



– Essays on Race and Guns in America –

*When CRT Meets 2A*

Gregory S. Parks\*

Forty-four reasons come to mind  
Why a motherfuckin' brother is hard to find  
He been walkin' on the streets and fuckin' with mine  
Stupid punk can't fuck with a mastermind  
See, I never take a step on a Compton block  
Or L.A. without the AK ready to pop  
'Cause them punk motherfuckers in black and white  
Ain't the only motherfuckers I got to fight  
-Dr. Dre, "A Nigga Witta Gun"

## Introduction

In the 1970s and into the 1980s, legal scholars founded an intellectual movement and offered a methodology for interrogating the intersection of law and racial inequality. They called it Critical Race Theory (“CRT”). That movement had its roots in other movements that predated it—Critical Legal Studies, Law and Society, and even Legal Realism.<sup>1</sup> Among CRT’s methodologies and tenets are (1) storytelling—using narrative to illuminate the lived experiences of race and racial oppression;<sup>2</sup> (2) race as a social construct—that race is not a biological phenomenon but, rather, rooted in whatever meaning people ascribe it;<sup>3</sup> (3) whiteness as property—giving it value in the forms of real or perceived status and even economic worth;<sup>4</sup> (4) the permanence of racism—that it is an indestructible and integral part of American society;<sup>5</sup> (5) institutional racism—that it is irrelevant whether individuals are racist, because racism is embedded within American, structures—e.g., the law;<sup>6</sup> (6) interest convergence—that racial progress turns on the extent to

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<sup>1</sup> To better understand Critical Race Theory, see Gregory S. Parks, *Towards a Critical Race Realism*, 17 CORNELL J. L. & PUB. POL’Y 683 (2008).

<sup>2</sup> See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988).

<sup>3</sup> See IAN HANEY LOPEZ, *THE LEGAL CONSTRUCTION OF RACE* (2006).

<sup>4</sup> See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).

<sup>5</sup> See DERRICK E. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

<sup>6</sup> See Ian F. Haney-López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000).



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which it aligns with the interests of White “elites”;<sup>7</sup> and (7) the critique of liberalism—the notion that concepts like colorblindness or equality are fallacies.<sup>8</sup>

To date, there has been limited scholarship at the intersection of CRT and the Second Amendment.<sup>9</sup> As such, this essay seeks to grapple with some of CRT’s core methodologies and tenets in the context of Black gun ownership. Below, in turn, I offer my own experience of being a Black gunowner, in Section I. In Section II, I grapple with the concepts of race and racism and why I advocate for Black gun ownership. In Section III, I grapple with interest convergence and the betwixt and between experience of Black gun ownership vis-à-vis the Democratic and Republican parties. In conclusion, I grapple with whether Black gun owners are on equal footing, under the law, with Whites.

## I Storytelling

Firearms did not come naturally to me. My affinity for them evolved over many decades, dating back to my teens. In August of 1989, Yusef Hawkins—a Black 16-year-old—his younger brother, and two friends were attacked by a group of baseball bat wielding white youths in Bensonhurst, New York. One of the White youths, armed with a handgun, shot Hawkins in the chest, killing him. Hawkins was just a year older than me at that time, and being raised on Long Island, New York, the story and outrage captivated me. The summer before, I had purchased the rap group, Public Enemy’s second studio album, *It Takes a Nation of Millions to Hold Us Back*. The confluence of Hawkins’ death and *It Takes a Nation of Millions* was a turning point for me. Over the months ahead, I would listen to and puzzle over the lyrics—wondering who X, Newton, Cleaver, Seale, and Elijah Muhammad were. My father, a middle school social studies teacher, was a valuable resource. As I turned to him with questions, he would point to books on the shelves in his den and encourage me to read them. The first was *The Autobiography of Malcolm X*, which I found enthralling, jarring, and illuminating, all at once.

Much like Malcolm, I progressed through what noted Black psychologist William Cross described as the nigrescence model of racial identity. In high school, I experienced the pre-encounter (racially unaware), encounter (experiencing some event that awakens race consciousness), and immersion/emersion (a deep embrace of blackness and race consciousness) stages. The summer of 1990, fascinated by Malcolm X, my father encouraged me to travel to Harlem to visit the mosque where Malcolm once preached. That journey lead to a chance meeting with a kid my age,

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<sup>7</sup> See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

<sup>8</sup> See Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STANFORD L. REV. 1 (1991).

<sup>9</sup> See Nicholas J. Johnson, *Plenary Power and Constitutional Outcasts: Federal Power, Critical Race Theory, and the Second, Ninth, and Tenth Amendments*, 57 OHIO ST. L.J. 1555 (1996); Robert J. Cottrol & Raymond Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, in *CRITICAL RACE THEORY: THE CUTTING EDGE* 145 (Richard Delgado ed., 1995). See also CAROL ANDERSON, *THE SECOND: RACE AND GUNS IN A FATALLY UNEQUAL AMERICA* (2021) for a broader and contemporary discussion on race and the Second Amendment.



