

Maryland's weapon carry laws: A brief chronology

By Henry Heymering

1642

"Noe man able to bear arms to goe to church or Chappell or any considerable distance from home without fixed gunn and 1 Charge at least of powder and Shott." (Maryland Statute of 1642) Presumably this included indentured servants and blacks as well as whites – as it did in Massachusetts. Every able man had to have a gun and carry it with him whenever he left home.

1715

"And be it Enacted, by the Authority, Advice and Consent aforesaid, That no Negro or other Slave, within this Province, shall be permitted to carry any Gun or any other offensive Weapon, from off their Master's Land, without Licence from their said Master...." (*Archives of Maryland* 75:268 XXXIII) The first Maryland restriction on carrying weapons applied only to blacks and/or slaves – as slaves were being imported in larger numbers, and neither blacks nor slaves were citizens. A license from their master is equivalent to a note from a parent.

1776

"That the Inhabitants of Maryland are entitled to the Common Law of England ... and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six." (Maryland Declaration of Rights, Art. 5a in both the original (1776) and current Maryland Constitutions)

Under English Common Law around the time our Maryland and U.S. Constitutions were being written, it was not only a right to have and carry arms for self-defense but it was considered the duty of citizens to protect themselves as well as others: "The right of his majesty's Protestant subjects, to have arms for their own defence, and to use them for lawful purposes, is most clear and undeniable. It seems, indeed, to be considered, by the ancient laws of this kingdom, not only as a right, but as a duty; for all the subjects of the realm, who are able to bear arms, are bound to be ready, at all times, to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of the public peace." Opinion of the Recorder of London, 1780 (The Recorder of London was the foremost legal advisor to the city.)

As neighboring Virginian Patrick Henry put it during Virginia's ratification convention 1788, "The great object is that every man be armed. Everyone who is able might have a gun." (*The Debates of the Several State Conventions on the Adoption of the Federal Constitution* at 386, Jonathan Elliot, New York, Burt Franklin: 1888)

1809

A law prohibiting any carry of weapons “with the intent feloniously to assault any person.” (*Archives of Maryland* 570:94) Any carry, concealed or open, with no permit required for citizens, was still legal as long as it was without felonious intent.

1831

A statewide law that requires free blacks (only) to obtain a license from a local court for possession or carry (open or concealed) of firearms. (*Archives of Maryland*, 213:448) This is clearly racist. Why did it happen? It was a reaction to the Turner Rebellion of slaves in Virginia earlier that year.

1857

The ‘Dred Scott’ U.S. Supreme Court decision, by Marylander Justice Roger Taney, explains what rights a citizen was recognized to have at that time, and that negroes were not citizens: “It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, **and to keep and carry arms wherever they went.**” [emphasis added]

1866

Concealed carry is banned for a few years, but open carry is not. (*Archives of Maryland* 389:468-9) This was the first time a Maryland restriction on carry of weapons for citizens could be found. It is a reasonable assumption that this law was passed partly as a result of the assassination of President Lincoln in 1865, and as a result of slavery being abolished at the 1864 Maryland Constitutional Convention. Since blacks could no longer be selectively legislated against, the 1831 law was dropped and the concealed carry prohibition was made general – but could be selectively enforced against blacks or any other chosen group.

1884

At this time concealed carry, with no permit required, is legal again. Concealed carry is only illegal when arrested and charged with another crime. (*Archives of Maryland*, 390:522-3) It suggests that the 1866 ban on concealed carry may have been struck down or rescinded as unconstitutional.

1904

After more than 250 years of legal concealed carry for all citizens, with no permit required, concealed carry is again made illegal in Maryland, but this time with the exception of “carrying such weapon as a reasonable precaution against apprehended danger.”(*Archives of Maryland* 209:4025-6) Probably the exception was made to allow selective enforcement against blacks only, while keeping it from being a total ban that would be unconstitutional.

