

## Gun Control in the Middle & Southern Colonies

This month I am completing my series on gun control laws in colonial America. Like the New England colonies, the Middle and Southern colonies carried over an English tradition about being armed that would startle most modern Americans, and cause apoplectic seizures among most modern Englishmen.

Shortly after the Dutch colony of New Netherlands was taken over by England, and renamed New York, the Duke of York gave orders for the arming of its people. “Besides the general stock of each town, every male within this government from sixteen to sixty years of age” with a few exceptions, was required to be armed. Heads of households were required to arm themselves at their own expense; “if sons or Servants, at their Parents and Masters Charge and Cost...” If you were not armed, the penalty was five shillings—roughly equivalent to a stiff traffic ticket today.<sup>1</sup>

Maryland also required its free population to be armed. Lord Baltimore was the founder of Maryland. (You are allowed one guess for whom Maryland’s largest city is named.) He gave instructions to settlers emigrating to Maryland, including a very detailed list of tools, clothing, and food to bring with them. On that list, for each man, “Item, one musket... Item, 10 pound of Powder... Item, 40 pound of Lead, Bullets, Pistoll and Goose shot, of each sort some...”<sup>2</sup>

It would appear that Lord Baltimore believed that most settlers brought guns with them to Maryland. “An Act for Military Discipline” enacted in February or March of

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<sup>1</sup> *The Colonial Laws of New York from the Year 1664 to the Revolution...* (Albany, New York: James B. Lyon, 1894), 1:49-50. Spelling, capitalization, and punctuation have been modernized in all quotes in this article.

<sup>2</sup> *A Relation of Maryland; Together with a Map of the Countrey...* (London: William Peasley, 1635), in Clayton Colman Hall, ed., *Narratives of Early Maryland: 1633-1684* (New York: Charles Scribner’s Sons,

1638 required “that every house keeper or housekeepers within this Province shall have ready continually upon all occasions within his her or their house... for every person within his her or their house able to bear arms, one serviceable [working] gun” along with a pound of gunpowder, four pounds of pistol or musket shot, “match for matchlocks and of flints for firelocks....”

Of course, laws were sometimes passed but not enforced in colonial times, just as happens now. But the provisions for enforcement in Maryland would seem likely to encourage enforcement for purely selfish reasons. The officers of the militia were required to verify compliance with the law by “a sight or view of the said arms and ammunition” every month. Those who lacked arms and ammunition were to be fined thirty pounds of tobacco, payable to the militia officer responsible for the inspection. This created an economic incentive for the militia officer to check everyone’s guns and ammunition every month. If anyone lacked arms and ammunition, the militia officer was suppose to arm them, and he could force the lazy person who refused to be adequately armed to pay “any price... not extending to above double the value of the said arms and ammunition according to the rate then usual in the country.”<sup>3</sup>

Virginia is America’s oldest government, and not surprisingly, we have an enormous amount of material about gun control laws there. Unsurprisingly, these laws are quite similar to those of New England and the Middle Colonies. A 1619 statute required everyone to attend church on the Sabbath, “and all such as bear arms shall bring their pieces, swords, powder and shot.” Those failing to bring their guns were subject to a

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1910; reprinted New York: Barnes & Noble, 1959), 94; Matthew Page Andrews, *Tercentenary History of Maryland* (Chicago and Baltimore: S.J. Clarke Publishing Co., 1925), 1:150.

three shilling fine.<sup>4</sup> Virginia reissued this law in 1632: “All men that are fitting to bear arms, shall bring their pieces to the church...”<sup>5</sup> and again in November 1738.<sup>6</sup>

Virginia’s government was concerned in the early years about Indian attack, and with good reason. A 1623 Virginia statute required, “That no man go or send abroad without a sufficient party well armed...” No one was to go out to work in the fields unarmed, and a sentry was to stand guard as well. “That the commander of every plantation take care that there be sufficient of powder and ammunition within the plantation under his command and their pieces fixed and their arms complete.... That no commander of any plantation do either himself or suffer others to spend powder unnecessarily in drinking or entertainments, &c.”<sup>7</sup>

At about the same time in the early days of the Virginia colony, the government decided that gun ownership was not a threat: “It is ordered that all persons have hereby liberty to sell arms and ammunition to any of his Majesty’s loyal subjects inhabiting this colony....”<sup>8</sup>

While “loyal subjects” were trusted to own guns, there were laws that controlled under what conditions those guns could be used. A March 1655/6 statute prohibited shooting “any guns at drinking (marriages and funerals only excepted” because gunshots

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<sup>3</sup> William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1892), 1:77.

<sup>4</sup> August 2, 1619, “Proceedings of the Virginia Assembly, 1619,” in Lyon Gardiner Tyler, *Narratives of Early Virginia, 1606-1625* (New York: Charles Scribner’s Sons, 1907; reprinted New York: Barnes & Noble, 1959), 273.

<sup>5</sup> William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (New York: R. & W. & G. Bartow, 1823), 1:198.

<sup>6</sup> Hening, 5:19.

<sup>7</sup> Hening, 1:127.

<sup>8</sup> Hening, 2:403.

were the common alarm of Indian attack, “of which no certainty can be had in respect of the frequent shooting of guns in drinking....”<sup>9</sup>

Of course, most of Virginia’s gun control laws were designed to make sure that every member of the militia (which is to say, nearly every free white man) had a gun. One of the early laws required militia captains “take a strict and particular account of what arms and ammunition are wanting in their several companies and troops....” The county courts were empowered to tax the population “for the providing of arms and ammunition for supplying the wants aforesaid....” Infantry were to receive muskets and swords; cavalrymen were to receive pistols, swords and carbines.

