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The True Meaning of "Going Armed" in the Statute of Northampton: A Response to Patrick J. Charles

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THE TRUE MEANING OF "GOING ARMED" IN THE STATUTE OF NORTHAMPTON: A RESPONSE TO PATRICK J. CHARLES

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ABSTRACT

In the debate over the meaning of the right to keep and bear arms guaranteed by the Second Amendment, some writers have argued that the prohibition in the 1328 English Statute of Northampton on "going armed" referred to carrying weapons, thus purportedly showing that regulation of carrying weapons was well known and established when the Second Amendment was adopted. For the first time, this Article reveals, through a thorough analysis of medieval royal proclamations and acts of parliament, well-regarded legal treatises, literature of the time, and English case law, that "going armed" did not refer to carrying weapons, but rather to wearing armor. Accordingly, the Statute of Northampton does not show that regulation of carrying weapons was established at the time of the adoption of the Second Amendment.

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The Author would like to thank historian Clayton Cramer for planting the seed that became the thesis of this Article.

Nothing in this Article should be taken to represent the opinion of the Fairfax Circuit Court. The arguments are solely those of the author.

CONTENTS

I. INTRODUCTION

In 2012, Patrick J. Charles published an article entitled *The Faces of the Second Amendment*,[1] in which he discussed his understanding of the term "going armed" in the 1328 *Statute of Northampton*[2] and its relevance to the ongoing debate about the meaning of the Second Amendment to the U.S. Constitution. On June 23, 2022, the U.S. Supreme Court issued its landmark decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*,[3] in which the Court, *inter alia*, rejected Mr. Charles' view of the term "going armed" in the *Statute of Northampton* and adopted the thesis of this Article. The Court stated:

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[1] *See generally* Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 CLEV. ST. L. REV. 43 (2012).

[2] 2 Edw. 2, c. 3 (1328).

[3] 142 S. Ct. 2111, 2156 (2022).

> The Statute's prohibition on going or riding "armed" obviously did not contemplate handguns, given they did not appear in Europe until about the mid-1500s.[4] Rather, it appears to have been centrally concerned with the wearing of armor.[5]

II. THE *BRUEN* CASE

Bruen was a challenge to a New York State law which, as explained by the Court, provided that, if a person "wants to carry a firearm *outside* his home or place of business for self-defense," he/she "must obtain an unrestricted license to 'have and carry' a concealed 'pistol or revolver.'"[6] For the license to be issued, the applicant must prove that "'proper cause exists' to issue it."[7] New York courts had held that an applicant "shows proper cause only if he can 'demonstrate a special need for self-protection distinguishable from that of the general community.'"[8] Because "petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense," the Court held that the "Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home"[9] and struck down the "proper cause" requirement because all individuals, not just a select few with a "special need," enjoy the guarantees of the Second and Fourteenth Amendments.[10]

In reaching that conclusion, the Court thoroughly reviewed the historical record of English common law, cautioning, however, that the English common law "'is not to be taken in all respects to be that of America.'"[11] Thus, the Court continued, "'[t]he language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted,' not as they existed in the Middle Ages."[12]

With that caution, the Court noted that "respondents and their *amici* point to several medieval English regulations from as early as 1285 that they say":

> . . . indicate a longstanding tradition of restricting the public carry of firearms. The most prominent is the 1328 Statute of Northampton (or Statute), passed shortly after Edward II was deposed by force of arms and his son, Edward III, took the throne of a kingdom where "tendency to turmoil and rebellion

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[4] *Id.* at 2140 (citing KENNETH CHASE, FIREARMS: A GLOBAL HISTORY TO 1700 61 (2003)).

[5] *Id.* (citing *e.g.*, CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1330–1333 131 (Apr. 3, 1330) (H. Maxwell-Lyte ed. 1898); *id.* at 243 (May 28, 1331); CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1327–1330 314 (Aug. 29, 1328) (1896)).

[6] *Id.* at 2123 (citation omitted).

[7] *Id.* at 2123.

[8] *Id.* (citation omitted).

[9] *Id.* at 2122.

[10] *Id.*

[11] *Id.* at 2139 (citations omitted).

[12] *Id.*

> was everywhere apparent throughout the realm." At the time, "[b]ands of malefactors, knights as well as those of lesser degree, harried the country, committing assaults and murders," prompted by a more general "spirit of insubordination" that led to a "decay in English national life."[13]

The Court explained that the *Statute of Northampton*:

> [P]rovided that, with some exceptions, Englishmen could not "come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure."[14]

The Court went on to explain that respondents argue that:

> [T]he prohibition on "rid[ing]" or "go[ing] . . . armed" was a sweeping restriction on public carry of self-defense weapons that would ultimately be adopted in Colonial America and justify onerous public-carry regulations.[15]

Heeding its caution about English common law, the Court observed:

> Notwithstanding the ink the parties spill over this provision, the Statute of Northampton—at least as it was understood during the Middle Ages—has little bearing on the Second Amendment adopted in 1791. The Statute of Northampton was enacted nearly 20 years before the Black Death, more than 200 years before the birth of Shakespeare, more than 350 years before the Salem Witch Trials, more than 450 years before the ratification of the Constitution, and nearly 550 years before the adoption of the Fourteenth Amendment.[16]

In addition to the *Statute of Northampton* shedding little light in discerning the meaning of the right to bear arms guaranteed by the Second Amendment, the Court first observed that the "Statute's prohibition on going or riding 'armed' obviously did not contemplate handguns, given they did not appear in Europe until about the mid-1500s.)."[17] In the key holding of the Court—for purposes of this Article—the Court went on to state:

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[13] *Id.* at 2139 (citing KENNETH VICKERS, ENGLAND IN THE LATER MIDDLE AGES 107 (1926)).

[14] *Id.* (citing 2 Edw. 3 c. 3 (1328)).

[15] *Id.*

[16] *Id.*

[17] 142 S. Ct. at 2140 (citing K. Chase, *Firearms: A Global History to 1700*, p. 61 (2003)).

> Rather, it [going or riding "armed"] appears to have been centrally concerned with the wearing of armor.[18] If it did apply beyond armor, it applied to such weapons as the "launcegay," a 10- to 12-foot-long lightweight lance. [19]

The Court explained its holding as follows:

> The Statute's apparent focus on armor and, perhaps, weapons like launcegays makes sense given that armor and lances were generally worn or carried only when one intended to engage in lawful combat or—as most early violations of the Statute show—to breach the peace.[20] Contrast these arms with daggers. In the medieval period, "[a]lmost everyone carried a knife or a dagger in his belt."[21] While these knives were used by knights in warfare, "[c]ivilians wore them for self-protection," among other things. Respondents point to no evidence suggesting the Statute applied to the smaller medieval weapons that strike us as most analogous to modern handguns.[22]

The authorities cited by the Court in *Bruen* which rejected Mr. Charles' view of the *Statute of Northampton* were taken from the brief *amicus curiae* filed by *The League for Sportsmen, Law Enforcement and Defense*, which authorities were drawn from an article this Author had recently published: *The Meaning Of "Going Armed" In The 1328 English Statute Of Northampton*.[23] As shown in this Author's original article, and expanded upon in this Article, Mr. Charles' review of numerous medieval royal proclamations and parliamentary documents completely missed the distinction between wearing armor and carrying weapons, so that he committed the serious legal error of merely assuming, without engaging in any traditional legal analysis of the language of the various royal proclamations and parliamentary documents, that "going armed" referred to carrying weapons.[24]

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[18] *Id.* (citing *e.g.*, CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1330–1333 131 (Apr. 3, 1330) (H. Maxwell-Lyte ed. 1898); *id.* at 243 (May 28, 1331); CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1327–1330 at 314 (Aug. 29, 1328) (1896)).

[19] *Id.* (citing 7 Rich. 2 c. 13 (1383); 20 Rich. 2 c. 1 (1396)).

[20] *Id.* (citing *e.g.*, CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1327–1330 402 (July 7, 1328); CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1333–1337 695 (Aug. 18, 1336) (1898)).

[21] *Id.* (citing HAROLD PETERSON, DAGGERS AND FIGHTING KNIVES OF THE WESTERN WORLD 12 (2001)).

[22] *Id.*

[23] *See generally* RICHARD E. GARDINER, THE MEANING OF "GOING ARMED" IN THE 1328 ENGLISH STATUTE OF NORTHAMPTON (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3885061.

[24] As it relates to the understanding of the *Statute of Northampton*, the *Calendars of the Close Rolls*, published by *British History Online*, a not-for-profit digital library based at the Institute of Historical Research, have been made available on-line, in searchable format, and have enabled otherwise virtually impossible research into the medieval use of the terms "going armed"—the key term in the *Statute of Northampton*. This approach is a form of research known as "corpus linguistics:" "the study of language based on examples of 'real life' language use." TONY MCENERY & ANDREW WILSON, CORPUS LINGUISTICS: AN INTRODUCTION 1 (2d ed. 2001).

In fact, as the historical evidence shows plainly, "going armed" had nothing to do with the carrying of weapons. Rather, as discussed in depth, *infra*, the historical evidence demonstrates that the *Statute of Northampton* concerned only the wearing of body armor.[25] Moreover, the evidence shows that the reading of the *Statute of Northampton* by the leading seventeenth century case, *Sir John Knight's Case*,[26] was entirely consistent with the true meaning of the term "going armed."[27]

In response to the Court's holding, the dissenting justices wrote:

> Pregun regulations prohibiting "going armed" in public illustrate an entrenched tradition of restricting public carriage of weapons. That tradition seems as likely to apply to firearms as to any other lethal weapons—particularly if we follow the Court's instruction to use analogical reasoning. . . .
>
> The Statute of Northampton was enacted in 1328.[28] By its terms, the statute made it a criminal offense to carry arms without the King's authorization.[29]

Thus, as with Mr. Charles, the dissent merely assumed that "armed" referred to carrying weapons, not wearing armor.[30] Notably, in reaching its erroneous conclusion, the dissent neither attempted to refute the majority's view that "armed" in the *Statute of Northampton* referred to wearing armor nor did it refer to Mr. Charles' *amicus* brief.

In a follow-up article published in Volume 71, Issue 3 of this journal, in which Mr. Charles criticizes the majority opinion in *Bruen*, he not only does not attempt to refute the thesis of this Article, but effectively acknowledges that the term "armed" in the *Statute of Northampton* did not refer to weapons.[31] He wrote: "[I]t was Elizabeth I who was responsible for extending the Statute's prohibition to modern weaponry, including firearms, pistols, and concealable weapons."[32] Moreover, he cited in footnote 64 to several royal proclamations and legal commentaries which emphasized that "going armed" referred to wearing armor;[33] they are discussed, *infra*.

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[25] *See infra* Parts IV–IX.

[26] 87 Eng. Rep. 75 (K.B. 1686) (also reported as Rex v. Knight (1686) 90 Eng. Rep. 330 (KB)). As there was no official reporter, two private reporters prepared two different reports about the same case.

[27] This Article will also discuss the uses of the term "going armed" in contemporary treatises, in literature, and the early case of Sir Thomas Figett. *See infra* Parts V–IX.

[28] N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. at 2182 (Breyer, J., dissenting) (citing 2 Edw. 3, 258, c. 3).

[29] *Id.* (emphasis added).

[30] *See id.* at 2182 (Breyer, J., dissenting).

[31] Patrick J. Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, 71 CLEV. ST. L. REV. 623, 632–33 (2023).

[32] *Id.* at 632.