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Jadi, who was raised in the Nation of Islam. Jadi encouraged me to travel to New York City every couple of weekends to train at the karate dojo where he studied under a gentleman named Sharrieff. Sharrieff, himself, had largely grown up in the Nation as well. He was the son-in-law of Dr. Khalid Abdul Muhammad, the Nation’s National Spokesman and Minister of Mosque Number 7—both positions Malcolm X had held. At Sharrieff’s dojo, everyone was Black except for Sharrieff’s close friend and student, Joe, who was White. Most were members of the Nation of Islam, and the majority were in law enforcement. Training was a mixture of race consciousness, spirituality, physical violence, and the expectation that we all be proficient in firearms usage.

After I graduated high school, I attended Howard University, in Washington, D.C. Sharrieff had moved to the area, so I continued my training with him. But I never gravitated toward firearms usage. In fact, I was probably one of his more docile students in a martial arts system known for its viciousness. As I moved, over the years, for graduate and law school, and professional opportunities, I continued to train in various martial arts. In 2013, Sharrieff promoted me to 4<sup>th</sup> degree black belt. It was not stated, but I recognized that part of the expectation was that I would finally get serious about my firearms training. It took time, but the racial unrest during the summer of 2020 prompted my first purchases. And I figured that if I was going to be serious about developing firearms skills, I would need a range of firearms. My first purchases came in rapid succession—nine millimeter, .380, 40 caliber, tactical shotgun, carbine, and an AR—all within about 14 months. Having guns was not enough; it was critical to be skilled and proficient. So, I took every class I could—Introduction To Firearms, Basic Pistol, Tactical Pistol, Concealed Carry, Basic Shotgun, Tactical Shotgun, Basic AR-15, and Tactical AR-15. I train weekly and carry daily. At the heart of how I think about firearms is that we live in an increasingly dangerous country for Blacks. Owning firearms, and being skilled at using them, is about self-preservation.

## II

### **Race—As Property and a Social Construct, Racism—Its Permanence and Institutional Nature**

Social scientists, generally, do not see race as biological or genetic, but as a “social construct.” What matters is its social meaning, and the meaning that people ascribe to it, in part, determines perceptions of social status.<sup>10</sup> The problem is that:

The concept of whiteness was premised on white supremacy rather than mere difference. “White” was defined and constructed in ways that increased its value by reinforcing its exclusivity. Indeed, just as whiteness as property embraced the right to exclude, whiteness as a theoretical construct evolved for the very purpose of racial exclusion. Thus, the concept of whiteness is built on both exclusion and racial subjugation. This fact was particularly

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<sup>10</sup> See Angela Onwuachi-Willig, *How Fluid is Race? Race and Racial Identity are Social Constructs*, N.Y. TIMES (June 16, 2015).



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evident during the period of the most rigid racial exclusion, as whiteness signified racial privilege and took the form of status property.<sup>11</sup>

The same way someone might be expected to protect their property, Whites have a long history of protecting the status of whiteness. They imbedded those protections in the law—e.g., Black Codes, Jim Crow—and fought racial progress when and where it happened.<sup>12</sup> Indeed, racial hierarchies in the United States have been enduring and embedded within this country’s institutions. Where law and policy failed, many Whites resorted to violence. Consequently, in the United States, there is an interplay between race and racism that necessitates Black gun ownership for self-protection and self-preservation.

Not surprisingly, Black armed self-defense has its roots in the history of slaves traveling the Underground Railroad to freedom and conductors, like Harriett Tubman, carrying firearms for self-defense.<sup>13</sup> As Blacks took up arms to resist the Fugitive Slave Act, even Frederick Douglass came to openly advocate for armed resistance to slave catchers.<sup>14</sup> In fact, he recommended “[a] good revolver, a steady hand, and a determination to shoot down any man attempting to kidnap.”<sup>15</sup> On the heels of the Civil War, White progressives and Blacks pressed for freedmens’ civil right to keep and bear arms. They saw the denial of Blacks’ right to keep and bear arms for self-defense as an infringement of Blacks’ citizenship rights.<sup>16</sup> Nonetheless, White anxiety about armed freed Blacks resulted in former Confederate states and local municipalities promulgating Black Codes.<sup>17</sup> These laws governed the conduct of free and freed Blacks, and many such codes had restrictions on Black gun ownership.<sup>18</sup>

The end of the Civil War, from 1865 to 1870, saw passage of the Reconstruction Amendments—Thirteenth (abolishing slavery), Fourteenth (providing the Citizenship Clause, the Due Process Clause, and the Equal Protection Clause), and Fifteenth (prohibiting federal and state governments from denying a citizen the right to vote based on “race, color, or previous condition of servitude”).<sup>19</sup> In the midst of this Reconstruction period, the nation experienced the nadir of

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<sup>11</sup> Harris, *supra*, at 1737.

