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A Brief History of Public Carry in Wyoming

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A BRIEF HISTORY OF PUBLIC CARRY IN WYOMING

George A. Mocsary & Debora A. Person***

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I. INTRODUCTION

The history of gun carry laws in Wyoming parallels that of many other Western states, reflecting the presence of great changes in national and regional events. From the time that Wyoming became its own territory in 1868, the

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treaties with the Cheyenne, the Crow, the Sioux, and the Arapahoe peoples distributing lands in Wyoming were in force.¹ The Wind River Reservation was created for the Shoshones.² The Homestead Act was recently passed,³ and the Pony Express, the Oregon Trail, the Overland Trail, the Mormon Trail, and the Bozeman Trail crossed the plains and mountains of the territory. The Civil War had just ended and recovery was painful. The U.S. government had granted land to the Union Pacific for the transcontinental railroad,⁴ bringing with the project an itinerant population of railroad workers, many of whom were immigrants of minority status. Raids and skirmishes between settlers, migrants, and frustrated Indian Nations were increasing, and federal military outposts were built. The Territory of Wyoming encompassed an expansive geographical area, but its population was sparse. Vast prairies surrounded homes and towns, and the arm of justice was often far away. For the few short years that a portion of Wyoming existed as part of the Dakota Territory, the seat of government in Yankton, Dakota Territory, was 500 miles from Cheyenne, with limited access to the courts.

Parts of Wyoming were lawless and dangerous, sometimes exceedingly so.⁵ At a time when guns were carried openly upon a person for business or for protection,⁶ carrying a concealed weapon came to be viewed with distrust.⁷ One Wyoming newspaper editor went so far as to infer intent to harm just by the act of arming oneself:

¹ Treaty of Fort Laramie with Sioux, etc., Sioux-U.S., Sept. 17, 1851, 11 Stat. 749 (also referred to as Horse Creek Treaty); Treaty with the Arapahoes, Arapahoe and Cheyenne-U.S., Feb. 18, 1861, 12 Stat. 1163 (also referred to as Fort Wise Treaty).

² Treaty with the Eastern Band Shoshoni and Bannock, Shoshoni and Bannock-U.S., July 3, 1868, 15 Stat. 673 (also referred to as Fort Bridger Council of 1868).

³ Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392.

⁴ Pacific Railroad Acts promoted the construction of a transcontinental railroad through government bonds and the grants of land to railroad companies. *See* Pacific Railroad Act of 1862, 12 Stat. 489; Pacific Railroad Act of 1863, 12 Stat. 807; Pacific Railroad Act of 1864, 13 Stat. 356; Pacific Railroad Act of 1865, 13 Stat. 504; and Pacific Railroad Act of 1866, 14 Stat. 66.

⁵ *See, e.g.*, 1 MARIE H. ERWIN, WYOMING HISTORICAL BLUE BOOK 655, 660, 662 (Virginia Cole Trenholm ed., 1974) (listing historical highlights such as “The Bloody Year on the Plains” resulting from the Sand Creek Massacre, 1865; the Indian War of 1876 against the Sioux Indians; and the 1885 Massacre of Chinese railroad workers); JOHN W. DAVIS, WYOMING RANGE WAR: THE INFAMOUS INVASION OF JOHNSON COUNTY (2010) (discussing the violence between large and small cattle ranchers). *But see* Philip J. Roberts, *A History of Wyoming Law: An Overview of Law and Lawyers in Territorial Wyoming*, 41 WYO. LAW., Apr. 2018, at 20 (briefly discussing a peaceful life in the territory outside of these isolated incidents).

⁶ *See, e.g.*, James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 WM. & MARY L. REV. 1777, 1780 (citing studies in probate databases in the eastern U.S. during 1774, finding gun ownership ranges from 54% to 73%, and estimating 50% of wealth owners in the rest of the country owned guns). Expectations that certain professions would require firearms were common. *E.g.*, Cheyenne, Wyo., Ordinance Concerning Carrying Firearms and Lethal Weapons (Feb. 4, 1876) and Buffalo, Wyo., Ordinance 43 (June 10, 1887) (excluding officers of the United

We take the point that the very act of arming oneself as a result of a quarrel or in anticipation of trouble constitutes malice and premeditation in a strict sense; that in view of the law prohibiting the carrying of concealed weapons, any person who has a grievance against another and arms himself is deserving of no sympathy when, as a result of his misdeeds, he is brought before the bar of justice.⁸

In the 150 years since the creation of the territorial government, the State's stance on gun carrying has undergone many adjustments. It shows that peaceable open firearm carriage has almost always been allowed everywhere, and always allowed somewhere, in Wyoming. Concealed carry, on the other hand, has a mixed history. It came to be held in disdain, and highly regulated, in the early part of Wyoming's history. But it became the accepted and default mode of public carry in recent years. Wyoming today has some of the most liberal gun laws in the country. This essay surveys the development of these laws from positive, public discourse, and comparative perspectives to the extent possible given the relative paucity of sources on the topic.⁹

The essay proceeds in three Parts. Part II presents the state of public firearm carriage in pre-territorial, territorial, and post-statehood Wyoming. It places the development into context using both (scarce) newspaper and other commentary and comparisons to contemporaneous developments in Wyoming's sister states. Part III surveys some local ordinances relating to firearms; Wyoming did not have a preemption statute in place for much of its history. Part IV concludes.

II. WYOMING-WIDE REGULATION, OR LACK THEREOF

Portions of the area that is now Wyoming were claimed over time by five nations: Great Britain, France, Spain, Mexico, and Texas. Similarly, it was

States, territory, and the city from carry laws). See NICHOLAS J. JOHNSON ET AL., *FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, & POLICY* 484 (2d ed. 2018) (discussing city ordinances along the cattle drive routes from Texas to Wyoming disarming cowhands to curtail violence often associated with drinking and gambling). Evidence also exists that carrying a firearm was required in unexpected professions. See Mable Wilkinson, *Establishing Libraries Under Difficulties*, BULL. OF THE AM. LIBR. ASS'N, July 1916, at 169 (referencing job skills required for a library organizer position in northern Wyoming to include, “. . . ride and drive, as well as pack a horse, follow a trail, shoot straight, run an automobile, and be able to rough it whenever necessary”).

⁷ Cf. Nelson Lund, *The Second Amendment, Heller, & Originalist Jurisprudence*, 56 UCLA L. REV. 1343, 1359 (2009) (noting that carrying concealed carried with it a “presumption of criminal intent”).

⁸ *The Stigma*, KEMMERER REPUBLICAN, May 21, 1915, at 2.

⁹ This essay does not intend to be a comprehensive treatment of the topic. Rather, it seeks to serve as a resource for practitioners and scholars by laying the foundation for future inquiry based on available information. In addition, access to certain types of documentation is limited. Legislative history, for example, is scarce.

parceled out to a number of different U.S. territories before establishing borders as a territory of its own in 1868.¹⁰ This Part sets forth the state of public firearm carriage in Wyoming from before it became a territory through the present.

A. *Pre-Territorial Wyoming: 1803–1868*

Much of the land area came into the United States through the Louisiana Purchase in 1803 and later through cessations from Mexico and the annexation of Texas.¹¹ Under the laws of the Louisiana Territory that governed much of Wyoming early in the nineteenth century, there were no general restrictions on weapon carriage, though “slaves and mulattos” were prohibited from keeping or carrying any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive.¹²

The inclusion of mulattos in the restriction likely originated in Louisiana, and applied to the entire Louisiana Territory by default.¹³ Louisiana was home to a significant mulatto population that “held a distinct intermediate position between black slaves and the white population” under both Spanish and French rule and in Latin America.¹⁴ Under American rule, however, Louisiana mulattos were classified more and more “within the system of caste disabilities common to free Negroes in the rest of the South.”¹⁵

Despite their relatively greater freedom as compared to the black population in the rest of the South, Civil War Reconstruction would bring an end to their distinct status in Louisiana.¹⁶ Racist firearm restrictions were common both before and after the Civil War.¹⁷ Indeed, racist gun controls appeared in both

¹⁰ See 1 THE FEDERAL AND STATE CONSTITUTIONS COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA XIV (Francis Newton Thorpe ed., 1909) (listing territories of which Wyoming was a part and referring to parts of the work in which those other territories are described) [hereinafter 1 ORGANIC LAWS].

¹¹ See Treaty of Guadalupe-Hidalgo, Mex.-U.S., Feb. 2, 1848, 9 Stat. 922; Joint Resolution for annexing Texas to the United States, H.R.J. Res. 8, Mar. 1, 1845, 5 Stat. 797.

¹² 1808 La. Terr. Laws 13, 13–14.

¹³ A mulatto was a person of mixed African and White, often Spanish, descent. ROBERT J. COTTROL, *THE LONG, LINGERING SHADOW: SLAVERY, RACE, AND LAW IN THE AMERICAN HEMISPHERE* 39, 89, 323 (2013).

¹⁴ Raymond T. Diamond & Robert J. Cottrol, *Codifying Caste: Louisiana's Racial Classification Scheme and the Fourteenth Amendment*, 29 LOYOLA L. REV. 255, 268, 270 (1983).