Clayton Cramer in his 1995 testimony to the Michigan House Judiciary Committee (<http://www.claytoncramer.com/Michigan.htm>) notes: “In a few cases, we have direct and explicit statements that these laws were passed to disarm feared minority groups, without violating the 14th Amendment's guarantee of equal protection. Florida Supreme Court Justice Buford's concurring opinion in *Watson v. Stone* (Fla. 1941) is perhaps the most blunt:

‘I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State.... [T]he Act was passed for the purpose of disarming the negro laborers ... and to give the white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population and in practice has never been so applied.’ [*Watson v. Stone* , 4 So.2d 700, 703 (Fla. 1941).]”

1972

Open carry of weapons in Maryland requires a permit for the first time ever – after more than 300 years of unrestricted open carry by citizens. (*Archives of Maryland*, 708:48-51) It now requires a permit from the Maryland State Police to carry a handgun in any way – concealed or open – State Police are to determine whether citizens have “good and substantial” reasons to carry a handgun, which show the permit is necessary “as a reasonable precaution against apprehended danger.” The only previous time in Maryland history that any and all carry required a permit was in 1831 and applied to free blacks only. The adoption of discretionary carry laws are a direct result from fears of the Baltimore Race Riots in 1968, and the rise in crime after the national gun control act of 1968. The similarity of this 1972 law to the 1831 law in response to the slave rebellion is striking and inescapable.

1988

“Saturday Night Special Law” – Creates the Handgun Roster Board to approve of all handguns sold in Maryland. (*Archives of Maryland*, 184:629) The roster board disapproves of inexpensive and concealable, easy to carry, handguns. This law harkens back to, and is reminiscent of, two other laws directly aimed at keeping guns out of the hands of slaves and recently freed men – the “Georgia Slavery Act of 1765” and the “Army and Navy Law” of Tennessee in 1879:

Since slaves did not work on Saturday Nights they were prohibited from carrying guns even if they had a license to do so. "PROVIDED ALSO That no Slave shall have Liberty to carry any Gun, Cutlass, Pistol or other Offensive Weapon abroad at any Time, between Saturday Evening after Sun-set and Monday Morning before Sun rise Notwithstanding a Licence or Tickett for so doing.... " (AN ACT *For the better Ordering and Governing Negroes and other Slaves* ... 25 March 1765, in THE COLONIAL RECORDS OF THE STATE OF GEORGIA, VOLUME XVIII, at 649, as cited by Edwin Vieira, "The Constitutional Militia, Slavery, And Contemporary 'Gun Control'" at <http://newswithviews.com/Vieira/edwin15.htm>)

"In 1879, the General Assembly of Tennessee banned the sale of any pistols other than "army or navy" model revolvers. This law effectively limited handgun ownership to whites, many of whom already possessed these Civil War service revolvers, or to those who could afford to purchase these more expensive firearms. These military firearms were among the best made and most expensive on the market, and were beyond the means of most blacks and laboring white people. The Ku Klux Klan was not inconvenienced since its organization in Tennessee had long since acquired its guns, many of which were such surplus army/navy model revolvers." (Stefan B. Tahmassebi, "GUN CONTROL AND RACISM" *GMU Civil Rights Law Journal* Vol. 2 (1991): 67)

Conclusion

Our Maryland weapons carry laws originated from, and are based on, the attempts to prevent slaves and negro freedmen from carrying weapons. Even the fairly recent laws of 1972 and 1988 were written as a result of racist fears. In either a republic or a true democracy the people – not just a select group of police and military – hold the power. Inalienable rights to life, liberty and happiness mean nothing without the ability to protect them. Free citizens have the right and the duty to protect themselves and their communities.

"In a democracy, citizens are supposed to act as partners in enforcing laws. Those forced to follow rules without being trusted even for a moment are, in fact, slaves."

(Jaron Lanier, pioneer of virtual reality, 2001)

"That rifle on the wall of the labourer's cottage or working class flat is the symbol of democracy."

(George Orwell, writer)

"Arms are the only true badges of liberty. The possession of arms is the distinction between a freeman and a slave. He who has nothing, and belongs to another, must be defended by him, and needs no arms: but he who thinks he is his own master, and has anything he may call his own, ought to have arms to defend himself and what he possesses, or else he lives precariously and at discretion."

(Andrew Fletcher, Scottish legislator, 1749)

(Thanks to Clayton Cramer, author of *Concealed Weapon Laws of the Early Republic; For Defense of Themselves and the State*; and *Armed America*, for the legal research.)