[33] ANTHONY FITZHERBERT, THE NEWE BOKE OF JUSTYCES OF PEAS, BB A.F.K. LATELY TRANSLATED OUT OF FRENCHE INTO ENGLYSHE 64 (1541); ANTHONY FITZHERBERT, IN THIS BOKE IS CONTEYNED THE OFFYCES OF SHYREFFES, BAILLYFFES, OF LIBERTYES, ESCHETOURS,

III. MR. CHARLES' ERRONEOUS COMMENT ON *BRUEN*

In his article in Volume 71, Issue 3 of this journal, Mr. Charles assumes, despite the virtually uniform historical evidence to the contrary, as shown, *infra*, that "going armed" in the *Statute of Northampton* refers to carrying weapons and criticizes *Bruen* for:

> . . . fail[ing] to acknowledge most of this history. The *Bruen* majority accomplished this by casting aside inconvenient, contrarian historical evidence as irrelevant or a historical bridge too far, and then pronouncing that a right to peaceable carry firearms was generally understood by Englishmen far and wide.[34]

Bruen did not either "fail[] to acknowledge most of this history" or "cast aside inconvenient, contrarian historical evidence" in its treatment of the *Statute of Northampton*. Rather, *Bruen* properly recognized that the *Statute of Northampton* had nothing to do with carrying firearms and correctly ignored the *Statute of Northampton* as having any bearing on the existence *vel non* of a right to peaceable carry of firearms by Englishmen.

IV. THE *STATUTE OF NORTHAMPTON*

The *Statute of Northampton* encompassed seventeen chapters covering a wide variety of matters, from pardons to measures of imported cloth to keeping of fairs to inquests.[35] The chapter concerning going or riding armed is Chapter 3, which provides:

> Item, it is enacted, *that no man great nor small, of what condition soever he be*, except the King's servants in his presence, and his ministers in executing of the King's precepts, or of their office, and such as be in their company assisting them, and also [upon a cry made for arms to keep the peace, and the same in such places where such acts happen,] be so hardy to come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to *go nor ride armed* by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere, *upon pain to forfeit their armour to the King*, and their bodies to prison at the King's pleasure.[36]

The first obvious (and thus overlooked) observation about the term "going armed" in the *Statute of Northampton* is that it certainly did not refer to carrying firearms—there were no firearms in the fourteenth century, or even through most of the fifteenth

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COSTABLES AND CORONERS 2 (1543); ANTHONY FITZHERBERT, IN THIS BOKE IS CONTEYNED THE OFFYCE OF SHYREFFES, BAILLYFFES OF LIBERTYES, ESCHETOURS, COSTABLES AND CORONERS 2 (1545).

[34] Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, *surpa* note 31, at 635.

[35] *See* THE STATUTES OF THE REALM 257–61 (Vol. 1, 1810).

[36] Statute of Northampton, 2 Edw. 3, c. 3 (1328) (emphasis added).

century.[37] Firearms did not come into existence until the late fifteenth century and pistols until the mid-sixteenth century:

> The late 1400s saw the appearance of handheld firearms ("arquebuses") that could be carried into battle, followed by heavier versions ("muskets") in the early 1500s that were fired from Y-shaped supports. Arquebuses and muskets were both shoulder arms; pistols did not appear until the mid-1500s.[38]

So, we know, beyond any doubt, that "going armed" did not mean carrying firearms as no such weapons existed. That leaves "going armed" as meaning either wearing body armor or carrying some medieval-era weapon, *e.g.*, a sword or dagger.[39] To understand to which "going armed" refers, the most certain method of making that determination is to look at how, in context, "going armed" was used in the years preceding, and following, the 1328 enactment of the *Statute of Northampton*.

V. THE USES OF THE PHRASE "GOING ARMED" IN ROYAL ORDERS AND ACTS OF PARLIAMENT

Turning to the uses of "going armed" in the years before and after 1328, we start forty-three years earlier with Chapter VI of the *Statute of Winchester*,[40] which required that men between the ages of fifteen and sixty have in-house certain armor and weapons "according to the quantity of their Lands and Goods" so that they could "be ready and apparelled to pursue and arrest felons and other evildoers and also the enemies of the king and of the realm in case aliens or other rebels enter the realm as enemies . . . ."[41] Accordingly, the *Statute of Winchester* explains:

> [T]hat is to wit, [from] Fifteen Pounds Lands, and Goods [of] Forty Marks, an Hauberke,[42] [a Breast-plate] of Iron, a Sword, a Knife, and an Horse; and [from] Ten Pounds of Lands, and Twenty Marks Goods, an Hauberke, [a Breast-plate of Iron,] a Sword, and a Knife; and [from] Five Pound Lands, [a Doublet,] [a Breast-plate] of Iron, a Sword, and a Knife; and from Forty Shillings Land and more, unto One hundred Shillings of Land, a Sword, a Bow and Arrows, and a Knife; and he that hath less than Forty Shillings

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[37] *See* KENNETH CHASE, FIREARMS: A GLOBAL HISTORY TO 1700, at 1 (2003).

[38] *Id.* at 61.

[39] *See infra* Parts V–IX (exploring the meaning of "going armed" in historical literature as either wearing body armor or carrying a medieval weapon).

[40] Statute of Winchester, 13 Edward I (1285).

[41] *Id.*; *see also* Brief for The League for Sportsmen, Law Enforcement and Defense as Amici Curiae Supporting Petitioners at 12, N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 U.S. 2111 (2022) (No. 20-843) (containing the latter portion of the quotation as attributed to the Statute of Winchester).

[42] A hauberk is a coat of chain mail made up of thousands of interlocking iron rings or links which provides the wearer protection against cuts from blades. *See Hauberk*, VOCABULARY.COM, https://www.vocabulary.com/dictionary/hauberk (last visited Mar. 1, 2023); *Plate Armour*, MEDIEVAL CHRONICLES, https://www.medievalchronicles.com/medieval-armour/full-plate-armour/ (last visited Mar. 1, 2023).

> yearly, shall be sworn to [keep Gis-armes] Knives, and other [less Weapons]; and he that hath less than Twenty Marks in Goods, shall have Swords, Knives, and other [less Weapons]; and all other that may, shall have Bows and Arrows out of the Forest, and in the Forest Bows and [Boults].[43]

What is notable about this statute is that, when it refers to weapons, it does so in plain language: a "Sword," a "Bow and Arrows," and a "Knife." Parliamentary scriveners in the century before the *Statute of Northampton* were thus perfectly capable of expressing the items upon which a statute was acting, thereby strongly suggesting that "going armed"—which does not mention specific weapons—likely did not encompass weapons.

Twelve years later, in a 1297 royal order (issued during the reign of Edward I at the time he was battling the Scots);[44]

> It was ordered that every bedel [administrator] shall make summons by day in his own Ward, upon view of two good men, for setting watch at the Gates;—and that those so summoned shall come to the Gates in the day-time, and in the morning, at day-light, shall depart therefrom. And such persons are to be properly *armed* with two pieces; namely, with *haketon*[45] and *gambeson* [inner jacket, worn beneath the haketon, or other armour],[46] or else *with haketon and corset, or with haketon and plates* . . . .[47]

Accordingly, in this order, because the "two good men" are to be "armed" with haketon (a leather defensive jacket) and gambeson (inner jacket), or with haketon and corset, or with haketon and plates, "armed" meant, and only meant, wearing body armor.

Two years later, Edward I sent an order to the sheriffs of Salop (an old name for Shropshire) and Stafford ordering them to issue a proclamation:

> [P]rohibiting any one, under pain of forfeiture of life and limb, lands, and of everything that he holds in the realm, from *tourneying, tilting (bordeare) or*

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[43] Statute of Winchester, 13 Edward I (1285).

[44] Edward I was known as Edward Longshanks and is known to moviegoers as the tall brutal bearded English king who was responsible for the capture and execution of William Wallace (Mel Gibson's "Braveheart") in 1297. *See* Reginald Francis Treharne, *Edward I*, ENCYC. BRITANNICA, https://www.britannica.com/biography/Edward-I-king-of-England (Jan. 4, 2023).

[45] A haketon (also aketon) was usually a leather defensive jacket used as armor. *See Haketon*, FREE DICTIONARY, https://www.thefreedictionary.com/Haketon (last visited Mar. 1, 2023); *Acton*, FREE DICTIONARY, https://www.thefreedictionary.com/Acton (last visited Mar. 1, 2023).

[46] A gambeson is a stiff and thickly padded defensive jacket worn by soldiers who could not afford chain mail or plate armor. It was produced with a sewing technique called quilting and was usually constructed of linen or wool; the stuffing varied and could be for example scrap cloth or horse hair. During the fourteenth century, illustrations usually show buttons or laces up the front. It might also contain arming points for attaching plates. *See Gambeson*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/gambeson (last visited Mar. 1, 2023).

[47] MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES: 1297, 33–36 (Longmans, Green, London, 1868) (emphasis added).

> *jousting, or making assemblies, or otherwise going armed* within the realm without the king's special licence.[48]

Tourneying, tilting, and jousting were martial games between two riders on horseback wearing body armor and wielding lances with blunted tips to replicate a clash of heavy cavalry, with each participant trying to strike the opponent while riding towards him at high speed, breaking the lance on the opponent's shield or jousting armor if possible, or unhorsing him.[49] As the object was not to kill, or even inflict serious injury on, an opponent, but simply to break the lance or unhorse him, no weapons, such as swords, were carried during tourneying, tilting, and jousting, revealing that the term "going armed" was a reference to the wearing of body armor, not the carrying of weapons.

Three years after issuing the above order, Edward I similarly instructed the sheriff of York[50] to prohibit:

> [A]ny knight, esquire or any other person from tourneying, tilting (burdeare), making jousts, seeking adventures or otherwise going armed without the king's special licence, and to cause to be arrested the horses and armour of any persons found thus going with arms after the proclamation, as the king wills that no tournaments, tiltings or jousts shall be made by any persons of his realm without his special licence.[51]

That "going armed" referred to wearing body armor is evident from the fact that what was to be arrested was "the horses and armour . . . ."[52] There was no requirement that any weapons be "arrested"—a not surprising result because tourneying, tilting (*burdeare*), and making jousts did not involve carrying weapons; rather, it involved wearing body armor and wielding lances with blunted tips only for the purpose of replicating a clash of heavy cavalry.[53]

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[48] 4 CALENDAR OF THE CLOSE ROLLS, EDWARD I, 1296-1302 318 (Sept. 15, 1299, Canterbury) (H.C. Maxwell-Lyte ed., London, Mackie and Co., 1906).

[49] *See Joust*, ENCYC. BRITANNICA, https://www.britannica.com/sports/joust#ref95060 (last visited Mar. 1, 2023).

[50] *See* 4 CALENDAR OF THE CLOSE ROLLS, EDWARD I, *supra* note 48, at 588. In the medieval era, York was the capital of the northern province of the Church of England, a role it retains today. *See King Edward I and York*, HIST. OF YORK, http://www.historyofyork.org.uk/themes/medieval/king-edward-i-and-york (last visited Mar. 4, 2023). Edward I used York as a base for his war in Scotland. *Id.* The city walls of York are the most complete example of medieval city walls still standing in England today and extend for 2.5 miles (which this Author has walked). *See also* Lily Johnson, *York City Walls*, HISTORYHIT (Feb. 18, 2021), https://www.historyhit.com/locations/york-city-walls/

[51] 4 CALENDAR OF THE CLOSE ROLLS, EDWARD I, 1296-1302, 588 (July 16, 1302, Westminster) (H.C. Maxwell-Lyte ed., London, Mackie And Co., 1906) (emphasis added).