¹⁵ *Id.* at 270–71.

¹⁶ *Id.* at 271 & n.76; see JOHNSON ET AL., *supra* note 6, at 428–29 (citing a post-bellum “Black Code” from Louisiana).

¹⁷ *E.g.*, ARK. CONST. OF 1836 art. II, § 21 (“[T]he free white men of this State shall have a right to keep and bear arms for their common defence”); *State v. Newsom*, 27 N.C. (1 Ired.) 250, 250 (1844) (enforcing a North Carolina statute that made it a misdemeanor for any “free negro,

pre-colonial America and the original colonies where the English, Dutch, French, Spanish, and Americans restricted firearm sales to Native Americans, with the earliest ban by the Spanish in 1501.¹⁸ In the colonies, slaves were barred from arms possession, though exceptions were made for those who were given licenses by their masters or lived in their own house.¹⁹

Wyoming has a mixed history with regard to selective disarmament. Some later newspaper articles advocated disarming Native Americans,²⁰ and Wyomingites did arm themselves for fear of Indian attack.²¹ The first state legislature also petitioned Congress to disarm the Indians residing within and adjacent to Wyoming.²² The State was not alone in disarming non-citizens in the early twentieth century.²³ Nevertheless, it is, perhaps, to Wyoming's credit that, once it separated from the Louisiana Territory, its legislature would never again enact gun controls targeting people of color.

As the American population moved west, new territories formed and new states applied for admission to the Union, leaving behind a patchwork of territorial remnants to be incorporated into the existing territories. The effect of the shifting governmental landscape was that over the course of time, the land that is now Wyoming belonged to a number of different territories.²⁴ Immediately before Wyoming became a territory in its own right, most of it belonged to the Territory of Dakota.²⁵ Wyoming would inherit Dakota's laws when it became an independent territory.²⁶ Dakota began a pattern in which two categories of laws related to public firearm carriage existed in parallel for most of Wyoming's history. The first category is a ban on concealed arms carriage coupled with permissive open carry. The second category, adopted by Dakota in 1862, is a pair of laws that (1) prohibited public carry with the intent to assault another, coupled with (2) a surety statute that allowed a justice of the peace to require that a weapon carrier post a good-behavior bond. This bond was initiated upon

mulatto, or free person of color" to "wear or carry about his or her person, or keep in his or her house, any shot gun, musket, rifle, pistol, sword, dagger or bowie-knife," unless he or she had previously obtained a license); JOHNSON ET AL., *supra* note 6, at 427–28 (quoting Black Codes, which also covered mulattos).

¹⁸ JOHNSON ET AL., *supra* note 6, at 187–92.

¹⁹ *Id.* at 194–95.

²⁰ *Indian Arms and Ammunition*, DAILY LEADER, July 14, 1876 (noting also that "Indians are well armed"); *Disarm the Indians*, DAILY LEADER, July 11, 1876 (asking "Why are the Indians permitted to bear firearms?").

²¹ *See infra* notes 45–47.

²² H.R.J. Mem. to Congr. 2, 1st Leg., 1890 Wyo. Laws 413.

²³ *See infra* notes 80–82.

²⁴ ERWIN, *supra* note 5, at 3–9.

²⁵ *Id.* at 42.

²⁶ *See infra* note 39 and accompanying text.

the credible complaint of, or other sufficient proof by, the plaintiff bringing the complaint that he or she had reasonable cause to fear an injury or breach of the peace by the carrier.

The intent-based statute, passed in the first 1862 legislative session, read “if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.”²⁷ The 1862 legislature passed a peace bond statute in its second session:

If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing [to the district court] as before provided.²⁸

The laws, acting in tandem, permitted open or concealed public firearm carriage, but allowed authorities to punish those who carried with the proven intent to do harm. If intent could not be proven, the plaintiff could attempt to meet a lower standing requirement of having “reasonable cause to fear an injury or breach of the peace” under the surety statute. The alleged offender could then be brought before a Justice of the Peace and required to bond his or her good behavior.²⁹ This surety statute, in the words of William Blackstone, served as a prophylactic, “without any crime actually committed by the party, but arising only from probable suspicion that some crime is intended or likely to happen.”³⁰

Two years later, the Territory of Dakota passed a statute specific to concealed carry, while leaving open carry unregulated: “Every person who carries concealed

²⁷ Act to provide for a criminal code for the Territory of Dakota, Ch. 9, § 135, 1862 Dakota Terr. Sess. Laws 1st Sess., 157, 191. In the second session, the Dakota legislature added provisions penalizing various degrees of actual assault with a weapon. Ch. 3, §§ 33, 34, 36, 37, 1862 Dakota Terr. Sess. Laws 2d Sess., 37, 44–45.

The Dakota intent statute’s language is nearly identical to that of the Nebraska Territory (TERR. OF NEB. REV. STAT. § 145 (1866)) and the Idaho Territory (Act concerning crimes and punishments, § 133, 1875 Terr. of Idaho Sess. Laws, 354). Both of these were enacted too late to have been the law while the land that would become Wyoming was part of these territories.

²⁸ *Id.* §§ 11, 18, 1862 Dakota Terr. Sess. Laws 2d sess., 94–95.

²⁹ See Robert Leider, *Constitutional Liquidation, Surety Laws, and the Right to Bear Arms* (forthcoming) (manuscript at 13) (on file with authors) (discussing the standing requirement in surety statutes).

³⁰ 4 WILLIAM BLACKSTONE, COMMENTARIES *252; see Leider, *supra* note 29, at 13.

about his person any description of fire-arms, being loaded or partly loaded or any sharp or dangerous weapon such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.”³¹ A misdemeanor was “punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.”³²

The Territory of Dakota thus started several trends for what would become the State of Wyoming. First, it began the dual system which combined, on the one hand, punishment for intent-based carry and a surety of the peace statute with, on the other hand, a general ban on concealed carry continued with broadly permitted open carry. This system continued mostly unchanged until nearly the end of the twentieth century. The exceptions included: (1) the nascent Territory of Wyoming did not regulate public carry at all; (2) the Territory then banned all carry in incorporated settlements for fourteen years in the late nineteenth century; and (3) Wyoming changed its ban on concealed carry to a may-issue licensing system for concealed carry around the midpoint of the twentieth century.³³

Second, it began the general embrace in Wyoming of the public carry model that was at the heart of the Western tradition in which open carry was broadly allowed, while concealed carry was severely restricted.³⁴ In contrast, Wyoming always rejected a model under which public carriage could be broadly restricted everywhere.³⁵ For most of its history, it also eschewed a model, which some say was characteristic of the West, under which arms bearing was broadly banned in towns.³⁶

³¹ Act of Jan. 11, 1865, ch. 27, § 455, 1864–65 Dakota Terr. Laws, 30, 128.

³² *Id.* Ch. 27, § 14, at 32.

³³ A may-issue licensing system is one in which the authority issuing the concealed-carry license has broad discretion in whether to issue the license, sometimes cabined by a requirement that the applicant must show a justifiable need for self protection greater than that of a member of the general public. JOHNSON ET AL., *supra* note 6, at 48, 735. One’s ability to get a license in such jurisdictions often depends on one’s connections rather than on the merits of one’s application. *Id.* at 735.

³⁴ *E.g.*, 1903 Kan. Laws ch. 216, § 1; 1909 Idaho Laws 6; 1888 Idaho Laws 23; OR. STAT. ch. VII, § 1969 (1885); 1886 Wash. Laws 81–82; WASH. CODE § 929 (1881); NEB. STAT. ch. V, § 25 (1873); CAL. CODE § 1585 (1863). These statutes were passed in many states across many legislative sessions. Professor Robert Leider ably shows that this model of public carry was not unique to any part of the nation. Leider, *supra* note 29, at 10–11, nn.92–95, 15 & n.133 (citing additional statutes, cases, and other sources, along with arguments to the contrary).

³⁵ Leider, *supra* note 29, *passim* (arguing that the so-called “Massachusetts model,” which some argue allowed for complete bans on public carriage, never came about).

³⁶ *Id.* at 2, 10, n.95 (citing sources); Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 84–85, 117–18 (2013) (citing and discussing sources).

Although the southern slave states adopted their regulations both to prevent violence and disarm freedmen by, for example, allowing carriage only of Army revolvers that freedmen could not afford and would not have had from military service,³⁷ Wyoming does not appear to have had racist motives behind its enactments.

Third, there is no available newspaper or other commentary specifically on the topic of public arms carriage from this point until the early twentieth century.³⁸ Some commentary about civilian arms bearing appears in various places, generally assuming that individuals are armed.

The next Section discusses the evolution of public carry in the Territory of Wyoming. The Section after discusses the State of Wyoming's treatment of public firearm carriage.

B. Territorial Wyoming: 1868–1890

The Organic Act of Congress that established the Territory of Wyoming provided that the laws of the Territory of Dakota in force at the time the Territory of Wyoming was established would remain in effect until repealed by the Wyoming Territorial Legislature.³⁹ Wyoming thus inherited the Dakota Territory's ban on carrying loaded or partly loaded concealed firearms, while fully allowing open carry. Dakota's laws would only be in effect for a short time, however.