<sup>12</sup> See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

<sup>13</sup> NICHOLAS JOHNSON, *NEGROES AND THE GUN: THE BLACK TRADITION OF ARMS* 41, 44-45 (2014).

<sup>14</sup> See Frederick Douglass, *Two Speeches by Frederick Douglass: One on West India Emancipation Delivered at Canandaigua, Aug. 4th and the Other on the Dredd Scott Decision Delivered in New York on the Occasion of the Anniversary of the American Abolition Society, May 1857*.

<sup>15</sup> See CHRISTOPHER B. STRAIN, *PURE FIRE: SELF-DEFENSE AS ACTIVISM IN THE CIVIL RIGHTS ERA* (2005).

<sup>16</sup> Clayton E. Cramer et al., *‘This Right Is Not Allowed by Governments that Are Afraid of the People’: The Public Meaning of the Second Amendment When the Fourteenth Amendment Was Ratified*, 17 GEO. MASON L. REV. (2010), 823, 831.

<sup>17</sup> See Johnson, *supra*.

<sup>18</sup> See ALEXANDER DECONDE, *GUN VIOLENCE IN AMERICA: THE STRUGGLE FOR CONTROL* (2001).

<sup>19</sup> See RAYFORD W. LOGAN, *THE BETRAYAL OF THE NEGRO: FROM RUTHERFORD B. HAYES TO WOODROW WILSON* (1954).



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American race relations. From the period of Southern Redemption for more than two generations, Blacks witnessed the resurgence of White supremacy, lynchings, and racial terror.<sup>20</sup>

While the dominant narrative about Blacks' 20th Century fight for civil rights is rooted in unarmed protest, that is an incomplete picture. In 1906, when Walter White—later the NAACP's Executive Secretary—was 13, he stood at the ready with his father, gun in hand, at their home during the Atlanta riots. Someone in the crowd shouted, "That's where that nigger mail carrier lives. Let's burn it down! It's too nice for a nigger to live in." White's father calmed him, "Son, don't shoot until the first man puts his foot on the lawn and then-don't you miss!"<sup>21</sup> After that riot, W.E.B. DuBois noted, "I bought a Winchester double-barreled shotgun and two dozen rounds of shells filled with buckshot. If a White mob had stepped on the campus where I lived I would without hesitation have sprayed their guts over the grass."<sup>22</sup> Observing that armed self-defense had prevented lynchings, Ida B. Wells Barnett famously noted, "The lesson this teaches and which every Afro-American should ponder well, is that a Winchester rifle should have a place of honor in every Black home."<sup>23</sup> And coming of age in the early 20<sup>th</sup> Century, famed author Zora Neal Hurston, "packed a chrome plated pistol" as she traveled throughout the south collecting Negro folktales.<sup>24</sup>

During the height of the Civil Rights Movement, activists and communities were provided armed protection. Describing her work with Thurgood Marshall to integrate the University of Alabama in the mid-1950s, Constance Baker Motley recalled how the two of them stayed at civil rights lawyer Arthur Shores' residence. It had been bombed numerous times. When Marshall and Motley arrived at Shores' home, there were "six or eight Black men with shotguns and machine guns" guarding the house. Even the drivers who shuttled them to court the next day were armed.<sup>25</sup> In Birmingham, civil rights activist, Reverend Fred Shuttlesworth, received armed protection by the "Civil Rights Guards" after Whites threatened and attacked him.<sup>26</sup> After the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham killed four little girls, Black residents provided an armed patrol of the community.<sup>27</sup> Rosa Parks recollected how, as a child, her grandfather always kept his double-barreled shotgun close in anticipation of the Ku Klux Klan. As an adult, when she and her husband organized activist meetings at their residence, attendees were armed to the teeth.<sup>28</sup>

Even more, it was not uncommon for civil rights activists to arm themselves for self-protection. E.W. Steptoe had founded the Amite County, Mississippi NAACP chapter in 1953, and as

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<sup>20</sup> See RAYFORD LOGAN, *THE NEGRO IN AMERICAN LIFE AND THOUGHT: THE NADIR, 1877–1901* (1954).

<sup>21</sup> WALTER WHITE, *A MAN CALLED WHITE: THE AUTOBIOGRAPHY OF WALTER WHITE* 10-12 (1948).

<sup>22</sup> LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* 317 (1998).

<sup>23</sup> LINDA McMURRAY EDWARDS, *TO KEEP THE WATERS TROUBLED: THE LIFE OF IDA B. WELLS* 164 (2000).

<sup>24</sup> See VALERIE BOYD, *WRAPPED IN RAINBOWS: THE LIFE OF ZORA NEALE* (2004).