[52] *Id.*

[53] In the context of this royal order, the phrase "going with arms" referred to the pieces of armor worn by the person, not to weapons, because tourneying, tilting (*burdeare*), and making jousts did not involve carrying weapons.

After Edward I died of illness on July 7, 1307 (age sixty-seven), Edward II was proclaimed king on July 20, 1307.[54] In January 1308, Edward II (age twenty-three) crossed the English Channel to France where he married twelve-year-old Isabella, the daughter of Philip IV, the King of France.[55] Isabella would later be known to history as the "she-wolf of France" for her part in the abdication of her husband eighteen years hence.[56] Edward and Isabella returned to England in February 1308 for his coronation and their lavish wedding feast at Westminster Abbey.[57]

In preparation for Edward II's coronation, an order prohibited any "knight, esquire, or other" from "presum[ing] to tourney or make jousts or bordices (*torneare, justas seu burdeicias facere*), or otherwise *go armed* at Croydon or elsewhere before the king's coronation."[58]

It was also proclaimed that:

> [N]o one shall be so daring, on the day of the Coronation, as to carry sword, or knife with point, or misericorde [short dagger], mace, or club, or any other arm, on pain of imprisonment for a year and a day.[59]

Thus, twenty years *before* the enactment of the *Statute of Northampton*, "go armed" was used in the context of tourneying or jousting, and thus referred to wearing body armor, whereas the term "arm," used as a noun, referred to weapons that one could "carry": a "sword, or knife with point, or misericorde [short dagger], mace, or club . . . ."[60] Because what was prohibited by the latter part of the royal order was carrying weapons, the latter part makes no reference to "going armed," which referred to wearing body armor. Equally importantly, this directive makes plain beyond any doubt that, when a legal decree intended to regulate carrying weapons, medieval scriveners were well able to do so in unambiguous terms.

Two years after his coronation, Edward II issued an order to the sheriff of York, and to all the sheriffs of England, prohibiting any "earl, baron, knight, or other" from

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[54] *Edward II*, ENCYC. BRITANNICA, https://www.britannica.com/biography/Edward-II-king-of-England (last visited Mar. 4, 2023).

[55] *Isabella of France: The Rebel Queen*, HIST. EXTRA (Jan. 30, 2019, 4:11 PM), https://www.historyextra.com/period/medieval/isabella-france-rebel-queen-invasion-england-deposition-husband-edward-ii/.

[56] *Id.*

[57] *See* Kathryn Warner, *25 February 1308: Coronation of Edward II*, EDWARD II (Feb. 25, 2008, 5:57 AM), http://edwardthesecond.blogspot.com/2008/02/25-february-1308-coronation-of-edward.html. Although married to Isabella, many historians believe Edward II was in love with and possibly involved in a sexual relationship with his closest friend, Piers Gaveston; *see also Edward II*, *supra* note 54.

[58] 1 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1307–1313 52 (Feb. 9, 1308, Dover) (H.C. Maxwell-Lyte ed., 1892) (emphasis added).

[59] MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES: 1308, 63–67 (H.T. Riley ed., London, 1868) (emphasis added).

[60] *Id. Accord supra* text accompanying notes 51–59.

"tourney[ing], bourd[ing], or mak[ing] jousts or seek adventures, or otherwise *go[ing] armed*, under pain of forfeiture . . . ."[61]

Once again, "going armed" is used in the context of tourneying and jousting, which does not involve the carrying of weapons. Thus, "going armed" was referring to wearing body armor, not carrying weapons.

A similar order was issued by Edward II two years later, which, in full, provided:

> [N]o one shall, under pain of forfeiture, make assemblies with horses and arms or go armed or hold tournaments, jousts, etc., without the king's special licence, or do anything to disturb the peace, and to arrest all persons doing contrary to this order, certifying the king of the names of any persons resisting him.[62]

Again, some sixteen years *before* the enactment of the *Statute of Northampton*, the royal scriveners recognized a difference between being "with . . . arms" and "go[ing] armed . . . ."[63] If "go armed" referred to carrying weapons, and not to wearing body armor, the prohibition on making assemblies "with . . . arms" would be merely duplicative of "go armed"; understanding that "go armed" referred to wearing body armor makes the dual prohibitions meaningful.

Some five months after the decisive defeat of Edward II at the hands of the Scots, led by Robert The Bruce, at the Battle of Bannock Burn (a river located north of Glasgow, Scotland), Edward II ordered the mayor and bailiffs of Northampton "to *arm* [twenty crossbowmen] with *aketons*, hauberks or *breastplates* (loricis vel platis), *bacinets*[64]. . . ."[65] Thus, as a verb, "to arm" meant to don a jacket with padding underneath armor, breastplates, and a helmet.

On May 21, 1320, "a barrel full of *helmets*, *haubergeons* (*hauberiettorum*) [sleeveless coat of chain mail], and other *armour*" were sold.[66] While this entry does not use the term "armed," it refers to "armour" as helmets and a sleeveless coat of chain mail.

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[61] 1 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1307–1313 257 (Apr. 9, 1310, Windsor) (emphasis added). Windsor is the home of Windsor Castle, a royal residence, the building of which began in the twelfth century. Edward III developed the castle between 1350–1368. *Id.*

[62] 1 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1307-1313 553 (Oct. 12, 1312, Windsor). The order was to go to "all the sheriffs of England." *Id.*

[63] *Id.*

[64] The bascinet—also bassinet, basinet, or bazineto—was an open-faced military helmet which evolved from a type of iron or steel skullcap, but had a more pointed apex to the skull, and extended downwards at the rear and sides to afford protection for the neck. *See* Alexi Goranov, *Spotlight: The 14th Century Bascinet*, MYARMOURY, http://myarmoury.com/feature_spot_bascinet.html (last visited Mar. 4, 2023). A mail curtain ("camail" or aventail) was usually attached to the lower edge of the helmet to protect the throat, neck, and shoulders. *Id.* A visor (face guard) was often employed to protect the face. *Id.*

[65] 2 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1314-1318 200–03 (Nov. 19, 1314, Northampton) (H.C. Maxwell-Lyte ed., London, 1893) (emphasis added).

[66] 3 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1318-1323, 189–92 (May 21, 1320, Odiham) (H.C. Maxwell-Lyte ed., London, 1895) (emphasis added).

Edward II's order of February 14, 1322, plainly expresses that "armed" referred to items to be worn for bodily protection when he ordered the mayor and bailiffs of the town of Bristol to provide "a hundred footmen suitably *armed* with *aketons*, *bacinets*, *iron gloves*, and other arms . . . ."[67]

A little more than a month later, on April 3, 1322, Edward sent a similar order to John de Bermyngeham, earl of Loueth, justiciary of Ireland; to provide, *inter alia*, the following men for the king's army (for the war against the Scots rebels): "6,000 footmen *armed with aketon*, *bascinet*, *and iron gloves* at least . . . ."[68]

A year later, Edward II required further troops, ordering the treasurer, barons, and chamberlains of the exchequer on May 5, 1323 "to ordain for the payment of the wages of the following," including "from co. Cornwall, 200 footmen *armed with aketons, bascinets, or palets (palettis) at least*, and other suitable arms . . . ."[69]

In March 1326, the language which would find its way into the *Statute of Northampton* two years hence appears for the first time when Edward II sent an order to all sheriffs of England, which began with:

> [I]f any man hereafter *go armed* on foot or on horseback, within liberties or without, he shall be arrested without delay by the sheriffs and bailiffs and the keepers of the king's peace, and his body shall be delivered to the nearest gaol *in the arms wherewith he shall be found* . . . .[70]

Edward II issued the March 1326 order because he was:

> [G]iven to understand that certain evildoers and disturbers of his peace in divers places are allied together (*entrealies*), and, under colour of the said statute, cause themselves to be *armed* and ride about in warlike manner (*chivauchent*), and go by day and night with force and arms, to the terror of the king's people, and take and rob men at their will, and imprison some until they make fine and ransom with the said evildoers, and that the evildoers come into fairs and markets and take men's goods without paying for the same against their owners' will, and beat and maltreat (*defoulent*) those who will not be of their accord, and that certain of them take and hold passes (*paas*) in divers places under cover and in the open (*en covert et dehors*), and rob merchants and other men notoriously and openly.[71]

What is first notable about this order is that, when the king orders the arrest of men who "go armed," he orders that they be "delivered to the nearest gaol *in the arms* wherewith he shall be found . . . ."[72] Plainly, by requiring that the offenders be delivered "in the arms" in which they are found, the king was referring to their body

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[67] *Id.* at 512–24 (Feb. 14, 1322, Gloucester) (emphasis added).

[68] *Id.* at 529–40 (Apr. 3, 1322, Altofts) (emphasis added).

[69] *Id.* at 645–55 (May 5, 1323, York) (emphasis added).

[70] 4 CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1323-1327, 547–52 (Mar. 6, 1326, Leicester) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

[71] *Id.* (emphasis added).

[72] *Id.* (emphasis added).

armor, not their weapons (which, at the time, would have been a sword, a knife, a bow and arrows, or a gisarme [a medieval weapon consisting of a blade mounted on a long staff]). Accordingly, "armed" could have only been a reference to body armor, not to weapons. Further, because there would be dispute about whether "going armed" as used in the *Statute of Northampton* was intended to be limited to going about in armor in such a way as to terrify the populace, it is notable that the king's concern is not merely with men riding armed, but with "rid[ing] about in warlike manner (*chivauchent*), and go[ing] by day and night with force and arms, to the terror of the king's people . . . ."[73]

It is thus apparent that, even prior to the enactment of the *Statute of Northampton*, the king's concern was with acts that terrorized his subjects. And they terrorized his subjects because they rode around in "warlike manner" due to being appareled in body armor.[74] Indeed, it is undoubtedly this terrorizing of the king's subjects merely because men were riding around in body armor that was the incentive for the *Statute of Northampton*.

Edward II's need for troops continued as his battles with the Scots continued. On April 2, 1326, he ordered Richard le Wayte, "escheator in cos. Wilts, Southampton, Oxford, Berks, Bedford, and Buckingham . . . not to intermeddle further with the manor of La Hale near Brommore, and to restore the issues thereof to Christina, late the wife of Adam de la Forde . . . ."[75] The king's order noted that:

> [T]he manor is held in chief by the service of finding a footman armed with a hauberget [long coat of mail], purpoint [padded defensive jacket, worn as armor separately, or combined with mail or plate armor], and iron hat in the king's war in England for 40 days at their cost, for all service . . . .[76]

In using the term "armed," the order refers exclusively to items that are worn as body protection, not to weapons. And, of course, this is just two years before the enactment of the *Statute of Northampton*.

Later that month, language which, two years hence, appeared in the *Statute of Northampton*, appeared when Edward II sent the following order to the sheriff of Huntingdon:

> Whereas the king lately caused proclamation to be made throughout his realm prohibiting any one *going armed* without his licence, except the keepers of his peace, sheriffs, and other ministers, willing that any one doing the contrary should be taken by the sheriff or bailiffs or the keepers of his peace and delivered to the nearest gaols, to remain therein until the king ordered his will concerning them; the king now learns that Thomas de Eye, John Grubbe, and Richard le Orfreysier, who are not, it is said, keepers of his peace or other ministers of his, frequently *go about armed with aketons, bacinets, and other arms* by day and by night in towns, fairs, markets, and other public and private places, committing many evil deeds, contrary to the proclamation and

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[73] *Id.* (emphasis added).

[74] *Id.* (emphasis added).