1. 1869

In 1869, Wyoming's First Territorial Legislature introduced a bill into the House titled, "An Act to Prevent the Carrying of Concealed Weapons in the Territory of Wyoming," but it was tabled and never progressed.⁴⁰ Because, during the same session, the Legislature repealed the laws of the Territory of Dakota in

³⁷ Robert J. Cottrol & Raymond T. Diamond, "Never Intended to Be Applied to the White Population": *Firearms Regulation and Racial Disparity—The Redeemed South's Legacy to a National Jurisprudence?*, 70 CHI.-KENT L. REV. 1307, 1310–13, 1321–23, 1329–33 (1995); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309, 335–38, 342–48 (1991); see JOHNSON ET AL., *supra* note 6, at 404–15; see generally Cottrol & Diamond, 70 CHI.-KENT L. REV. 1307, *supra*. This explains why, before the Civil War, nearly all Southern approaches to carry follow the Wyoming model. After the Civil War, there is more effort to modify the laws to make it difficult for people of color to carry.

³⁸ See *infra* text accompanying notes 119–31.

³⁹ Act to Provide a Temporary Government for the Territory of Wyoming, ch. 235, 15 Stat. 178 (1868).

⁴⁰ H.R. JOURNAL, Gen. Sess., at 49 (Wyo. 1869). Discussion of HB 13. The bill itself is no longer available.

effect in the Territory of Wyoming at that time, the State would temporarily be without any restrictions on concealed or open carry.⁴¹

The Legislature did, however, pass a law forbidding the carry of “any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person.”⁴² Violators were subject to a maximum fine of \$500 or six months’ imprisonment.⁴³ The Territory also had a surety-of-the-peace statute in effect, but unlike the Dakota version which had a section dealing specifically with weapons, the 1869 Wyoming territorial version dealt only generally with bonding one’s behavior to keep the peace.⁴⁴

In his first address to the brand new Legislature in 1869, Territorial Governor J. A. Campbell relayed warnings of recent Sioux Indian raids in the South Pass area where property and lives were lost, and he stated that he had arranged for the acquisition of “arms and ammunition . . . for distribution to the citizens in threatened localities” in order that they protect themselves until a militia could be established.⁴⁵ He noted that the Shoshone Reservation and the unceded Indian Territory provided to the Sioux in the 1868 Fort Laramie Treaty included the “finest and richest portions of our territory.”⁴⁶ He went on to say that “[t]hese unceded Indian lands must soon be abandoned by the Sioux, and they will be restricted to their reservations proper. I trust that, as the Indians have already violated the treaty, it will be entirely abrogated by our government, and this vast extent of territory given up to civilization.”⁴⁷

No militia had been formed as of 1873, and Indian raids continued. In his message of that year to the Territorial Legislature, Governor Campbell stated that he had received “fifty stand of arms” from the federal government.⁴⁸ Because no formal militia existed, he loaned the arms to “unarmed and unprotected citizens living upon ranches where they were exposed to Indian depredations.”⁴⁹ The Territorial Librarian distributed the arms.⁵⁰

⁴¹ COMPILED L. WYO., ch. 100 (1876).

⁴² 1869 Wyo. Terr. Laws, ch. 3, § 127.

⁴³ *Id.*

⁴⁴ *Id.* ch. 74, §§ 1–2.

⁴⁵ H.R. JOURNAL, *supra* note 40, at 9 (stating also that “I recommend the passage of a militia law, providing for the formation of volunteer companies, or the enrollment of all persons liable to military duty, under such rules and regulations as you may deem proper.”).

⁴⁶ *Id.* at 15.

⁴⁷ *Id.*

⁴⁸ *Id.* at 30.

⁴⁹ *Id.*

⁵⁰ *Id.*

2. 1875

During the 1875 legislative session, the Legislature enacted “[a]n act to prevent the carrying of fire arms or other deadly weapons.”⁵¹ The House read the bill a first and second time then referred it to its Committee on Indian and Military Affairs.⁵² The Territorial Council passed the bill. The Governor signed it into law on December 2, 1875.⁵³ It read,

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Section. 1. That hereafter it shall be unlawful for any resident of any city, town, or village, or for any one not a resident of any city, town or village, in said Territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

Sec. 2. That if any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of this act by a proper peace officer, continue to carry or bear upon his person any fire-arm or other deadly weapon, he or she, shall be deemed to be guilty of a violation of the provisions of this act and shall be punished accordingly.

Sec. 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days.⁵⁴

This began a unique fourteen-year period in which both concealed and open firearm carriage was allowed while traveling in the Territory at large, but both were forbidden while in a settlement proper.⁵⁵

One attempt was made to amend the 1875 legislation in 1886, but the text of that bill is not available. House Representative Kerr introduced the bill as

⁵¹ H.R. 1, 4th Gen. Sess. (Wyo. 1875).

⁵² H.R. JOURNAL, Gen. Sess., at 53 (Wyo. 1875).

⁵³ *Id.* at 145.

⁵⁴ WYO. UNCONSOL. LAW, ch. 52, §§ 1–3 (1876).

⁵⁵ *See supra* text accompanying note 36.

“A Bill for an Act Concerning the Carrying of Weapons.”⁵⁶ It was reported out of committee as “do not pass.” The Act was then tabled before it died completely.

The complementary intent-based and surety statutes from 1869 remained in force during this time.⁵⁷ If the penalties for the violation of the laws are an indication of the Legislature’s view of their wrongfulness, it would seem that carrying with intending to assault someone was viewed as about an order of magnitude more grave than in-town weapon carriage.⁵⁸

3. 1889

In 1889, shortly before the U.S. Congress admitted Wyoming to the Union in 1890,⁵⁹ Wyoming’s Constitutional Convention convened and adopted its first constitution.⁶⁰ That constitution included in its Declaration of Rights a provision guaranteeing that “The right of citizens to bear arms in defense of themselves and of the state shall not be denied.”⁶¹ This provision continues in force today.

The question of individual carrying did not consume the efforts of members of Wyoming’s Constitutional Convention. Discussions were entertained, however, with regard to police power and importing armed bodies. A provision that would ultimately be adopted as Article 19, Section 6, of that document stated, “No armed police force, or detective agency, or armed body, or unarmed body of men, shall ever be brought into this state, for the suppression of domestic violence, except upon the application of the legislature, or executive, when the legislature cannot be convened.”⁶² The discussions further indicated that this proposed provision was in response to Albany County and the Union Pacific’s importation of Pinkerton detectives to squelch any violence that might result from the brakeman’s strike in the summer of 1886, an event described by Mr. E.S.N. Morgan from Laramie County as “one of the greatest outrages ever perpetrated upon any people.”⁶³

⁵⁶ H.R. 72, Budget Sess. (Wyo. Terr. 1886).

⁵⁷ 1876 Wyo. Laws, ch. 14, §§ 1–2; *id.* ch. 35, § 127.

⁵⁸ Up to a \$500 fine and 6 months’ imprisonment for carrying with intent to harm someone, *id.* ch. 35, § 127, versus up to a \$50 fine and 20 days’ imprisonment for carrying in town, *id.* ch. 52, §§ 1–3.

⁵⁹ Act of July 10, 1890, ch. 664, 26 Stat. 222.

⁶⁰ *Id.*

⁶¹ WYO. CONST. art. I, § 24.

⁶² *Id.* art. XIX, § 6.

⁶³ JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING 402 (1893) [hereinafter JOURNAL AND DEBATES]; see *Railroad Strikes*, BOOMERANG, May 13, 1886 (providing one account of the event).

Sentiment did, however, support the need to protect one's property. Mr. Melville C. Brown of Albany County declared, "I don't believe in bringing into our state an armed force from another state to put down insurrection, or anything else in the way of disturbances, as long as we ourselves can protect ourselves."⁶⁴ This convention convened just months after the vigilante hanging of local ranchers and accused rustlers, James Averell and Ella Watson, an event associated with the early violence of the Johnson County Wars.⁶⁵ During the range wars, gunmen were recruited from Texas by the cattle ranchers with the support of the Governor, presumably averting any conflict with the constitutional provision on police power.⁶⁶

C. *The State of Wyoming: 1890–Present*

Statehood, not surprisingly, was pivotal in Wyoming's history. This Part describes the final phases in Wyoming's public-carriage history, beginning with the influential changes made in 1890 and ending with the State's current public-carry system.

1. 1890

Wyoming's 1890 enactments, made on the eve of statehood, would have long-lasting effect well into the twentieth century. These enactments are also subject to the most (relatively speaking) judicial interpretation and public commentary. This Section, therefore, begins by discussing the statutes enacted and rejected just before, and in the several decades following, statehood. It then discusses available judicial treatment of, and public discourse on, the topic.

a. *The Statutes*

Just before statehood in 1890, the Wyoming Legislature adopted substantial portions of the criminal code from the *Revised Statutes of Indiana* in the areas of offenses against public peace, public justice, public morals, and select felonies.⁶⁷ Among these were the gun carry laws which came from the *Revised Statutes of Indiana* section 1985, though Wyoming enacted its own penalties for the offenses.⁶⁸ The statute borrowed from Indiana read:

⁶⁴ JOURNAL AND DEBATES, *supra* note 63, at 402.