These weapons purchased by the government, however, did not remain government property. The militia officers were to keep these arms “for them to dispose of the same as there shall be occasion; and that those to whom distribution shall be made do pay for the same at a reasonable rate....”<sup>10</sup> It was rather like the DCM program today; the government sold its population guns at a “reasonable rate,” but they were certainly the private property of the militiamen.

By 1684, the law required free Virginians to “provide and furnish themselves with a sword, musket and other furniture fit for a soldier... two pounds of powder, and eight pounds of shot....”<sup>11</sup> A similar 1705 statute required every foot soldier to arm himself “with a firelock, musket, or fusee well fixed” and gave him eighteen months to comply with the law before he would subject to fine.<sup>12</sup>

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<sup>9</sup> Hening, 1:401-2.

<sup>10</sup> William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (New York: R. & W. & G. Bartow, 1823), 2:304.

<sup>11</sup> Hening, 3:13.

<sup>12</sup> Hening, 3:338.

There are minor modifications to the statute in 1738 that still required all members of the militia to appear at musters with the same list of gun choices. The militiamen were still obligated to supply themselves with weapons, but reduced the ammunition requirement to one pound of powder and four pounds of lead balls.<sup>13</sup> A 1748 revision also required militiamen to provide themselves with “arms and ammunition...”<sup>14</sup> All cavalry officers were obligated to provide themselves with “holsters and pistols well fixed...”<sup>15</sup>

Not every militiaman apparently succeeded in arming himself; a 1748 statute provided “it may be necessary in time of danger, to arm part of the militia, not otherwise sufficiently provided, out of his majesty’s magazine and other stores within this colony...” Unlike the earlier laws that ordered government guns to be sold to militia members (and those guns then became the property of the militiaman), the 1748 statute criminalized embezzlement of “arms or ammunition” that were issued to those who were too poor to arm themselves, and thus treated private arms and public arms differently.<sup>16</sup>

A 1757 version of the statute again addressed the problem of those militiamen who were too poor to buy a gun: “any soldier... so poor as not to be able to purchase the arms aforesaid” would be provided with publicly owned arms.<sup>17</sup>

Not *everyone* was trusted with guns in Virginia, however. A 1680 statute prohibited “any Negro or other slave to carry or arm himself with any club, staff, gun, sword or any other weapon of defence or offence...”<sup>18</sup>

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<sup>13</sup> Hening, 5:17, 21.

<sup>14</sup> Hening, 6:116.

<sup>15</sup> Hening, 6:537.

<sup>16</sup> Hening, 7:118.

<sup>17</sup> Hening, 7:94.

By May, 1723, however, there seem to have been enough free blacks and Indians in the militia that the law was changed, “That every free Negro, mulatto, or Indian, being a house-keeper, or listed in the militia, may be permitted to keep one gun, powder, and shot...” Those blacks and Indians who were “not house-keepers, nor listed in the militia” were required to dispose of their weapons by the end of October, 1723. Blacks and Indians living on frontier plantations were required to obtain a license “to keep and use guns, powder, and shot...”<sup>19</sup>

Even the small number of blacks and Indians who were members of the militia were apparently no longer trusted with guns by 1738. They were still required to muster with the militia, but “shall appear without arms...”<sup>20</sup>

Like Virginia, South Carolina’s laws show how fear of slave revolt determined the colony’s gun control laws. A 1735 statute about the status of slaves authorized searches of slave quarters for guns, and requiring any “Negro or slave” to have a license to possess a gun.<sup>21</sup>

A 1743 statute similar to those of Virginia and New England, required “every white male inhabitant of this Province, (except travelers and such persons as shall be above sixty years of age,) who [are] liable to bear arms in the militia of this province” to come to church “with a gun or a pair of horse-pistols... with at least six charges of gun-powder and ball...” Those who came to church and did not “carry the same into the church or other place of divine worship as aforesaid” would be fined twenty shillings.

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<sup>18</sup> Hening, 2:481.

<sup>19</sup> Hening, 4:131.

<sup>20</sup> Hening, 5:17. Indians and blacks to appear unarmed for muster reiterated in 1757 at Hening, 7:95.

<sup>21</sup> David J. McCord, *Statutes at Large of South Carolina* (Columbia, S.C.: A. S. Johnson, 1840), 7:397, 399-400, 404-5.

Other provisions required church-wardens, deacons, or elders to check each man coming in, to make sure that he was armed. The stated purpose of this severe gun control measure—requiring almost all free white men to be armed—was “for the better security of this province against the insurrections and other wicked attempts of Negroes and other slaves....”<sup>22</sup>

The colonial tradition was not particularly freedom-oriented; gun control in Colonial America meant that while there few restrictions on free whites owning guns, most free whites were also *required* to own a gun. If you were black, or an Indian, your ownership of a gun, if it was allowed at all, was very restricted and controlled. This is not surprising; when a government allows someone to own a gun, it is making a statement that it considers you a trusted and loyal member of the community.

In Colonial America, to be black or Indian meant that you were not really trusted with the power to do good or evil that a gun provides. In much of modern America, to be a convicted felon means that the government does not trust you with this power. In places such as New York, Massachusetts, the District of Columbia, Chicago, and unfortunately, my home state of California, the complex raft of gun control laws shows that the general population is trusted only slightly more than Colonial Virginia trusted slaves.

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<sup>22</sup> *Ibid.*, 417-19.