[75] *Id.* at 465–72 (April 2, 1326, Kenilworth)

[76] *Id.* (emphasis added).

> inhibition aforesaid; . . . [the king] . . . therefore orders the sheriff to . . . take and imprison until further orders all those found guilty of the premises and all those whom he shall find hereafter *going about armed in such arms* anywhere in his bailiwick . . . .[77]

Edward's use of the term "armed" unmistakably referred to the wearing of items that were used as body protection: aketons and bacinets. This is confirmed by the fact that the order requires the imprisonment of those going about armed "in" such arms. A person can only be "in" body armor, not "in" a weapon such as a sword.

Little more than a week later, Edward issued the following order:

> And whereas the men dwelling in the city and strangers coming and repairing thither are consorted together and rendered bold (*embaudiz*) to assail others and to do evil by reason of their *arms and armour* borne by them: let prohibition be made of any one *being armed or carrying arms*, except according to the commission that shall be made for that purpose.[78]

In this order, there is a clear distinction drawn between "being armed" and "carrying arms."[79] Had the term "armed" referred to carrying weapons, the "carrying arms" prohibition would have been unnecessary; the fact that the two prohibitions are found in the order indicates that "being armed" and "carrying arms" were two different acts.

On September 28, 1326, after retreating to the Tower of London while being pursued by Roger Mortimer and forces loyal to him, a desperate Edward II sent out the following proclamation to the sheriff of Hereford which the sheriff was, "under pain of forfeiture of his body and goods," to disseminate "at days of the county [courts], in fairs, markets, and other places, at least two or three times a week":

> Whereas Roger de Mortimer and other traitors and enemies of the king and his realm have entered the realm in force, and have brought with them alien strangers for the purpose of taking the royal power from the king; . . . . [T]he king . . . wills . . . that all those . . . who shall come to him to set out with him against his said enemies shall be paid their wages according to their value promptly, to wit, a man-at-arms 12d., a hobeler 6d., a footman armed with double garment 4d., armed with single garment 3d., and an archer 2d. a day each . . . .[80]

It plainly appears that, when Edward II used the term "armed" (referring to a double or single garment), he was referring not to the carrying of a weapon, but to the wearing of a "garment" for bodily protection.

This was one of the last orders issued by Edward II, as he was captured in November 1326 by forces led by Roger Mortimer (a close friend and likely paramour

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[77] *Id.* at 559–70 (Apr. 28, 1326, Kenilworth) (emphasis added).

[78] *Id.* at 559–70 (May 8, 1326, Pirton).

[79] *See id.*

[80] *Id.* at 648–53 (Sept. 28, 1326, The Tower) (emphasis added).

of Edward II's queen, Isabella) and abdicated in favor of his son Edward III in January, 1327; Edward III's coronation was held on February 1, 1327.[81]

Like his father—who was held in prison under the control of Roger Mortimer and died (or was murdered) on September 21, 1327[82]—Edward III issued orders which continued the then-established usage of "armed." Edward III's orders, however, came after the enactment by the Northampton Parliament[83] of the *Statute of Northampton* and the approval of the *Treaty of Edinburgh–Northampton* with Scotland (temporarily ending the war between England and Scotland).[84] At the time of the Northampton Parliament, Roger Mortimer was in firm control of Edward III.[85]

From Clipstone, Edward III, on August 29, 1328, ordered the bailiffs of the abbot of Redyngges at Redyngges to release John and Thomas Wynter "and their goods"

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[81] Thomas Frederick Tout & J.R.L. Highfield, *Edward III*, ENCYC. BRITANNICA, https://www.britannica.com/biography/Edward-III-king-of-England (last updated Feb. 19, 2023). Edward III was thus just fourteen years old when he assumed the throne of England. Although Edward III was king in name, Mortimer, in collaboration with Isabella, was the real decision-maker, wielding his influence through the teenage Edward III. *Id.* Mortimer made enemies of much of the nobility, including Henry, Earl of Lancaster, and his allies, by virtue of Mortimer's abuses of power (*e.g.*, acquiring noble estates and titles) in the name of Edward III. *Id.*

[82] *The Big Debate: Was Edward II Really Murdered?*, HIST. EXTRA (Feb. 25, 2019, 12:15 PM), https://www.historyextra.com/period/medieval/the-big-debate-was-edward-ii-really-murdered/.

[83] The Northampton Parliament (April 24, 1328 - May 14, 1328) was formed by writs of summons issued by the king on March 5, 1328 to:

> [T]he archbishop of York, the keeper of the spiritualities of the vacant archdiocese of Canterbury, eighteen bishops (including three Welsh bishops) and the keeper of one vacant diocese, and eighteen abbots; seven earls (Norfolk, Kent, Lancaster, Surrey, Richmond, Oxford, Hereford), fifty barons; eleven royal judges and clerks; and for the election of representatives of the knights of the shire and burgesses, and of the lower clergy.

THE PARLIAMENT ROLLS OF MEDIEVAL ENGLAND 1275-1504: EDWARD III 86 (Seymour Phillips & Mark Ormrod eds., 2005).

[84] *Treaty of Northampton 1328*, TRAVEL SCOT., https://www.scotland.org.uk/scotland-in-the-14th-century/treaty-of-northampton-1328 (last visited Mar. 4, 2023).

[85] *See* Tout & Highfield, *supra* note 81. Unlike today, when Parliament only meets in Westminster, in the thirteenth and fourteenth centuries, Parliaments were held in various locations throughout England, depending on the king's needs and wishes. *See Meeting Places of the Medieval Parliament*, UK PARLIAMENT, https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/meetingplaces/ (last visited Mar. 4, 2023). Northampton Castle, where the Northampton Parliament was held some thirty-two times, was in the town of Northampton, which is in the center of England about sixty miles northwest of London. Nothing remains of the castle today, except the rebuilt Postern Gate (which this Author has visited). *See also* C.R., *Northampton*, THE HIST. OF PARLIAMENT, https://www.historyofparliamentonline.org/volume/1386-1421/constituencies/northampton (last visited Mar. 4, 2023); *Commuter Town Focus–Northampton, East Midlands*, FINE & COUNTRY (Aug. 24, 2019), https://www.fineandcountry.com/insights/blog/commuter-town-focus-northampton-east-midlands.

"upon their finding mainprise" [providing sureties pending trial, similar to a bail bond] and "to have them before the king in three weeks from Michaelmas."[86] The Wynters had been arrested at the abbot's fair, where they had gone to trade their goods "and for no other purpose," because they each wore a "single (*simplicibus*) aketon[]" [a padded defensive jacket] "by reason of the dangers of the road and not for the purpose of committing evil . . . ."[87] Their arrest was:

> [B]y virtue of the ordinance in the late parliament at Northampton that no one shall go armed in fairs or markets of elsewhere, under pain of imprisonment and loss of their arms . . . .[88]

There was no mention in the order that the Wynters were carrying weapons of any sort; they were each merely wearing, for their own bodily protection due to "the dangers of the road," not to commit evil, an aketon—which was considered to be "go[ing] armed."[89]

The next year, an order was issued by the Mayor and Aldermen of London which stated:

> [N]o person, native or stranger, shall go armed in [London], or shall carry arms by night or by day, on pain of imprisonment, and of losing his arms; save only, the serjeants at-arms of our Lord the King, and of my Lady the Queen, and the vadlets of the Earls and Barons; that is to say, for every Earl or Baron one vadlet, carrying the sword of his lord in his presence; and save also, the officers of the City, and those who shall be summoned unto them, for keeping and maintaining the peace of the City . . . .
>
> And that every hosteler and herbergeour in the City shall cause his guests to be warned as to the points of this cry; and if any stranger shall from henceforth be found in the City armed or bearing arms, for default of such warning, his host shall have the punishment in his stead . . . .[90]

Once again, the order draws a clear distinction between "go[ing] armed" and "carrying/bearing arms"—the former referring to wearing body armor and the latter referring to carrying or bearing weapons (such as a sword).

On April 3, 1330, the sheriff of Surrey and Sussex was ordered to:

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[86] 1 CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1327-1330, 314 (Vol 1, 1896). Clipstone is north of Nottingham, near Sherwood Forest where the legendary Robin Hood had battled the forces of Edward III's great-great-grandfather, King John. *See History of Sherwood Forest, Robin Hood and Major Oak*, NOTTINGHAMSHIRE COUNTY COUNCIL, https://www.nottinghamshire.gov.uk/culture-leisure/country-parks/history-of-sherwood-forest-robin-hood-and-major-oak (last visited Mar. 4, 2023).

[87] 1 CALENDAR OF THE CLOSE ROLLS, EDWARD III, *supra* note 86.

[88] *Id.* (emphasis added).

[89] *Id.*

[90] MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES: 1329 171–78 (H.T. Riley ed., London, 1868) (emphasis added).

> [T]ake all those whom he shall find going armed, with their horses and armour, and to cause them to be imprisoned, and their horses and armour to be kept safely until otherwise ordered, certifying the king of the names of those arrested and of the value of their horses and arms, as the king understands that many are going about armed in the sheriff's bailiwick, contrary to the form of the statute made in the late parliament of Northampton.[91]

Like so many previous orders, in prohibiting "going armed," the order directs the seizure of the violator's "horses and armour"; nothing whatever is said of seizing weapons. Thus, "going armed" was plainly understood to refer to riding clothed in armor.

Four years later, an order was issued by the Mayor, Aldermen, and Commonality, of the City of London:

> [N]o person, denizen or stranger, other than officers of the City, and those who have to keep the peace, shall go armed, or shall carry arms, by night or by day, within the franchise of said city . . . .[92]

Yet again, the Mayor and Aldermen, and the Commonality, were consistent in drawing a clear distinction between "go[ing] armed" and "carry[ing] arms."

In 1350, Parliament delineated what acts involving riding armed were not treason:

> [I]f percase any Man of this Realm *ride armed* [covertly] or secretly with Men of arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ransom for to have his Deliverance, *it is not the mind of the King nor his Council, that in such Case it shall be judged Treason*, but shall be judged Felony or Trespass, according to the laws of the land of old Time used, and according as the case requireth.[93]

Unlike so many of the previously cited acts and orders, this act does not reference weapons and thus does not distinguish between carrying weapons or riding in armor, so that it does not detract from the contention that "going armed" did not refer to carrying weapons. Rather, its only purpose is to express that someone who does "ride armed" "covertly" or "secretly" with "Men of arms against" another person is not guilty of treason, but only of "Felony or Trespass . . . ."[94]

In 1357, a royal "proclamation for the preservation of order and cleanliness in the City; and for the regulation of the Poultry-market at Ledenhalle" declared:

> [N]o Fleming [a Belgian], Brabanter [person from a province of central Belgium], or Selander [Native of Zeeland, in Holland] shall *go armed, or carry any manner of arms, or knife*, small or great, with a point, either privily

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[91] 2 CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1330–1333 131 (Apr. 3, 1330, Woodstock) (H.C. Maxwell-Lyte ed., vol. 2, 1898) (emphasis added).

[92] MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES: 1334 192 (Longmans, Green, London, 1868) (emphasis added).

[93] 25 Edw. 3, 320, st. 5, c. 2, § 13 (1350) (emphasis added).

[94] *Id.*

> or openly; on pain of forfeiture of the same, and imprisonment of his body etc.[95]

The term "go armed" was thus distinguished from "carry[ing] . . . arms," consistent with the practice discussed, *supra*.