⁶⁵ JOHN W. DAVIS, WYOMING RANGE WAR: THE INFAMOUS INVASION OF JOHNSON COUNTY 67–78 (2010).

⁶⁶ *Id.* at 134–35.

⁶⁷ Wyo. Stat. 1957, § 6-239 (annotating to Indiana cases and labeling the annotations "Decisions Under Law of Origin"); C.S. 1945, § 9-1203 (same).

⁶⁸ By 1931, this reference to Ind. Rev. Stat. § 1985 is changed to § 2540 (1926). The 1926 penalty of the Indiana statute reads, "on conviction, be fined not exceeding five hundred dollars." It goes on to say that the weapon shall be turned over to the sheriff and, if court ordered, destroyed. It

Every person, not being a traveler, who shall wear or carry any dirk, pistol, bowie knife, dagger, sword-in-cane, or any other dangerous or deadly weapon concealed, or who shall carry or wear any such weapon openly, with the intent, or avowed purpose, of injuring his fellow-man, shall be fined not more than one hundred dollars.⁶⁹

Wyoming thus shifted back to a version in which open gun carriage was allowed unless it was with injurious intent, but concealed carriage was prohibited for all but travelers. “Traveler,” as used in the statute,

designated a person traveling at least such a distance as takes him among strangers, with whose habits, conduct, and character he is not acquainted, where unknown dangers may exist from which there may be a necessity to protect himself by preparing for a defense against an attack. It follows that, to come within the exception of said section, the travel must be without the ordinary habits, business, or duties of the person, and at least to such distance from his home as takes him beyond the circle of his general acquaintances.⁷⁰

Such traveler exceptions were a common feature of other states’ carry laws.⁷¹

The parallel pair of intent-based and surety schemes thus remained in effect in slightly altered form. With the importation of Indiana’s carry statute, which included an intent-based component for open carry, a free-standing statute barring public carriage with the intent to assault may have been deemed unnecessary.⁷² The Wyoming Legislature did not adopt one, although it did adopt a trio of standard-form assault and attempted-assault statutes.⁷³ The surety statute remained unchanged from 1875, still with no weapon-specific component.⁷⁴

also contains a 3-strikes component in which the convicted shall be imprisoned in the state prison not more than one year.

⁶⁹ 1890 Wyo. Terr. Laws, ch. 73, § 96 (codified at WYO. REV. STAT. § 5051 (1899)).

⁷⁰ *State v. Smith*, 61 N.E. 566, 566 (Ind. 1901). Earlier cases did not except from traveling journeys away from home that involved one’s business or duties. *See Lott v. State*, 24 N.E. 156, 156 (Ind. 1890); *Burst v. State*, 89 Ind. 133 (1883). *See infra* notes 105–15 and accompanying text, for further discussion of how Indiana precedent was considered binding, or nearly so, in Wyoming with respect to the statutes imported from that state.

⁷¹ *E.g.*, MO. REV. STAT. § 3503 (1895); *Id.* § 1275 (1879); CAL. CODE § 1585 (1863); 1837 ARK. ACTS, ch. XLIV, § 3; *Coker v. State*, 63 Ala. 95 (1875); *Gholson v. State*, 53 Ala. 519 (1875); *Lockett v. State*, 47 Ala. 42 (1872).

⁷² *See supra* note 68–69 and accompanying text.

⁷³ 1890 Wyo. Terr. Laws, ch. 73, §§ 20–22.

⁷⁴ WYO. REV. STAT. §§ 5430–5441 (1899); WYO. REV. STAT. §§ 3156–3167 (1887).

As compared with the penalties in the 1875 statute, 1890's scheme doubled the penalty for unlawful concealed carry from \$50 to \$100 but removed the possibility of incarceration. The effective penalty for gun carriage with intent to assault, however, fell from a maximum of \$500 and six months' imprisonment to a mere \$100. Although the section preceding the carry restrictions did impose a maximum \$100 fine and six months' jail time for "[w]hoever draws or threatens to use any pistol, dirk, knife, slung-shot or any other deadly or dangerous weapon, already drawn, upon any other person," the discrepancy in the presumed seriousness of the offenses likely explains why the legislature re-enacted the separate intent-based provision in 1899.⁷⁵ Both this primary separate intent-based statute and the secondary one attached to the carry provision would remain in effect well into the latter portion of the twentieth century.⁷⁶ This statutory scheme remained unchanged with regard to concealed and open carry until 1957.⁷⁷ The intent-based statute remained unchanged until 1971,⁷⁸ and the surety statute remained unchanged until 1987.⁷⁹

There was, however, activity in the legislature on the gun carry laws during these years. One related enactment in the 1925 legislative session prohibited non-citizens of the United States from possessing, wearing or carrying any dangerous or deadly weapons.⁸⁰ This statute specifically authorizes the Game and Fish Commissioner and his deputies, as well as peace officers, to confiscate deadly weapons found to be owned, possessed, worn or carried by an alien not entitled to own or possess the same.⁸¹ It also directs that moneys derived from the sale of such confiscated property when the arrest is made by peace officers shall be paid into the school fund of the county where the offense is committed.⁸² At a

⁷⁵ WYO. REV. STAT. § 5050 (1899).

⁷⁶ See *infra* note 78 and accompanying text.

⁷⁷ 1957 Wyo. Laws, ch. 201, § 1 (amending WYO. COMP. STAT. § 9-1203 (1945), codified at WYO. STAT. § 6-239 (1957)); WYO. COMP. STAT. § 9-1203 (1945); WYO. REV. STAT. § 32-408 (1931); WYO. COMP. STAT. § 7188 (1920); WYO. COMP. STAT. § 5899 (1910); WYO. REV. STAT. § 5051 (1899).

⁷⁸ 1971 Wyo. Laws, ch. 32 (repealing WYO. STAT. 1957, § 6-237); WYO. STAT. § 6-237 (1957); WYO. COMP. STAT. § 9-1201 (1945); WYO. REV. STAT. § 32-309 (1931); WYO. COMP. STAT. § 7102 (1920); WYO. COMP. STAT. § 5824 (1910); WYO. REV. STAT. § 4981 (1899). From 1890 until 1971, the carry statute had attached to it the intent-based component that appears to have been superfluous given the existence of the stand-alone intent-based statute discussed in this note and its accompanying text. See *supra* text accompanying note 72; *supra* note 77 (citing the iterations of the carry statute).

⁷⁹ WYO. STAT. ANN. § 7-3-501 (1987); WYO. COMP. STAT. §§ 10-101 to -112 (1945); WYO. REV. STAT. §§ 33-1401 to -1412 (1931); WYO. COMP. STAT. §§ 7597-7608 (1920); WYO. COMP. STAT. §§ 6301-6312 (1910); WYO. REV. STAT. §§ 5430-5441 (1899).

⁸⁰ 1925 Wyo. Laws, ch. 106, § 1 (codified at WYO. REV. STAT. § 32-410 (1931)).

⁸¹ *Id.* § 2.

⁸² *Id.*

time that “witnessed severe hostility toward aliens,” Wyoming was not alone in disarming aliens, often under the guise of game laws.⁸³

In 1911, Representative Umahler introduced House Bill 171, which would have changed the fines for unlawful carry to a range of \$25 to \$100 and incarceration ranging from ten to thirty days.⁸⁴ It removed the traveler exception and added an exception for militiamen, police officers, and others licensed in the state by the prosecuting attorney of a county, or the Secretary of State on approval of the Attorney General.⁸⁵ The State required licensees to affirm that they were sober and law-abiding and to pay a licensing fee.⁸⁶ Although this bill never made it through the Senate, it foreshadowed changes that would be adopted forty years in the future.

In 1913, the House again proposed legislation to amend and re-enact section 5899 of C.L. 1910.⁸⁷ This bill would have raised the fine to \$500: “Every person who shall wear or carry any dirk, pistol, revolver, bowie knife, dagger, sword-in-cane, or any other dangerous weapon concealed, or who shall carry or wear any such weapon openly with the intent or avowed purpose of injuring his fellow man, shall be fined not more than \$500.00.”⁸⁸ The committee recommended postponing this bill indefinitely.

b. Interpretation and Commentary

There are a few hints in the 1890 Territorial House Journal that the change from the 1875 version of the carry statute may have been made to ensure its constitutionality. These hints grow stronger when combined with judicial interpretation and newspaper commentary.

Soon after the 1890 Territorial House session began, Representative Thomas B. Adams stated that he would “introduce a House Resolution requesting the opinion of the Attorney General upon the validity of certain laws, etc.”⁸⁹ A few weeks later, he proposed a resolution, which was adopted, that the “Attorney

⁸³ JOHNSON ET AL., *supra* note 6, at 501–07 (describing history and citing sources); *see also* 4 WILLIAM BLACKSTONE, COMMENTARIES *412 (describing how game laws were used to disarm the untrustworthy—according to the Crown—members of the citizenry).

⁸⁴ H.R. 171, Gen. Sess. (Wyo. 1911).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ H.R. 202, Gen. Sess. (Wyo. 1913).

⁸⁸ *Id.*

⁸⁹ HOUSE JOURNAL OF THE ELEVENTH LEGISLATIVE ASSEMBLY, OF THE TERRITORY OF WYOMING, CONVENED AT CHEYENNE, ON THE FOURTEENTH DAY OF JANUARY, 1890, at 35–36 (1890) (Jan. 20, 1890) [hereinafter 1890 TERRITORIAL HOUSE JOURNAL].

General . . . assist the members of this House, and the committees thereof, in the drafting and preparation of bills recommended in the Governor’s message.”⁹⁰ In addition to the Governor’s message, the Attorney General had also submitted a report to the legislature.⁹¹ Unfortunately, there seems to be no available transcript of the Governor’s message or Attorney General’s report.⁹²

About three weeks later, the House introduced House Bill 105, “[a] bill for an act defining crimes, regulating criminal procedure, and for other purposes.”⁹³ This bill included the 1890 carry statute.⁹⁴ Two days later, the bill was referred to a “special committee of the members of the bar of Wyoming,” including Wyoming’s Attorney General and Chief Justice.⁹⁵ Four days later, the “special committee to examine and report upon H.B. No. 105” returned the bill to the House “with the recommendation that such bill be passed with . . . amendments.”⁹⁶

The amendments returned to the House did not include amendments to the public carriage section, but they did include an amendment to the following section dealing with the sale of weapons to minors.⁹⁷ The amendment, which was passed, reduced the age of a person to whom “cartridges manufactured and designed for use in a pistol” could be transferred from twenty-one to sixteen.⁹⁸ The amendments were approved and the bill passed the House.⁹⁹ The Territorial Council (which would later become the Senate) added two unrelated amendments to the bill, passed it, and returned it to the House four days later, where it was passed with the Council’s amendments.¹⁰⁰

⁹⁰ *Id.* at 165 (Feb. 12, 1890).

⁹¹ *Id.* at 33 (Jan. 16, 1890).

⁹² The Cheyenne Daily Leader newspaper did report on the message in multiple articles. Neither reports anything said by the Governor or Attorney General about crime. It did, however, report that the Attorney General recommended stricter game laws. *See* CHEYENNE DAILY LEADER, Jan. 17, 1890, at 2, 3.

⁹³ 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 339 (Mar. 4, 1890).

⁹⁴ 1890 Wyo. Laws, ch. 73; *see supra* note 69 and accompanying text.

⁹⁵ 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 339 (Mar. 6, 1890).

⁹⁶ *Id.* at 371 (Mar. 10, 1890).

⁹⁷ 1890 Wyo. Laws, ch. 73, § 97; 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 377 (Mar. 10, 1890).

⁹⁸ 1890 Wyo. Laws, ch. 73, § 97; 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 377 (Mar. 10, 1890).

⁹⁹ 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 179–80 (Mar. 10, 1890).

¹⁰⁰ 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 428–29, 437–38; COUNCIL JOURNAL OF THE ELEVENTH LEGISLATIVE ASSEMBLY, OF THE TERRITORY OF WYOMING, CONVENED AT CHEYENNE, ON THE FOURTEENTH DAY OF JANUARY, 1890, at 323 (Mar. 14, 1890).

Ultimately, although the Attorney General opined that at least one law was inconsistent with federal law,¹⁰¹ the legislative journals contain no further direct evidence about the evolution of the carry statute's text. All that can be known for certain is that the legislature expressed concerns with ensuring the validity of the Territory's laws. It is possible that, in a national environment where most courts held that concealed carry could be banned as long as open carry was allowed,¹⁰² Wyoming adopted Indiana's statute to ensure that its public carry regime was constitutional. This would be a sensible approach to take on the eve of applying for statehood. It may also explain why Wyoming adopted a state constitutional arms-bearing provision that closely resembled that of Indiana, whose statutes it had imported.¹⁰³

This may also explain why Wyoming adopted Indiana's case law. No Wyoming Supreme Court cases reference the carry statute in force in 1890, despite its staying power,¹⁰⁴ while it remained in its current form.¹⁰⁵ The statutory compilations instead include annotations to Indiana's cases interpreting its identical statute.¹⁰⁶ Those cases, therefore, are instructive in understanding the legal public carry landscape in Wyoming, and potentially the motivations of the Wyoming Legislature in importing Indiana law.

The most famous of the Indiana cases was *State v. Mitchell*, which upheld Indiana's identical carry statute with a one-sentence opinion: "It was held in this case, that the statute of 1831, prohibiting all persons, except travelers, from

¹⁰¹ 1890 TERRITORIAL HOUSE JOURNAL, *supra* note 89, at 61–62 (Jan. 24, 1890).

¹⁰² See JOHNSON ET AL., *supra* note 6, at 371–92, 467–83 (excerpting and citing cases); Joseph G.S. Greenlee, *Concealed Carry and the Right to Bear Arms*, 20 FEDERALIST SOC'Y REV. 32 (2019) (examining 19th-century case law and concluding that, to be constitutional, public carry regulations had to permit either open or concealed carry).

¹⁰³ Compare WYO. CONST. art. I, § 24 ("The right of citizens to bear arms in defense of themselves and of the state shall not be denied."), with IND. CONST. art. I, § 32 ("The people shall have a right to bear arms for the defense of themselves and the State.").

¹⁰⁴ See *supra* text accompanying note 77.

¹⁰⁵ Indeed, *State v. McAdams*, 714 P.2d 1236 (Wyo. 1986), appears to be the first Wyoming case to cite any of the 1890 carry statute's successors. The 1899 version of the intent-based provision, see *supra* note 75 and accompanying text, likewise seems not to have been cited by the Wyoming Supreme Court. Its successor was first cited in 1982. *Harries v. State*, 650 P.2d 273 (Wyo. 1982). Similarly, the first, and seemingly only, case to cite the surety statute is *Goodman v. State*, 644 P.2d 1240 (Wyo. 1982), and it does not interpret the statute.

The Wyoming Constitution's arms-bearing provision, WYO. CONST. art. I, § 24, seems to have been first cited by the Wyoming Supreme Court in 1982. *Carfield v. State*, 649 P.2d 865 (Wyo. 1982) (rejecting a challenge to Wyoming's felon-in-possession ban on the ground that "there is no claim . . . by the appellant that his possession was for the purpose of defending the State or himself"). The 1945 Compiled Statutes of Wyoming indicate that *State v. Smart*, 136 P. 452 (Wyo. 1913), cites this provision, but an examination of the case shows that this is incorrect. 5 WYO. COMP. STAT. 1945, at 54 (1945).

¹⁰⁶ WYO. COMP. STAT. § 9-1203 (1945); WYO. REV. STAT. § 32-408 (1931); WYO. COMP. STAT. § 7188 (1920); WYO. COMP. STAT. § 5899 (1910). Earlier compilations did not include annotations.

wearing or carrying concealed weapons, is not unconstitutional.”¹⁰⁷ Two cases, from Alabama and Georgia, remarked both that their facts were very similar to *Mitchell*'s and that their states' constitutional arms-bearing provisions were likewise similar to Indiana's (which, in turn, is substantially the same as Wyoming's).¹⁰⁸ Both cases held that it was constitutional to regulate concealed carry because open carry was still available, and the right to bear arms was, therefore, merely regulated but not destroyed.¹⁰⁹ The Georgia case's holding was grounded in both the Georgia constitution and the Second Amendment.¹¹⁰

These Indiana cases referenced by the Wyoming statutory compilations for decades took the open/concealed distinction seriously. If there was no evidence of concealment of the pistol in question, a guilty verdict could not stand.¹¹¹ The concealment had to be directly on the carrier's person; carrying a pistol in a box did not suffice.¹¹² More mundanely, mere carriage of a concealed firearm by a homicide defendant would not relieve the prosecution of proving all elements of the homicide,¹¹³ intent in carrying concealed was irrelevant,¹¹⁴ as was carrying concealed but unloaded.¹¹⁵

It appears that only one Wyoming case discusses the crime of carrying a concealed weapon in this period, and it does not interpret the carry statute's language. The 1909 case of *Eads v. State* involved an attempt to discredit a witness

¹⁰⁷ *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833). The validity of *Mitchell*'s holding was affirmed by *McIntyre v. State*, 83 N.E. 1005, 1006 (Ind. 1908).

¹⁰⁸ *Nunn v. State*, 1 Ga. 243, 249 (1846); *State v. Reid*, 1 Ala. 612, 620 (1840) (“The difference between the terms used in the constitution of Indiana, and that of our own State, is so entirely immaterial, that it could not possibly authorize a difference of construction.”); see *supra* note 103.