On June 12, 1363, Edward III issued a proclamation that again drew a distinction between carrying weapons and "going armed," stating in part:

> That no man of whatsoever condition shall *go armed* in the said city nor suburbs, *nor carry arms* by day nor by night, *except* yeomen of the great lords of the land carrying their lords' *swords* in their presence . . . upon pain of losing their *arms and armor.*[96]

There are two prohibitions here: one, going armed and two, carrying arms. Thus, the carrying arms prohibition exempts certain carrying of swords. Accordingly, "go armed" meant something different than carrying weapons such as swords. Moreover, the forfeiture language distinguished between "arms" and "armor."

The distinction between carrying weapons and wearing bodily protection continued into the reign of Edward III's successor, his grandson, Richard II (January 6, 1367 – c. February 14, 1400).[97] In an order on December 1, 1377, Richard II ordered the mayor and bailiffs of Newcastle upon Tyne to arrest and imprison "until further order" all those "who shall be found by night or day . . . *going armed, bearing arms* or leading an armed power to the disturbance of the peace" because:

> [T]he king is informed that great number of evildoers and disturbers of the peace . . . have heretofore made and cease [not] daily to make unlawful assemblies etc. by night and day in that town and neighbouring places, have gone and *go armed and bearing arms* wander hither and thither, laying snares for men coming to or from the town and those dwelling therein, beating, wounding and evil treating them, robbing some of their property and goods, and daily committing many other hurts and mischiefs not to be borne, in contempt of the king, in breach of the peace and to the terror of the people in those parts.[98]

Once again, the royal order distinguishes between "go[ing] armed" and "bearing arms," the first being a reference to wearing body armor and the latter referring to carrying weapons.

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[95] MEMORIALS OF LONDON & LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES, 1357 295–300 (H.T. Riley ed., London, 1868).

[96] 11 CALENDAR OF THE CLOSE ROLLS, EDWARD III, 1360-1364, 528–37 (June 12, 1363, Westminster) (H.C. Maxwell-Lyte ed., London, 1909) (emphasis added).

[97] The eldest son of Edward III, Edward of Woodstock, known as the Black Prince (15 June 1330 – 8 June 1376), died before his father, so his son, Richard II, succeeded to the throne instead. Nigel Saul, *Richard II*, ENCYC. BRITANNICA, https://www.britannica.com/biography/Richard-II-king-of-England (Jan. 28, 2023).

[98] 1 CALENDAR OF CLOSE ROLLS, RICHARD II, 1377-1381 34 (Dec. 1, 1377, Westminster) (H.C. Maxwell-Lyte ed., 1914).

The distinction drawn by Richard II in 1377 between "go[ing] armed" and carrying weapons continued into 1381, when a proclamation was issued which stated:

> Be it proclaimed on behalf of our Lord the King, for the safekeeping of the peace, that no one repairing unto the City, after he shall have taken up his lodging there, shall go armed, or shall carry upon him, or have carried after him, a sword, unless he be a knight.[99]

There are three offenses here: "go[ing] armed," "carry[ing]" a sword "upon" the person, and having a sword "carried after" the person (presumably by a knight's servant). By distinguishing "go armed" from sword carrying, it is evident that sword carrying was not "go[ing] armed."

Two years later, Parliament enacted the following to enforce the *Statute of Northampton*:

> [N]o Man shall ride in Harness within the Realm, contrary to the Form of the Statute of Northampton thereupon made, neither with Launcegay [a light lance or throwing spear] within the Realm, the which Launcegays be clearly put out within the said Realm, as a Thing prohibited by our Lord the King, upon Pain of Forfeiture of the said Launcegays, Armours, and other Harness, in whose hands or Possession they be found that bear them within the Realm, contrary to the Statutes and Ordinances aforesaid without the King's special license.[100]

It is thus clear that what was "contrary to the Form of the Statute of Northampton" was to "ride in Harness" (which refers to riding while wearing body armor), whereas riding with a weapon (a Launcegay) was equally plainly *not* "contrary to the Form of the Statute of Northampton" as the prohibition on riding with a Launcegay follows, and is independent of, a violation of the *Statute of Northampton* by "rid[ing] in harness." Indeed, the forfeiture language distinguishes between "Launcegays" and "Armours," indicating that each was viewed as a separate item.

Less than a decade later, Richard II sent an order to the mayor and sheriffs of London "to cause proclamation to be made" that:

> [N]o man of whatsoever estate or condition shall make unlawful assemblies within the city or suburbs, go armed, girt with a sword or arrayed with other unaccustomed harness, bear arms, swords or other such harness . . . .[101]

The reason for the proclamation was that:

> [I]t has now newly come to the king's ears that numbers of evildoers and breakers of the peace, *some armed, some girt about the midst with swords* and others arrayed as aforesaid, do in contempt of the king, in breach of the peace, to the disturbance and terror of the people contrary to those statues lurk and run about in divers places within the city and suburbs, committing

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[99] MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES: 1381, 447–55 (Longmans, Green, London, 1868) (emphasis added).

[100] 7 Ric. 2, c. 13 (1383) (emphasis added).

[101] 4 CALENDAR OF CLOSE ROLLS, RICHARD II, 1389-1392 530 (Dec. 23, 1391, Westminster) (H.C. Maxwell Lyte, London, 1922) (emphasis added) (emphasis added).

> assaults, mayhems, robberies, manslaughters etc., and hindering the ministers and officers of the city from exercising their offices, which the king will not and ought not to endure.[102]

The proclamation exempted "lords, great men, knights and esquires of decent estate, and other men at their entry into or departure from the city" as well as "the king's officers and ministers appointed to keep the peace . . . ."[103]

As is readily apparent from the plain language of the order, "go[ing] armed" and "girt with a sword" are two different acts, a point emphasized by the king's noting that he has heard that "some" of the evildoers are "armed" and "some" are "girt about the midst with swords . . . ."[104]

Two years later, Richard II issued the following order:

> To the mayor and sheriffs of London. Order to cause proclamation to be made, forbidding any man of whatsoever estate or condition to make unlawful assemblies in the city or suburbs of London, to *go armed, girt with a sword or arrayed with unwonted harness* . . . .[105]

As in previous orders, this order drew a distinction between "go[ing] armed" and carrying a sword on a belt ("girt with a sword").

Richard II's successor, Henry IV (who overthrew and imprisoned Richard II and usurped the throne), issued proclamations similar to those of Richard II. In 1405, he decreed to the bailiffs of Suthwerke:

> Order to cause proclamation to be made, forbidding any man of whatsoever estate or condition to make unlawful assemblies within the town and surburbs of Suthwerke, *to go armed, girt with a sword or arrayed with other unusual harness* . . . .[106]

And, in 1409, he ordered the mayor and sheriffs of London to:

> [C]ause proclamation to be made, on the king's behalf forbidding any man of whatsoever estate or condition to go armed within the city and suburbs, or any[,] except lords, knights and esquires with a sword, and the king's will is that one sword and no more be borne after each of these, under pain of forfeiting armour and swords, ..., and order to arrest all whom they may find so doing after the proclamation, with their armour and swords, and commit them to the nearest prison, there to abide until the king shall take order for their deliverance; as the king has information that great number of disputes etc. are made within the city by certain lieges gathering in such

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[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] 5 CALENDAR OF THE CLOSE ROLLS, RICHARD II, 1392-1396 249 (Dec. 18, 1393, Westminster) (H.C. Maxwell-Lyte ed., London, 1925).

[106] 2 CALENDAR OF THE CLOSE ROLLS, HENRY IV, 1402-1405 526 (July 16, 1405, Westminster) (A.E. Stamp ed., London, 1929).

> assemblies with hauberks, swords and other arms and armour contrary to divers statutes and other ordinances . . . .[107]

Thus, even some eighty years after the enactment of the *Statute of Northampton*, the consistent distinction between wearing armor ("go armed") and carrying weapons continued to be drawn. It was thus evident that when the *Statute of Northampton* referred to "going armed," it was barring the wearing of armor, not prohibiting the carrying of common weapons.

VI. THE USES OF "GOING ARMED" IN TREATISES

A. John Carpenter

In 1419, a legal treatise was published by John Carpenter in which he summarized the law as follows:

> [T]hat no one, of whatever condition he be, *go armed* in the said city or in the suburbs, *or carry arms*, by day or by night, except the vadlets of the great lords of the land, *carrying the swords* of their masters in their presence, and the serjeants-at-arms of his lordship the King, of my lady the Queen, the Prince, and the other children of his lordship the King, and the officers of the City, and such persons as shall come in their company in aid of them, at their command, for saving and maintaining the said peace; under the penalty aforesaid, and the loss of their *arms* and *armour*.[108]

As with all the authorities previously cited, particularly the then-recent orders of Richard II, Carpenter understood the difference between "go armed" and "carry arms," the former referring to wearing armor and the latter referring to carrying weapons, a distinction made clear by what may "los[t]": arms *and* armour.

B. Anthony Fitzherbert

In three treatises cited by Mr. Charles in his article in Volume 71, Issue 3 of this journal[109]—written by Anthony Fitzherbert in the 1540s[110]—the reference to "going or riding armed" was plainly a reference to wearing armor as it was only armor which could be forfeited to the king. For example, in 1541, Fitzherbert wrote: "None shal go nor ryd armid by day nor by nyght, and payne to lea[ve] their *armour* to the king [None

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[107] 3 CALENDAR OF THE CLOSE ROLLS, HENRY IV, 1405-1409 485 (Jan. 30, 1409, Westminster) (A.E. Stamp ed., London, 1931).

[108] JOHN CARPENTER, LIBER ALBUS: THE WHITE BOOK OF THE CITY OF LONDON 335 (1861) (emphasis added).

[109] Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, *supra* note 31, at 632 (citing three treatises in footnote 64).

[110] *See generally* ANTHONY FITZHERBERT, THE NEWE BOKE OF JUSTYCES OF PEAS, BY A.F.K. LATELY TRANSLATED OUT OF FRENCHE INTO ENGLYSHE (1541). Mr. Charles refers to Fitzherbert as the author of "influential sixteenth-century legal treatises." Charles, *supra* note 31, at 632 (citing three treatises in footnote 64).

shall *go nor ride armed* by day nor by night, and pain to leave [forfeit] their *armor* to the king]."[111] The same book later states:

> Constables in the towne where they beare office, may arrest me[n] that go or ryde armed in fayres, or markettes by daye or by nyght, and take their *armour* as forfayt [forfeit] to the kyng, and empryson them at the kynges pleasure [Constables in the town where they bear office, may arrest men that go or ride armed in fairs, or markets by day or by night, and take their *armor* as forfeit to the king, and imprison them at the king's pleasure].[112]

Two years later, Fitzherbert makes exactly the same point; that "going or riding armed" referred only to wearing armor as it was only armor which could be forfeited to the king:

> Constables in the townes where they beare office may arreste me[n] that goo or ryde armed in fayres, or markettes by daye or by nyght, and take theyr *armour* as forfayt to the kyng and imprison them at the kiges pleasure [Constables in the towns where they bear office may arrest men that go or ride armed in fairs, or markets by day or by night, and take their *armor* as forfeit to the king and imprison them at the king's pleasure].[113]

And, in 1545, Fitzherbert repeats this statement: "Constables in the townes where they beare office, may arreste me[n] that go or ryde armed in fayres, or markets by daye or by nyght, and take theyre *armour* as forfayte to the kyng and imprison them at the kings pleasure."[114]

It is thus evident that Fitzherbert understood that "going or riding armed" referred exclusively to wearing armor and had nothing to do with carrying weapons.

C. William Lambarde

Another treatise cited by Mr. Charles in his article in Volume 71, Issue 3 of this journal makes the same point. Mr. Charles refers to a description of the *Statute of Northampton* by William Lambarde (whom Mr. Charles describes as "arguably the most prominent lawyer of the Elizabethan period") in which Lambarde states:

> [I]f an[y] person whatsoever (except the *Queenes* servants and ministers in her presence, or in executing her precepts, or other offices, or such as shall assist them and except it be upon *Hue* and *Crie* made to keep the peace, and that in places where acts against the Peace do happen) shall be so bold, as to *go, or ride armed*, by night, or by day, in Faires, Markets, or any other places: then any *Constable*, or any other of the saide *Officers*, may take such *Armour* from him, for the *Queenes* use, & may also commit him to the *Gaole*. And therefore, it shall be good in this behalf, for the Officers to stay and arrest all

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[111] *Id.* at 64 (emphasis added).

[112] *Id.* at 346 (emphasis added).

[113] ANTHONY FITZHERBERT, IN THIS BOKE IS CONTEYNED THE. OFFYCES OF SHYREFFES, BAILLYFFES, OF LIBERTYES, ESCHETOURS, COSTABLES AND CORONERS 97 (1543).

[114] ANTHONY FITZHERBERT, IN THIS BOKE IS CONTEYNED THE OFFYCE OF SHYREFFES, BAILLYFFES OF LIBERTYES, ESCHETOURS, COSTABLES AND CORONERS 99 (1545).

> such persons as they shall find to carry *Dags* or *Pistols*, or to be appareled with privie coates, or doublets: as by the proclamation [of Queen Elizabeth I] . . . .[115]

While the first sentence, which prohibits going or riding armed, only permits the seizure of armor and is thus a discussion of the *Statute of Northampton*, the second sentence expressly supplements the *Statute of Northampton* with "the proclamation [of Queen Elizabeth I]" which prohibited the "carry[ing of] *Dags* or *Pistols* . . . ."[116] Thus, Lambarde understood that, in the absence of the proclamation of Queen Elizabeth I, the *Statute of Northampton* was limited to wearing armor and that it was only the proclamation of Queen Elizabeth I which prohibited the "carry[ing of] *Dags* or *Pistols* . . . ."[117]

D. William Hawkins

William Hawkins noted that, under the *Statute of Northampton*, a person "cannot excuse the wearing such *Armour* in Publick . . . ."[118] Hawkins also referred to persons being "armed" with "privy Coats of Mail" to "the Intent to defend themselves against their Adversaries, are not within the Meaning of this Statute [of Northampton], because they do nothing *in terrorem Populi*."[119] "Privy" means "secret, concealed, hidden, or secluded."[120] Thus, "privy Coats of Mail" were coats of mail that were hidden under outer clothing and, because they were hidden, they could "do nothing *in terrorem Populi*."[121] Moreover, Hawkins distinguished between wearing weapons and being "armed with privy Coats of Mail" when he notes that "Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons . . . ."[122]

Bruen also cited to Hawkins:

> Serjeant William Hawkins, in his widely read 1716 treatise, confirmed that "no wearing of Arms is within the meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People." To illustrate that proposition, Hawkins noted as an example that "Persons of Quality" were "in no Danger of Offending against this Statute by wearing common Weapons" because, in those circumstances, it would be

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115 WILLIAM LAMBARDE, THE DUTIES OF CONSTABLES, BORSHOLDERS, TYTHINGMEN, AND SUCH OTHER LOW AND LAY MINISTERS OF THE PEACE 13–14 (1602) (emphasis added).

116 *Id.*

117 *Id.*

118 WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN, BOOK I 136, Sec. 8 (1716) (emphasis added).

119 *Id.* at Sec. 9.

120 *Privy*, DICTIONARY.COM, https://www.dictionary.com/browse/privy (last visited Mar. 5, 2023).

121 Hawkins, *supra* note 118, at Sec. 9.

122 *Id.*

> clear that they had no "Intention to commit any Act of Violence or Disturbance of the Peace."[123]

Bruen thus used Hawkins to emphasize that the *Statute of Northampton* was not violated in the absence of circumstances as are apt to terrify the people. Those circumstances likely referred to the wearing of armor, not the carrying of common weapons (such as swords and daggers), as the carrying of common weapons would not, of itself, terrify the people whereas the wearing of armor would terrify the people because of its war-like connotations.

E. Michael Dalton

Another good source for understanding the meaning of "going armed" in the *Statute of Northampton* is Michael Dalton's popular legal guidebook. In Chapter IX—which is titled *Armour*—Dalton wrote:

> If any person shall ride or go armed offensively before the Kings Justices, or any other the Kings Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, (by night or by day) in Affray of the Kings people, (Sheriff, and other the Kings Officers) and every Justice of Peace (upon his own view, or upon complaint thereof) may cause them to be staid and arrested, and may bind all such to the Peace or Good behaviour, (or, for want of Sureties may commit them to the Gaol:) and the said Justice of Peace (as also every Constable) may seize and take away their Armour and other Weapons, and shall cause them to be apprised, and answered to the King as forfeited. And this the Justice of Peace may do by the first Assignavimus in the Commission . . . .
>
> So of such as shall *carry* any *Guns, Daggs, or Pistols* that be *charged*, or that shall go *apparelled with privy Coats or Doublets*, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide tit. Surety for the Peace*.[124]

Thus, Dalton appears to have viewed the *Statute of Northampton* as affecting only the wearing of armor in such a manner as to inculcate fear in the populace—a fact emphasized by the use of the phrase "in Affray of the Kings people . . . ."[125] The consequence for persons going or riding wearing armor "offensively" in "Affray of the Kings people" is that they may be bound "to the Peace or Good behaviour" or, if they have no sureties, *i.e.*, if they are unable to post a surety/peace bond (an agreement to pay a sum certain to the King if the peace is breached)[126] for them, they may be committed to jail.

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[123] N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2142 (2022).

[124] MICHAEL DALTON, THE COUNTREY JUSTICE, CONTAINING THE PRACTICE OF THE JUSTICES OF THE PEACE AS WELL IN AS OUT OF THEIR SESSIONS 38 (London, 1666) (emphasis added).

[125] *See id.*

[126] *Id.* at 194.

Notably, it is only wearing armor in such a manner as to inculcate fear in the populace that is prohibited; the mere carrying of weapons, without also wearing armor, was not viewed by Dalton as a breach of the *Statute of Northampton*.

Moreover, the armor of persons wearing armor in such a manner as to inculcate fear in the populace *may* be forfeited, as *may* any weapons they were also carrying. While not clearly set forth, a reasonable reading of Dalton's description of the *Statute of Northampton* is that forfeiture would only apply if the person wearing armor was not bound "to the Peace or Good behaviour."[127] If they were so bound, they could not be jailed, nor could their armor (or weapons) be forfeited.

In addition to the prohibition of the *Statute of Northampton*—wearing armor in such a manner as to inculcate fear in the populace—Dalton recognized that the later-issued Elizabethan proclamations prohibiting the carrying of loaded "Guns, Daggs, or Pistols" (or wearing "privy Coats or Doublets") could also require the person "to find Sureties for the Peace" and could also result in forfeiture of the loaded "Guns, Daggs, or Pistols" (or "privy Coats or Doublets"), presumably only if "Sureties for the Peace" could not be found.[128]

Emphasizing that mere carrying of weapons was not an offense, in the chapter entitled *Guns* (Chap. XXIX), Dalton writes:

> 3. No person may carry in his journey any Gun (Dag, or pistol) charged, or Bow bent, (but only in time and service of War, or in going to or from Musters) except he hath *per annum* 100 li. in Lands, &c.[129]

Thus, a person who had *per annum* 100 li. in Lands was entitled to carry in his journey a loaded Dag or pistol.

In a later chapter setting forth the grounds upon which a justice of the peace may "command surety of the peace to be found, or may bind a man to the peace," Dalton summarizes the prohibitions of the *Statute of Northampton* thusly:

> 12. All such as shall *go or ride armed* (offensively) in Fairs, Markets or elsewhere; *or shall wear, or carry any Guns, Dags or Pistols charged*; it seemeth any Constable, seeing this, may arrest them, and carry them before the Justice of Peace, and the Justice may bind them to the Peace; yea, though those persons were so *armed or weaponed* for their defense upon any private quarrel, &c. for they might have had the peace against the other persons: and besides, it striketh a fear and terrour into the Kings Subjects.[130]

Dalton thus again distinguished between to "go or ride armed" and to "wear, or carry" "charged" (loaded) firearms, the former referring to wearing body armor; this distinction is emphasized by the reference to persons being so "armed or weaponed . . . ."[131] Dalton emphasized that the wearing of armor must be done "offensively," *i.e.*,

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127 *See id.*

128 Patrick J. Charles, *The Facts of the Second Amendment Outside the Home, Take Two: How We Got Here and Why it Matters*, 64 CLEVE. ST. L. REV. 373, 384–86, 402 (2016).

129 DALTON, *supra* note 124, at 92.

130 *Id.* at 194.

131 *See id.*

not simply for self-defense, but in an aggressive manner so as to inculcate "fear and terrour" in the populace.[132] He also incorporated the Elizabethan royal proclamations issued subsequent to the *Statute of Northampton* which regulated carrying weapons.[133] Notably, Dalton repeats that the only consequence for persons going or riding wearing armor or carrying firearms is that the justice of the peace "bind them to the Peace," *i.e.*, the persons may have to post a peace bond—an agreement to pay a sum certain to the King if the peace is breached.[134]

Indeed, in a later version of *The Country Justice*, Dalton recounts that, if it is proclaimed by a justice of the peace that no one in a certain house "shall go armed . . . in offense of" the *Statute of Northampton*, and any such persons "do depart in peaceable Manner, then hath the Justice no Authority . . . to commit them to Prison, nor to take away their *Armour*."[135]

F. Sir William Blackstone

Sir William Blackstone noted that the offense of "riding or going armed, with dangerous or unusual weapons":

> . . . is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the statute of Northampton . . . in like manner as, by the laws of Solon, every Athenian was finable who walked about the city *in armor.*[136]

From the comparison to "the laws of Solon," Blackstone understood that "riding or going armed" referred to going about in armor. Further, by referring to "riding or going armed, *with* dangerous or unusual weapons," Blackstone recognized the distinction between riding or going armed "in armor" and having weapons *while* riding or going armed in armor.

G. MacNally

In the nineteenth century, MacNally's manual for justices of the peace in Ireland discussed the *Statute of Northampton* and not only distinguished weapons from armor, but made clear his view that carrying weapons were not within the meaning of the *Statute of Northampton* "unless it be accompanied with such circumstances as are apt to terrify the people":

> [N]o *wearing of arms* is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; therefore persons of quality are in no danger of offending against this statute

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132 *See id.*

133 Charles, *The Facts of the Second Amendment Outside the Home, Take Two: How We Got Here and Why it Matters*, *supra* note 128, at 384–85.

134 DALTON, *supra* note 124, at 194.

135 MICHAEL DALTON, THE COUNTRY JUSTICE, CONTAINING THE PRACTICE, DUTY, AND POWER OF THE JUSTICES OF THE PEACE AS WELL IN AS OUT OF THEIR SESSIONS 129 (London, 1727) (emphasis added).

136 4 COMMENTARIES ON THE LAWS OF ENGLAND, 85 (1796) (emphasis added).