¹⁰⁹ *Nunn*, 1 Ga. at 249, 251; *Reid*, 1 Ala. at 616–17, 619, 621; see also *State v. Wilforth*, 74 Mo. 528, 530 (Mo. 1881) (citing *Mitchell* and stating that “We do not desire to be understood as maintaining that in regulating the manner of bearing arms the authority of the legislature has no other limit than its own discretion”).

¹¹⁰ *Nunn*, 1 Ga. at 250–51.

¹¹¹ *Smith v. State*, 69 Ind. 140 (1879); *Ridenour v. State*, 65 Ind. 411, 412–13 (1879); see *Davidson v. State*, 99 Ind. 366 (1884) (“Section 1985, R. S. 1881, makes carrying a pistol concealed an offence. It also makes it a misdemeanor to carry a pistol openly with the intent, or avowed purpose, of injuring some other person. But neither that, nor any other section of the statute known to us, makes the simple carrying a pistol unlawful.”).

¹¹² *Smith*, 69 Ind. at 142. It is possible that temporarily folding one's arms so that the pistol was out of view of her brother's attackers also did not qualify. *Id.* at 140.

¹¹³ *Males v. State*, 156 N.E. 403, 406 (Ind. 1927); *Potter v. State*, 70 N.E. 129, 131 (Ind. 1904).

¹¹⁴ *Ridenour*, 65 Ind. at 413; *State v. Swope*, 20 Ind. 106 (1863); *Walls v. State*, 7 Blackf. 572, 573 (Ind. 1845).

¹¹⁵ *Ridenour*, 65 Ind. at 413; *State v. Duzan*, 6 Blackf. 31, 31 (1841).

who had been convicted of carrying a concealed weapon.¹¹⁶ The Wyoming Supreme Court held that

“[a] misdemeanor is not an infamous crime, nor does it always involve moral turpitude or lack of veracity in the perpetrator. It seems to us that the evidence, to be competent and relevant to discredit the witness, should at least tend to prove moral turpitude or a lack of veracity. The crime of carrying concealed weapons imputes neither.”¹¹⁷

The Court also confirmed that “it is lawful to carry an unconcealed weapon for a lawful purpose.”¹¹⁸

In the early years of the 1910s, there was considerable, at least compared to what was available before or since, support voiced in the newspapers for increased gun controls. All four of the articles discovered blamed high homicide rates on the “cowardly” practice of concealed carry, and made strongly worded explicit or implicit calls for greater enforcement of restrictions on the practice.¹¹⁹ Three of these articles noted how common concealed carry was, speaking of “the popularity of that practice” and the “alarmingly general custom of carrying concealed weapons.”¹²⁰ One of these articles seemed clearly not to object to open carry, going so far as to say that a pair of murderers “would not have approached [their victim] with Winchester rifles on their shoulders. . . . [T]hat would have lacked the element of refinement which a pearl handled revolver, stowed away in the coat pocket, lends to such an occasion.”¹²¹ One lamented that the docket of murder cases in Kemmerer exceeds that of all other Wyoming counties together, and charged that “By the mere fact of having a deadly weapon upon his person a man is stirred to murder and maim much more readily than if possessed only with a sense of right.”¹²²

The articles offered various policy solutions. These included recordkeeping, licensing, or registration requirements;¹²³ lower search-and-seizure standards

¹¹⁶ Eads v. State, 101 P. 946 (Wyo. 1909).

¹¹⁷ *Id.* at 951.

¹¹⁸ *Id.*

¹¹⁹ *The Stigma*, KEMMERER REPUBLICAN, May 21, 1915, at 2; *Anti-Gun Laws Needed*, BIG HORN CNTY. RUSTLER, Jan. 3, 1913, at 7; *A Gun Carrier Again*, WYO. TRIB., May 31, 1911; *Sentiment Growing Against Concealed Weapons*, WYO. TRIB. SEMI-WKLY., Mar. 25, 1909, at 4.

¹²⁰ BIG HORN CNTY. RUSTLER, *supra* note 119, at 7; WYO. TRIB., *supra* note 119; *see* WYO. TRIB. SEMI-WKLY., *supra* note 119, at 4.

¹²¹ WYO. TRIB. SEMI-WKLY., *supra* note 119, at 4.

¹²² KEMMERER REPUBLICAN, *supra* note 119, at 2.

¹²³ KEMMERER REPUBLICAN, *supra* note 119, at 2; WYO. TRIB., *supra* note 119; WYO. TRIB. SEMI-WKLY., *supra* note 119, at 4.

for weapon carriers;¹²⁴ limiting carry (perhaps including open carry and even a “pocket knife”) to one who can “show proper justification;”¹²⁵ removing the traveler exception;¹²⁶ a “confiscatory tax;”¹²⁷ a ban on concealable firearms;¹²⁸ and capital punishment for murderers.¹²⁹ One included a sarcastic offer to draft legislation for consideration by the Legislature.¹³⁰

One paper added, however, that there may be constitutional limits to what laws could be enacted:

It is possible it may require a constitutional amendment before an effective prohibitive anti-gun law can be enacted. Section 24, Article 1, says: “The right of citizens to bear arms in defense of themselves and the state shall not be denied.”

This is another relic of the days of the “road agent,” the “cattle rustler,” the “vigilantes” and pioneer conditions generally. Our state constitution is loaded down with legislation and pretty soon Wyoming must get rid of such antiquated provisions as section 24, above named, which makes laws against concealed deadly weapons inoperative.¹³¹

One fourteen-year period excepted, Wyoming followed the Western tradition of public carry from before its inception. It also had a parallel pair of statutory provisions that enabled authorities to deal with ill-intentioned and reckless open (or concealed) carriage. This scheme lasted until past the midpoint of the twentieth century. At that point, as the next section shows, it began implementing changes that would become the State’s modern carry regime. Although concealed carry would continue to be regulated for some time, open carry would remain available to all who could lawfully possess a firearm to the present day.

¹²⁴ KEMMERER REPUBLICAN, *supra* note 119, at 2.

¹²⁵ *Id.* This appears to resemble a may-issue licensing system, but without a prior restraint in the form of having to obtain a license from governmental authorities. *See supra* note 33.

¹²⁶ BIG HORN CNTY. RUSTLER, *supra* note 119, at 7 (“[T]here appears no logical reason why a traveler in Wyoming should be permitted to carry concealed weapons. The traveler is not in greater danger from the criminal in this state than elsewhere; only extraordinary danger of that variety would justify legal permission for travelers to conceal arms upon their persons.”).

¹²⁷ WYO. TRIB. SEMI-WKLY., *supra* note 119, at 4.

¹²⁸ *Id.*

¹²⁹ KEMMERER REPUBLICAN, *supra* note 119, at 2.

¹³⁰ WYO. TRIB., *supra* note 119 (“The Tribune believes it could draft a law in two hours which if passed and enforced would minimize murder and felonious shooting 90 per cent.”).

¹³¹ BIG HORN CNTY. RUSTLER, *supra* note 119, at 7.

2. 1957

With the 1957 legislative session, the statute on weapons carry was amended to include an exception for law enforcement officials and provide for the issuance and revocation of permits to carry concealed weapons where the sheriff deemed applicants fit to do so. Travelers were no longer permitted rights beyond those of locals, but the statute allowed for travelers who may be required by their vocation to carry a weapon to apply for permits:

- (A) Every person, not being a Law Enforcement Officer, who shall wear or carry any dirk, switch knife, pistol, bowie knife, dagger, sword-in-cane, or any other dangerous or deadly weapon concealed, shall be fined in any sum not exceeding One Hundred Dollars (\$100.00). For the purpose of this Statute the term "Law Enforcement Officer" shall include any Federal, State, County, City, Town or Municipal Official vested with the authority or duty to enforce any criminal law or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. Provided, however, that the sheriffs of the respective counties may issue permits to travelers, merchant police, private detectives, or other persons who may be required by their work, vocation or profession to carry a weapon or weapons, and who, in the opinion of such sheriff, are otherwise qualified, having due regard for said applicant's general reputation and previous criminal record. Said permit when issued shall be for a period of three (3) years and for successive periods of three (3) years thereafter, upon application; provided however, that said sheriff may at any time revoke said permit, if in the opinion of said sheriff the conduct of said permittee is contrary to or against the best interests of the State of Wyoming or any of its political subdivisions.
- (B) Every person who shall carry or wear any weapon listed in Section (A) of this Statute, either concealed or openly, with the intent, or avowed purpose, of injuring his fellow-man, shall be fined in any sum not exceeding One Hundred Dollars (\$100.00).¹³²

¹³² 1957 Wyo. Laws, ch. 201, § 1 (amending WYO. COMP. STAT. 1945, § 9-1203, codified at WYO. STAT. ANN. § 6-239 (1957)).