> by wearing common weapons . . . . And persons *armed with privy coats of mail*, to the intent to defend themselves, against their adversaries, are not within the meaning of this statute, because they do nothing in terror of the people.[137]

In referring to being "armed" with privy coats of mail, MacNally's manual also emphasizes that "armed" referred to wearing body armor. And wearing "privy coats of mail," *i.e.*, wearing coats of mail that were not visible, was not prohibited by the *Statute of Northampton* because it could not terrify people.

VII. THE USES OF "GOING ARMED" IN LITERATURE

A. Geoffrey Chaucer

The distinction between wearing armor and carrying weapons was also reflected in medieval literature. For example, in his 1390s literary classic, *The Knight's Tale* (from *The Canterbury Tales*), Geoffrey Chaucer, wrote:

> With hym ther wenten knyghtes many on;
> [With him there went knights many a one;]
> Som wol ben armed in an haubergeoun,
> [Some of them will be armed in a long coat of mail,]
>
> And in a brestplate and a light gypoun;
> [And in a brestplate and a light tunic;]
> And som wol have a paire plates large;
> [And some of them will have a set of plate armor;]
> And som wol have a Pruce sheeld or a targe;
> [And some of them will have a Prussian shield or a buckler.][138]

The term "armed" is thus used in referring to an item that is worn for bodily protection.

B. William Shakespeare

Almost two centuries later, Shakespeare (bapt. 26 April 1564 – 23 April 1616) wrote:

> What stronger breastplate than a heart untainted?
> Thrice is he armed that hath his quarrel just,
> And he but naked, though locked up in steel,
> Whose conscience with injustice is corrupted.[139]

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[137] LEONARD MACNALLY, 1 THE JUSTICE OF THE PEACE FOR IRELAND: CONTAINING THE AUTHORITIES AND DUTIES OF THAT OFFICER 32 (1808).

[138] Geoffrey Chaucer, *The Knight's Tale*, HARVARD'S GEOFFREY CHAUCER WEBSITE, https://chaucer.fas.harvard.edu/pages/knights-tale-0 (last visited Feb. 26, 2023) (from *The Canterbury Tales*, *circa* 1387 to 1400).

[139] *Henry VI, Part 2: Act 3, Scene 2*, THE FOLGER SHAKESPEARE, https://shakespeare.folger.edu/shakespeares-works/henry-vi-part-2/act-3-scene-2/ (last visited Feb. 26, 2023).

Within *Henry VI*, Shakespeare understood that to be "armed" meant to have a breastplate and to be "locked up in steel."

Similarly, in *Hamlet*, Hamlet asks for a description of his father's ghost:

> HAMLET: Armed, say you?
> ALL: Armed, my lord.
> HAMLET: From top to toe?
> ALL: My lord, from head to foot.
> HAMLET: Then saw you not his face?
> HORATIO: O, yes, my lord, he wore his beaver [helmet's face protector] up.[140]

"Armed" thus referred to wearing body armor.

VIII. THE CASE OF SIR THOMAS FIGETT

One of the few *Statute of Northampton* cases preceding *Rex* v. *Knight* for which a record is extant is that of Sir Thomas Figett, Knight.[141] The earliest surviving account of the case is from a 1584 treatise that stated: "[A] man will not *go armed* overtly, even though it be for his defense, but it seems that a man can *go armed under his private coat of plate, underneath his coat* etc., because this cannot cause any fear among people."[142]

In Edward Coke's famed legal treatise (cited in numerous cases decided by the United States Supreme Court), Coke discusses Sir Thomas' case, describing him as a person who *"went armed under his garments*, as well in the palace, as before the justice of the kings bench . . . ."[143]

It is thus apparent that, while "armed" could have meant carrying a weapon, it is far more likely that "armed" referred to wearing some form of body armor because the item that was at issue was under Sir Thomas' garments, which is ordinarily how body armor was often worn, *e.g.*, a haubergeon, a sleeveless coat of chain mail.[144]

Sir Thomas' defense lends weight to that interpretation of "armed":

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[140] *Hamlet*, Act 1, Scene 2, MYSHAKESPEARE, https://myshakespeare.com/hamlet/act-1-scene-2 (last visited Feb. 26, 2023).

[141] Brief for The League for Sportsmen, Law Enforcement and Defense as Amici Curiae Supporting Petitioners, N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2117 (2022) (No. 20-843).

[142] RICHARD CROMPTON, L'OFFICE ET AUCTHORITIE DE IUSTICES DE PEACE 58 (1584) (emphasis added).

[143] EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 161 (1644) (emphasis added).

[144] *Cf.* CALENDAR OF THE CLOSE ROLLS, EDWARD II, 1323-1327 648–53 (Apr. 28, 1326, Kenilworth) (H.C. Maxwell-Lyte ed., 1898) ("[F]ootman armed with double garment 4d., armed with single garment 3d.").

> [Sir Thomas] said that there had been debate between him and sir John Trevet Knight in the same week, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, *he went so armed.*[145]

Whatever doubt there might have been about whether Sir Thomas was wearing armor or carrying a weapon was removed by the explanation of the penalty imposed: "It appeareth before by the case of sir Thomas Figett, that the offender was to bee punished according to this act, but by forfeiture of the *armor* and imprisonment."[146]

Thus, more than a century before *Sir John Knight's Case*, discussed, *infra*, an English court had found that the *Statute of Northampton* was focused on the wearing of armor, not the carrying of weapons.

IX. *SIR JOHN KNIGHT'S CASE*

With the above background in mind, we can now turn to *Sir John Knight's Case*. *Bruen* wrote of *Sir John Knight's Case* that:

> [T]he government charged Sir John Knight, a prominent detractor of James II, with violating the Statute of Northampton because he allegedly "did walk about the streets armed with guns, and that he went into the church of St. Michael, in Bristol, in the time of divine service, with a gun, to terrify the King's subjects."[147]

In reviewing the albeit limited reports of the opinion of the presiding judge, Chief Justice Herbert, *Bruen* stated that Chief Justice Herbert:

> . . . explained that the Statute of Northampton had "almost gone in *desuetudinem*,"[148] meaning that the Statute had largely become obsolete through disuse. And the Chief Justice further explained that the act of "go[ing] armed to terrify the King's subjects" was "a great offence at the *common law*" and that the Statute of Northampton "is but an affirmance of that law."[149] Thus, one's conduct "will come within the Act," — *i.e.*, would terrify the King's subjects — only "where the crime shall appear to be *malo animo*,"[150] with evil intent or malice. Knight was ultimately acquitted by the jury.[151]

The dissent downplayed the significance of *Sir John Knight's Case*, citing Mr. Charles' *amicus* brief: "But by now the legal significance of Knight's acquittal is

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[145] COKE, *supra* note 143, at 162.

[146] *Id.* (emphasis added).

[147] N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2140–41 (2022) (citing *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, 76 (K.B. 1686)).

[148] 142 S. Ct. at 2141 (citing *Rex v. Sir John Knight*, 1 Comb. 38, 38–39, 90 Eng. Rep. 330 (K.B. 1686)).

[149] 142 S. Ct. at 2141 (citing 3 Mod., at 118, 87 Eng. Rep., at 76) (first emphasis added).

[150] 142 S. Ct. at 2141 (citing 1 Comb., at 39, 90 Eng. Rep., at 330).

[151] 142 S. Ct. at 2141.

impossible to reconstruct."[152] At footnote 9 of Mr. Charles' *amicus* brief (which he declared he filed "in support of neither party"—despite actually supporting New York State), he stated: "Why Knight was acquitted remains a mystery" and "it remains unknown why exactly Knight was acquitted by a jury of his peers."[153] In fact, when it is understood, as demonstrated, *supra*, by the numerous acts and royal orders discussed in Part V, the treatises discussed in Part VI, and the literary sources discussed in Part VII, that the *Statute of Northampton* was directed to wearing armor and not to carrying weapons, there is no mystery either as to why Sir John was acquitted or why Chief Justice Herbert found that the Statute "be almost gone in *desuetudinem*."[154]

Turning first to the facts of *Sir John Knight's Case*, historian Tim Harris has explained that whenever Sir John:

> . . . came to Bristol[,][155] he would ride "with a Sword and a Gun" for his own safety, although he "left them," he claimed, "at the end of the Town when he came in, and tooke them thence when he went out." He went so far as to take his gun and sword with him to St. Michael's church one Sunday—the church itself was outside the city walls—fearing that the Irishmen were lying in wait for him, though he said he left the gun with a servant in the church porch, "to stand upon the Watch."[156]

The first version of the King's Bench Reports (87 Eng. Rep. 75) sets forth essentially the same facts:

> The information sets forth, that the defendant did walk about the streets armed with guns, and that he went into the church of St. Michael, in Bristol,

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[152] 142 S. Ct. at 2183 (citing Brief for Patrick J. Charles as Amicus Curiae 23, n.9).

[153] Brief for Patrick J. Charles as Amicus Curiae 23, n.9. In his article published in Volume 71, Issue 3 of this journal, Mr. Charles repeats his assertions that "why Knight was acquitted remains a mystery" and that historians are "unable to piece together why exactly Knight was acquitted . . . ." Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, *supra* note 31, at 636.

[154] 142 S. Ct. at 2141 (citing Rex v. Sir John Knight, 1 Comb. 38, 38–39, 90 Eng. Rep. 330 (K.B. 1686)).

[155] Bristol is a city straddling the River Avon in the southwest of England. *Attractions*, SHEPHERD RETREATS, https://www.shepherdretreats.co.uk/attractions.html (last visited Mar. 3, 2023).

[156] Tim Harris, *The Right to Bear Arms in English and Irish Historical Context*, in A RIGHT TO BEAR ARMS? THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT 25–26 (Smithsonian Scholarly Press, 2019) (quotation marks in original). While Harris brought to light some bits of interesting information about Sir John Knight and the incident in Bristol that led to *Rex* v. *Knight*, nothing Harris found supports the thesis that the *Statute of Northampton* regulated the carrying of weapons or that *Rex* v. *Knight* did anything more than apply the plain language of the *Statute of Northampton*. *See* TIM HARRIS, A RIGHT TO BEAR ARMS? 25–26 (Jennifer Tucker et al. eds., 2019).

> in the time of divine service, with a gun, to terrify the King's subjects, contra formam statuti [*i.e.*, contrary to the form of the Statute of Northampton].[157]
>
> This case was tried at the Bar, and the defendant was acquitted.
>
> The Chief Justice said, that the meaning of the statute of 2 Edw. 3, c. 3, was to punish people who go armed to terrify the King's subjects. It is likewise a great offense at the *common law*, as if the King were not able or willing to protect his subjects; and therefore this Act is but an affirmance of that law; and it having appointed a penalty, this Court can inflict no other punishment than what is therein directed.[158]

The second version of the King's Bench Reports (90 Eng. Rep. 330) reported the following:

> Information for going to church with pistols, &c. contra stat. 2 Ed. 3, of Northampton.
>
> Winnington *pro defendente*.[159] This statute was made to prevent the people's being oppressed by great men; but this is a private matter, and not within the statute. Vide stat. 20 R. 2.
>
> C. J. This offence had been much greater, and better laid at common law. But tho' this statute be almost gone in *desuetudinem*, yet where the crime shall appear to be *malo animo*,[160] it will come within the Act (tho' now there be a general connivance to gentlemen to ride armed for their security); but afterwards he was found, not guilty.[161]

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[157] *See* Sir John Knight's Case, 87 Eng. Rep. 75, 76 (1686). The case was brought by Sir Robert Sawyer, the Attorney General for England and Wales (1681–1687). Harris asserts that Knight was "proceeded against not by indictment—indictments had to be submitted to a grand Jury, which would determine whether there was a case to answer—but by information *ex officio*, which did not require the attorney general to establish a prima facie case against the defendant." Harris, *supra* note 156, at 26. The website Harris cites as authority for this statement further explains that "[o]rdinary criminal informations were exhibited by the king's coroner and attorney (usually known as the master of the crown office) on the complaint of a private individual." *See* Amendment II, THE UNIVERSITY OF CHICAGO PRESS, https://press-pubs.uchicago.edu/founders/documents/amendIIs2.html (last visited Mar. 3, 2023).