Wyoming thus adopted a modern may-issue concealed carry licensing regime. Despite equal treatment problems with may-issue regimes,¹³³ and the removal of the traveler exception, the 1957 statute made concealed carry more accessible to Wyomingites. Notwithstanding language about professions requiring armament during work, the statute, which allowed sheriffs to issue licenses to those “otherwise qualified,” did not have a justifiable need requirement.¹³⁴ Violations were punished with the same monetary penalty as was in effect in 1890.¹³⁵

The separate intent-based and surety-of-the-peace provisions were unchanged by this 1957 enactment, while the secondary intent-based provision remained attached to the carry statute in modified form.¹³⁶ That changed in 1971, when both the stand-alone and attached intent-based statutes were repealed and replaced with a broader stand-alone statute:

Any person who arms himself with, carries or wears, either openly or concealed, any firearm, knife, dirk, club, bludgeon, chain, rock, bottle, or any other dangerous or deadly weapon, or any explosive or incendiary apparatus, instrument or materials, with the intent or avowed purpose of unlawfully threatening the life or physical well being of another, or of committing assault or assault and battery or inflicting bodily harm or injury upon the person of another, or for the purpose of willfully and maliciously inflicting upon or causing injury or damage to the property of another, shall upon conviction be punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment. Nothing herein contained shall be so construed as to apply to peace or law enforcement officers or to any other person authorized or required to carry any such weapons, while in the performance of their official duties.¹³⁷

This statute remains in this form today.¹³⁸ The peace-bond statute remained untouched, thus continuing Wyoming’s two-track system in which concealed carry was relatively strictly regulated while open-carry behavior was kept in check via other means.

¹³³ See *supra* note 33.

¹³⁴ See *supra* text accompanying note 132.

¹³⁵ See *supra* text following note 74; accompanying note 132.

¹³⁶ See *supra* notes 72–73, 75–78 and accompanying text.

¹³⁷ 1971 Wyo. Laws, ch. 132, § 1 (codified at WYO. STAT. ANN. § 6-237.1 (1977)).

¹³⁸ WYO. STAT. ANN. § 6-8-103 (2020).

The Wyoming criminal code was recodified in 1982 and amended in 1983. The 1982 statute simplified the carry laws, with language similar to the pre-1957 language, including regarding concealed carry.

- (a) A person who wears or carries a concealed deadly weapon is guilty of a misdemeanor punishable of a fine of not more than seven hundred fifty dollars (\$750.00) unless:
 - (i) The person is a peace officer; or
 - (ii) The person possesses a permit under subsection (b) of this section.
- (b) A sheriff may issue permits to travelers, merchant police, private detectives, or other persons whose work, vocation or profession requires them to carry a weapon, and who the sheriffs believe are qualified, taking into account the person's general reputation and previous criminal record. The permits shall be issued for a three (3) year period and may be renewed for successive three (3) year periods. The sheriff may revoke a permit if the conduct of the permittee is contrary to the best interests of the state or its political subdivisions.¹³⁹

The 1983 session laws added a jail sentence to the penalty in section (a), after which it read, “[a] person who wears or carries a concealed deadly weapon is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment in the county jail for not more than six (6) months, or both, unless:”¹⁴⁰ The bill at one time incorporated the language “(a) A person who wears or carries a concealed deadly weapon *on his person or within his immediate reach* is guilty of a misdemeanor. . . .” but this change did not make it into the final version.¹⁴¹ The legislature next addressed public carry a decade later.

3. 1983–1994

Between 1983 and 1994, legislation was introduced in various sessions, but nothing was enacted, though many of these same topics have been enacted into law in subsequent years.

¹³⁹ 1982 Wyo. Laws, ch. 75, § 3.

¹⁴⁰ 1983 Wyo. Laws, ch. 171, § 1.

¹⁴¹ S.F. 30, Gen. Sess. at 75 (Wyo. 1983) (emphasis added).

In 1987, legislation was introduced for concealed weapons permits which died in committee. This bill addressed amendments to create sections on the licensing process, license suspension and revocation, and concealed weapon immunity.¹⁴²

In 1989¹⁴³ and 1990¹⁴⁴ attempts to preempt cities or counties from regulating the possession of firearms failed. Preemption would ultimately pass in 1995.¹⁴⁵

In 1992, a bill was introduced to replace subjective authority of the sheriff to allow permits to those believed to be qualified with a shall-issue system that required the issuance of carry licenses to otherwise qualified applicants.¹⁴⁶

In 1993 a shall-issue licensing bill passed both houses and was sent to the Governor, who vetoed it.¹⁴⁷ The Governor appears to have vetoed the bill because he believed that it would have allowed the carry of all weapons, including “knives and explosives,” rather than just firearms.¹⁴⁸

The following year, a bill very similar to the 1993 licensing bill was enacted into law. The 1994 version provided an exception to existing weapon carriage law for licensed firearm carry.¹⁴⁹ It placed the authority to issue carry permits with the Attorney General’s Division of Criminal Investigation, to whom sheriffs send completed applications that they accept.¹⁵⁰ Importantly, the statute provided that the Attorney General “*shall issue* a permit [to carry a concealed firearm] to any person who”:

- (1) has been a Wyoming resident for six months, unless the person holds a license to carry concealed from another state;
- (2) is at least 21 years old;¹⁵¹

¹⁴² H.R. 393, Gen. Sess. (Wyo. 1987).

¹⁴³ S.F. 253, Gen. Sess. (Wyo. 1989).

¹⁴⁴ S.F. 10, Budget Sess. (Wyo. 1990).

¹⁴⁵ See *infra* note 177 and accompanying text.

¹⁴⁶ H.R. 198, Budget Sess. (Wyo. 1992). A shall-issue licensing system requires the issuance of a concealed carry license to adults who meet certain objective criteria, like a fingerprint-based background check and passing a firearm safety class. JOHNSON ET AL., *supra* note 6, at 610.

¹⁴⁷ H.R. 262A, Gen. Sess. (Wyo. 1993).

¹⁴⁸ Mike Sullivan, *We Would Have Shot Ourselves in the Foot with That Bill*, STAR-TRIB., Mar. 28, 1993, at A9.

¹⁴⁹ Compare Wyo. Laws, ch. 41, § 1 (“A person who wears or carries a concealed deadly *weapon* is guilty of a misdemeanor . . .”) (emphasis added), with H.B. 262A, (1993) (“A person who wears or carries a concealed deadly *firearm* is guilty of a misdemeanor . . .”) (emphasis added).

¹⁵⁰ 1994 Wyo. Laws, ch. 41, § 1 (enacting WYO. STAT. ANN. § 6-8-104(f) (2020)).

¹⁵¹ The act does allow for the issuance of permits to 18-to-21-year-olds upon the sheriff’s recommendation that the circumstances warrant it. *Id.* (enacting WYO. STAT. ANN. § 6-8-104(j)).

- (3) is eligible to possess a firearm under Wyoming and federal law;
- (4) has not been committed for substance abuse;
- (5) is not an alcoholic;
- (6) takes a firearm safety class;
- (7) is not adjudicated to be incompetent; and
- (8) has not been committed to a mental institution.¹⁵²

The provision also enacted a “naked man” rule,¹⁵³ under which the Attorney General, upon a report made by the sheriff accepting an application, may deny the application of a person with a clean record but for whom the licensing authority can point to specific evidence showing that the person could be a danger to himself or others.¹⁵⁴ It required fingerprints of all applicants,¹⁵⁵ and restricted carry in certain locations like government buildings.¹⁵⁶

Wyoming thus became the twentieth state to require the nondiscretionary issuance of a concealed carry license to anyone meeting a set of basic background and training criteria.¹⁵⁷ It joined a trend started by Florida, the tenth state to adopt such a scheme.¹⁵⁸ When its sister states saw that Florida did not turn into “the Gunshine State,” and that concealed carry licensees were exceedingly law-abiding, they began to follow suit.¹⁵⁹ The trend may have been helped by the

¹⁵² *Id.* (enacting WYO. STAT. ANN. § 6-8-104(b)).

¹⁵³ Such provisions allow authorities “to deny a carry permit to the man who sits naked in his front yard, screaming about the imminent Martian invasion, but who has not been criminally convicted or adjudicated mentally ill.” David B. Kopel, *The First Amendment Guide to the Second Amendment*, 81 TENN. L. REV. 417, 474 (2014).

¹⁵⁴ 1994 Wyo. Laws, ch. 41, § 1 (enacting WYO. STAT. ANN. § 6-8-104(g)).

¹⁵⁵ *Id.* (enacting WYO. STAT. ANN. § 6-8-104(e)(iii)).

¹⁵⁶ *Id.* (enacting WYO. STAT. ANN. § 6-8-104(t)).

¹⁵⁷ Larry Arnold, *The History of Concealed Carry, 1976-2011*, TEX. HANDGUN ASS’N, txhga.org/texas-ltc-information/a-history-of-concealed-carry/ (last visited Mar. 5, 2021) [https://perma.cc/W5LH-WF86]; see *Progress in Right-to-Carry*, RADICAL GUN NUTTERY! (Feb. 18, 2021), www.gun-nuttery.com/rtc.php [https://perma.cc/LM9P-6ZPF]. Included in this figure is Vermont, which has allowed permitless concealed carry since 1903 when the state’s Supreme Court held discretionary carry licensing violated the state’s constitutional right to arms. *State v. Rosenthal*, 55 A. 610 (Vt. 1903).