[158] 87 Eng. Rep. at 75.

[159] Probably Sir Francis Winnington (7 November 1634 - 1 May 1700), an English barrister who was called to the Bar in 1660, was a member of Parliament at various times between 1677 and 1698, and became Solicitor-General to King Charles II. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2117 (2022) (No. 20-843); *see* Francis Winnington (Solicitor-General), PEOPLEPILL, https://peoplepill.com/people/francis-winnington-1/ (last visited Mar. 3, 2023).

[160] "With an evil mind." *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2117 (2022) (No. 20-843); *see Malo Animo*, BLACK'S LAW DICTIONARY (2d ed. 1910).

[161] 90 Eng. Rep. 330, 330. The Chief Justice of the King's Bench in 1686 was Sir Edward Herbert (c. 1648 - November 1698), who had been called to the Bar in 1669, practiced for some years in Ireland, and was there created a king's counsel on 31 July 1677. Returning to England, he was appointed Chief Justice of Chester on October 25, 1683; on April 15, 1685, he was

Narcissus Luttrell also recites the facts of the case: on June 12, 1686, "sir John Knight pleaded not guilty to an information exhibited against him for goeing with a blunderbus[162] in the streets, to the terrifyeing his majesties subjects."[163] Five months later, Luttrell wrote:

> The 23d [of November], sir John Knight, the loyall, was tried at the court of kings bench for a high misdemeanour, in goeing armed up and down with a gun att Bristoll; who being tried by a jury of his own citty, that knew him well, he was acquitted, not thinking he did it with any ill design . . . .[164]

What is abundantly clear from every source is that Sir John was acquitted. Why? The simplest and most obvious reason is that there was no evidence that he was wearing body armor, *i.e.*, that he was "going armed" as had long been understood as the meaning of that phrase.[165] He was only alleged to have gone "into the church of St. Michael, in Bristol, in the time of divine service, with a gun"[166] or to have "go[ne] to church with pistols"[167] or "for goeing with a blunderbus in the streets"[168] or to have "take[n] his gun and sword with him to St. Michael's church . . . ."[169] His counsel (Winnington) thus argued, apparently successfully, that Sir John's act was "not within the statute . . . ."[170]

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returned to Parliament for Ludlow. Sir Edward became Chief Justice of the King's Bench on October 23, 1685, a post he held for about two years before being transferred—a demotion—to the chief justiceship of the Common Pleas in April, 1687, as he had refused to abet the king's design of introducing martial law by declining to order the execution of a deserter from the army. In 1689, following the Glorious Revolution and the ascension of William and Mary to the throne, Sir Edward followed King James II to France and later to Ireland. He later returned with James to France, where he received the title of Earl of Portland and the office of Lord Chancellor. He was dismissed and retired to Flanders in the autumn of 1692; he died in November 1698. *See* James McMullen Rigg, *Dictionary of National Biography, 1885-1900/Herbert, Edward (1648?–1698)*, WIKISOURCE, https://en.wikisource.org/wiki/Dictionary_of_National_Biography,_1885-1900/Herbert,_Edward_(1648%3F-1698) (last visited Apr. 10, 2023).

[162] A "muzzle-loading firearm with a short barrel and flaring muzzle to facilitate loading." *Blunderbuss*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/blunderbuss (last visited Mar. 3, 2023).

[163] 1 NARCISSUS LUTTRELL, A BRIEF HISTORICAL RELATION OF STATE AFFAIRS FROM SEPTEMBER 1678 TO APRIL 1714, AT 380 (Oxford 1857). Narcissus Luttrell attended St Johns College, Cambridge and was called to the Bar in 1680. He served as Justice of the Peace for Middlesex between 1693 and 1723 and was twice elected to the House of Commons.

[164] *Id.* at 389.

[165] *See supra* Parts V-VII.

[166] 87 Eng. Rep. 75, 76.

[167] 90 Eng. Rep. 330, 330.

[168] LUTTRELL, *supra* note 163, at 380.

[169] Harris, *supra* note 156, at 25.

[170] 90 Eng. Rep. 330, 330.

It is also possible that Sir John was acquitted because the jury found that he was not carrying his blunderbus so as to terrify the people. But that does not fully explain the argument of Sir John's counsel that Sir John's act was "not within the statute . . . ."[171] What does explain these statements is to understand that the *Statute of Northampton* concerned wearing body armor which intimidated the populace.

Understanding that "go or ride armed" in the *Statute of Northampton* referred to wearing body armor also explains the Chief Justice Herbert's statements in both reports of the trial. In the 87 Eng. Rep. version, the Chief Justice states that the meaning of the statute "was to punish people who go armed to terrify the King's subjects."[172] Notably, while the information which charged Sir John referred to "armed with guns," at no point in either report did Chief Justice Herbert refer to carrying weapons; he consistently referred to the Statute's terminology: "go armed" or "ride armed."[173] If "go or ride armed" referred to carrying weapons, it would seem odd that Sir John would have been acquitted since he was undoubtedly carrying a gun (or "pistols, &c." or a "blunderbus") openly in the streets—although maybe not in such a manner as to terrify the King's subjects. But, if "go or ride armed" referred to wearing body armor, and there was no allegation that Sir John was so appareled, it follows that he should have been, and in fact was, acquitted.

The fact that "go armed" in the *Statute of Northampton* referred to the wearing of body armor is also evident from the Chief Justice Herbert's observation that "[i]t is likewise a great offense at the common law, as if the King were not able or willing to protect his subjects . . . ."[174] The Chief Justice was making the point that it was an offense at common law to wear body armor because a person who does so suggests to all who observe him that the King was not able or willing to protect his subjects, which is a direct slight to the King's sovereign power.

Further, if "go or ride armed" in the *Statute of Northampton* referred to wearing body armor, there is a ready and unstrained explanation for the Chief Justice Herbert's otherwise somewhat obtuse statement that "this statute be almost gone in *desuetudinem*."[175] By 1686, the wearing of body armor in battle was largely obsolete due to the invention, and common use in battle, of long-barreled firearms, which could easily defeat body armor.[176] On the other hand, if "go or ride armed" referred to carrying weapons, like swords, the *Statute of Northampton* would not have "gone in *desuetudinem*" since the carrying swords certainly had not fallen out of use.

That "go or ride armed" referred to wearing body armor for protection also explains the Chief Justice's comment that there is "a general connivance to gentlemen

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[171] *Id.*

[172] 87 Eng. Rep. 75, 76.

[173] *Id.*

[174] *Id.*

[175] The meaning of the word "desuetude" includes "[d]isuse; cessation or discontinuance of use . . . . [a]pplied to obsolete practices and statutes." *See Desuetude*, BLACK'S LAW DICTIONARY (2d ed.1910).

[176] *See* KENNETH CHASE, FIREARMS A GLOBAL HISTORY TO 1700 61 (Cambridge University Press, 2003) ("[T]here was no musket-proof armour. As the musket became more prevalent, soldiers dispensed with most of their useless armour.").

to ride armed for their security . . . ."[177] While in the twentieth century, the word "connivance" came to be a synonym for "conspire," the root word, "connive," comes from the Latin *connivere*, which means "to close the eyes."[178] Thus, in the seventeenth century, by "connivance," the Chief Justice would have meant "knowledge of and active or passive consent to wrongdoing," *i.e.*, looking the other way.[179] Thus, the Chief Justice acknowledged that, despite the *Statute of Northampton*, the fact that "gentlemen" wore armor was a well-accepted, but legally overlooked, practice.

The Chief Justice's understanding of "go or ride armed" in the *Statute of Northampton* would also undoubtedly have been driven by the *Statute of Northampton*'s penalty language: "upon pain to forfeit their *armour* to the King, and their bodies to prison at the King's pleasure."[180] It would have been odd for the 1328 Parliament to have prohibited the carrying of weapons, but not to have mandated their forfeiture, but not to have prohibited the wearing of armor while requiring its forfeiture. Indeed, it is almost certainly for this reason that the Chief Justice went out of his way to observe that the *Statute of Northampton*, "having appointed a penalty, this Court can inflict no other punishment than what is therein directed."[181]

That the *Statute of Northampton* referred to wearing body armor, not to carrying weapons, also explains, as Mr. Charles observes in his article in Volume 71, Issue 3 of this journal, that there is no "post-1686 historical evidence of the founders—anyone for that matter up through the mid-nineteenth century—interpreting *Rex* v. *Knight*" as "chang[ing] the prosecutorial scope of the Statute of Northampton by requiring a person to carry arms with 'evil-intent.'"[182] Because the Statute of Northampton did not concern the carrying of weapons, and was so understood at least until 1686, as reflected in *Rex* v. *Knight*, there is unlikely to be any post-1686 historical evidence interpreting *Rex* v. *Knight* as requiring a person to carry weapons with "evil-intent."[183]

X. CONCLUSION

A careful parsing of the *Statute of Northampton*, in light of the proclamations which preceded and followed it, the treatises and cases which interpreted it, and its uses in literature, makes plain that it only prohibited wearing armor—it simply did not

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[177] 90 Eng. Rep. 330, 330.

[178] David Theobald, *The BFD Word of the Day*, BFD (Nov. 30, 2021), https://thebfd.co.nz/2021/11/30/the-bfd-word-of-the-day-670/.

[179] *Connivance*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/connivance (last visited Mar. 3, 2023).

[180] 2 Edw. 2, c. 3 (1328) (emphasis added).

[181] 87 Eng. Rep. 75, 76.

[182] Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, *supra* note 31, at 636.

[183] That does not exclude the possibility, however, that there might be post-1686 historical evidence that English law only prohibited carrying of weapons with "evil-intent," or that the Second Amendment guaranteed the right to peaceable carry of firearms; those questions are beyond the scope of this Article.

address carrying weapons; that was dealt with entirely separately.[184] And with that understanding, the otherwise somewhat mystifying language of the Chief Justice of the King's Bench in *Sir John Knight's Case* falls easily into place and makes logical sense of that decision.

[184] In Mr. Charles' article in Volume 71, Issue 3 of this journal, at footnote 66, he notes that, in a law review article this Author wrote in 1982, this Author adopted an erroneous interpretation of *Rex* v. *Knight*. In that article, this Author wrote that the *Statute of Northampton*: "dealt only with the bearing of arms in public places, not the keeping of arms, was also given a very narrow reading by the courts in that they required proof that the carrying of arms was to 'terrify the King's subjects.'" *Sir John Knight's Case*, 87 Eng. Rep. 75, 76 (K.B. 1686); *To Preserve Liberty—A Look at the Right to Keep and Bear Arms*, 10 N. KY. L. REV. 63, 70 (1982).

Having now had an opportunity to review medieval documents which were not accessible in 1982, this Author concedes that his understanding of the *Statute of Northampton* in 1982, and thus of *Rex* v. *Knight*, was in error—but not because *Rex* v. *Knight* had taken on "a very narrow reading" of a limit on the right to carry weapons under the *Statute of Northampton*, but because the *Statute of Northampton*, as recognized in *Rex* v. *Knight*, had nothing whatever to do with the carrying of weapons. Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix it*, *supra* note 31, at 670.