¹⁵⁸ Arnold, *supra* note 157.

¹⁵⁹ JOHNSON ET AL., *supra* note 6, at 50–51; Jeffrey R. Snyder, *A Nation of Cowards*, 113 PUB. INT. 40, 48 (1993); Arnold, *supra* note 157.

1993 Brady Handgun Violence Prevention Act's mandating that the National Instant Criminal Background Check System be put into place.¹⁶⁰

Also during this time, in 1987, the surety statute was overhauled and simplified, and formed the basis of a provision that would come to look like a modern order-of-protection statute.¹⁶¹ An order-of-protection provision was added to the statute in 2004, which remains in effect today.¹⁶²

4. 2011

The trend in shall-issue carry turned into a trend in permitless carry, often referred to as “constitutional carry” by its proponents, under which an adult who is eligible to possess a handgun can lawfully carry it concealed, without a permit.¹⁶³ In 2011, Wyoming became the fourth permitless carry state when it enacted language allowing concealed carry by any person who does not possess a permit but otherwise meets the requirements of being issued one.¹⁶⁴ The Wyoming Legislature also amended the statute to increase the penalty for a second and subsequent violation of the carry statute to \$2,000.¹⁶⁵ With minor changes,¹⁶⁶ including the expansion of permitless carry to non-residents as of July 1, 2021, this is the law in Wyoming today.¹⁶⁷

¹⁶⁰ *National Instant Criminal Background Check System (NICS)*, FED. BUREAU OF INVESTIGATION, www.fbi.gov/services/cjis/nics (last visited Mar. 5, 2021) [<https://perma.cc/8HBS-Z7D2>]; *About NICS*, FED. BUREAU OF INVESTIGATION, www.fbi.gov/services/cjis/nics/about-nics (last visited Mar. 5, 2021) [<https://perma.cc/CPD8-G9YG>].

¹⁶¹ 1987 Wyo. Laws, ch. 157 (enacting WYO. STAT. ANN. § 7-3-501); *see* 2000 Wyo. Laws, ch. 24, § 4 (amending WYO. STAT. ANN. § 7-3-501).

¹⁶² WYO. STAT. ANN. § 7-3-501 (2020); 2004 Wyo Laws., ch. 42, § 1 (amending WYO. STAT. ANN. § 7-3-501 and enacting §§ 7-3-501, -506 to -507).

¹⁶³ JOHNSON ET AL., *supra* note 6, at 734.

¹⁶⁴ 2011 Wyo. Laws, ch. 84, § 1 (enacting WYO. STAT. ANN. 6-8-104(a)(iv)); Arnold, *supra* note 157. As of this writing, 18 states allow permitless concealed carry, with two more likely by the end of the year. *UPDATE: There are now 18 Constitutional Carry States, and there is a reasonable chance it will be 20 later this year*, CRIME PREVENTION RSCH. CTR. (Feb. 18, 2021), crimeresearch.org/2021/02/there-are-18-constitutional-carry-states/ [<https://perma.cc/4NU8-KP6Q>].

¹⁶⁵ 2011 Wyo. Laws, ch. 84, § 1 (amending WYO. STAT. ANN. 6-8-104(a)).

¹⁶⁶ The 2017 amendment, for example, added a provision directing the attorney general to draft regulations for providing for application or renews to carry a concealed firearm for military spouses residing with a person in active military service outside the state without appearing in Wyoming. 2017 Wyo. Laws, ch. 114, § 1.

¹⁶⁷ WYO. STAT. ANN. § 6-8-104; *HB0116 - Concealed carry-residency requirement-2*, STATE OF WYO. 66TH LEG., wyoleg.gov/Legislation/2021/HB0116 (last visited Apr. 22, 2021) [<https://perma.cc/5QCZ-8PGD>].

III. LOCAL GOVERNMENT AND MUNICIPAL ORDINANCES

In a fashion reminiscent of a model that differentiated between urban and rural areas,¹⁶⁸ Wyoming granted some municipalities and counties the ability to regulate the possession of firearms since pre-territory time under the Dakota laws. Nevertheless, a spot check of municipal codes of Wyoming towns indicates that city laws typically reflected state laws. Cities were more likely to regulate carrying concealed weapons, and in most cases their ordinances included the intent-to-harm language with respect to open carry. By the early to mid 1900s, most towns adopted ordinances that prohibited carrying concealed firearms or other weapons, as well as carrying weapons openly with intent.

The cities of Cheyenne and Laramie are cases in point. The Dakota Legislature established the County of Laramie in 1866.¹⁶⁹ In 1867, it incorporated the city of Cheyenne.¹⁷⁰ In 1868 the cities of Cheyenne and Laramie were authorized to make all necessary provisions for the “safety, good order and prosperity of the city, the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense,” which appeared to include prohibitions against carrying weapons.¹⁷¹

In 1883, while the State banned carry in incorporated municipalities, Cheyenne banned public carry.¹⁷² In 1907, while the State banned concealed carry but allowed open carry as long as it was without injurious intent, Cheyenne barred concealed carry of firearms and some knives while barring all carry of slingshots, bludgeons, and other lethal weapons.¹⁷³ Then in 1938, Cheyenne’s law fell into line with Wyoming’s 1890 law, barring concealed carry of all dangerous weapons while allowing open carry as long as it was without ill intent.¹⁷⁴ Laramie’s ordinances tracked Cheyenne’s.¹⁷⁵

¹⁶⁸ See *supra* note 36 (citing sources) and accompanying text.

¹⁶⁹ 1866 Dakota Terr. Laws, ch. 14.

¹⁷⁰ 1867 Dakota Terr. Laws, ch. 11.

¹⁷¹ 1868 Dakota Terr. Laws, 8th Sess., ch. 34, § 2 (Cheyenne), ch. 38, § 3 (Laramie).

¹⁷² CHEYENNE, WYO. CODE, § 1 (1883) (“Hereafter it shall be unlawful for any person in said city to keep or bear upon the person any pistol, revolver, knife, slung-shot, bludgeon or other lethal weapon, (except the officers of the United States, of the Territory, and of the city.”).

¹⁷³ CHEYENNE, WYO. CODE, § 272 (1907) (“Hereafter it shall be unlawful for any person in the city of Cheyenne to keep or bear upon the person, any slingshot, bludgeon or other lethal weapon, or to bear concealed upon or about the person any pistol, revolver, or knife whose blade shall exceed four inches in length.”).

¹⁷⁴ CHEYENNE, WYO. CODE, § 10-202 (1938) (“No person shall wear or carry concealed any knife whose blade exceeds four (4) inches in length, any dirk, dagger, sword-in-cane, sling-shot, revolver, pistol, or any other dangerous or deadly weapon; and no person shall openly wear or carry any such weapon, or any combustible or explosive material, with intent or avowed purpose of injuring any person.”).

¹⁷⁵ LARAMIE, WYO. CODE, § 69 (1913); LARAMIE, WYO. CODE § 9.205–.206 (1947).

There are, however, isolated examples of unique language. Casper's 1951 municipal code, which references its 1897 ordinance, states that "[a]ny person who shall carry any slingshot, or any concealed deadly weapon, without permission of the Mayer first had and obtained, shall . . . be liable to a fine not exceeding \$50."¹⁷⁶ Thermopolis's municipal code made it unlawful to carry a concealed weapon and unlawful to carry openly a weapon with intent to harm except in self-defense.¹⁷⁷

In 1989, the Wyoming Legislature began considering legislation that would disempower counties and cities from enacting gun controls.¹⁷⁸ By 1995, the legislature expressly preempted cities, towns, and counties from regulating "the sale, transfer, purchase, delivery, taxation, manufacture, ownership, transportation, storage, use or possession of firearms, weapons and ammunition."¹⁷⁹ Zoning and other police activities were excepted, but zoning intended to interfere with firearm commerce was not.¹⁸⁰ The scope of the preemption was expanded in 2017 to include "political subdivisions and any other entit[ies]," and the exceptions were expended specifically to include local control over firearm possession on school property.¹⁸¹ Localities, therefore, are no longer able independently to regulate public carriage, save in the limited excepted circumstances.

IV. CONCLUSION

Wyoming's storied history is matched by its legal history of public firearm carriage. Its laws changed with both its internal needs and challenges and the diverse views about law, safety, security, and morality. But the State's public carry regime evolved in a broader national environment. Sometimes it followed trends in public carry, sometimes it was at their forefront.

¹⁷⁶ CASPER, WYO. CODE, § 8-626 (1951) (citing Ord. #24, Sec. 4, 9-20-1897).

¹⁷⁷ THERMOPOLIS, WYO. CODE, § 3 (1910).

¹⁷⁸ S.F. 253, Gen. Sess. (1989) (referred to committee and died).

¹⁷⁹ 1995 Wyo. Laws, ch. 53, § 1 (enacting WYO. STAT. ANN. 6-8-401).

¹⁸⁰ *Id.*

¹⁸¹ 2017 Wyo. Laws, ch. 209 § 2 (amending WYO. STAT. ANN. 6-8-401).