<sup>25</sup> See CONSTANCE BAKER MOTLEY, *EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY* (1988).

<sup>26</sup> See ANDREW MICHAEL MANIS, *A FIRE YOU CAN'T PUT OUT: THE CIVIL RIGHTS LIFE OF BIRMINGHAM'S REVEREND FRED SHUTTLESWORTH* (2002).

<sup>27</sup> See SIMON WENDT, *THE SPIRIT AND THE SHOTGUN: ARMED RESISTANCE AND THE STRUGGLE FOR CIVIL RIGHTS* (2007).

<sup>28</sup> See ROSA PARKS & HIM HASKINS, *ROSA PARKS: MY STORY* (1992).

chairman, he never left home unarmed. In fact, he kept firearms all over his residence. On January 30, 1956, about two months into the Montgomery bus boycott, Martin Luther King Jr.’s house was bombed. When he arrived home, King found his wife and daughter unharmed along with scores of armed Black men in front of the parsonage. King sent the men away, but applied for—and was denied—a pistol permit at the sheriff’s office the next day.<sup>29</sup> In Mississippi, Student Nonviolent Coordinating Committee (“SNCC”) activist Fannie Lou Hamer survived threats of racial violence by “keep[ing] a shotgun in every corner of my bedroom and the first cracker even look like he wants to throw some dynamite on my porch won’t write his mama again.”<sup>30</sup> The NAACP’s Mississippi Field Secretary, Medgar Evers, carried a gun for personal survival though he “realized that the image of armed Blacks was not ‘good public relations.’”<sup>31</sup> Moreover, the NAACP’s national office did not object to Evers carrying weapons for self-defense.<sup>32</sup> In contrast, in 1955, Robert Williams became President of the Monroe County, North Carolina NAACP chapter. Compared to Evers, Williams was more militant and open-carried a Colt .45 automatic pistol wherever he went.<sup>33</sup>

While Black armed resistance was largely taken-up on an individual basis throughout the 1950s and early 1960s, it became more organized by the mid-1960s with the emergence of “paramilitary groups.” Even as late as the 1970s, groups like the United League relied on armed resistance to fight racist violence perpetuated by the Klan. In short, civil rights organizations like the NAACP, Congress of Racial Equality (“CORE”), and SNCC had to grapple with the issue of armed self-defense. While they were committed to nonviolence as a political tool, armed resistance and self-defense were crucial to their history as well.<sup>34</sup>

The more things change, the more they stay the same. Demographically, the United States is becoming more racially diverse. In recent history, the Republican party has increasingly relied on White, working-class voters to win elections. That voting block has become a shrinking share of voters. In 1980, they constituted two-thirds of the electorate, reduced to just over a third in 2012. The White electorate had dropped enough for President Obama to win the 2012 presidential election with only thirty-nine percent of the White vote. That was the lowest winning share for any Democrat, presidential candidate in a two-way race.<sup>35</sup> For over a decade, White racial resentment has percolated over into violence and threats of violence. The election of Barack Obama as the first Black President resulted in him receiving four times the number of death threats of his predecessor.<sup>36</sup> Even more, Donald Trump’s presidency campaign and his four years in office added

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<sup>29</sup> See Wendt, *supra*.

<sup>30</sup> See FANNIE LOU HAMER, *TO PRAISE OUR BRIDGES: AN AUTOBIOGRAPHY* (1967).

<sup>31</sup> AKINYELE OMOWALE UMOJA, *WE WILL SHOOT BACK: ARMED RESISTANCE IN THE MISSISSIPPI FREEDOM MOVEMENT* 49 (2014).

<sup>32</sup> See CHARLES E COBB, *THIS NONVIOLENT STUFF’LL GET YOU KILLED: HOW GUNS MADE THE CIVIL RIGHTS MOVEMENT POSSIBLE* (2016).

<sup>33</sup> See TIMOTHY B. TYSON, *RADIO FREE DIXIE: ROBERT F. WILLIAMS & THE ROOTS OF BLACK POWER* (2020).

<sup>34</sup> See Umoja, *supra*.

<sup>35</sup> See Domineco Montanaro, *How The Browning Of America Is Upending Both Political Parties*, NPR (Oct. 12, 2016).

<sup>36</sup> See Gregory S. Parks & Danielle C. Heard, “Assassinate the Nigger Ape[]”: *Obama, Implicit Imagery, and the Dire Consequences of Racist Jokes*, 11 RUTGERS RACE & L. REV. 259 (2010).



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fuel to many Whites’ racial hostilities and an increase in race-based hate crimes.<sup>37</sup> In 2017, during a Unite the Right rally—in Charlottesville, Virginia—self-identified White supremacist James Alex Fields Jr. deliberately drove his car into a crowd of counter-protesters, killing Heather Heyer and injuring 35 others.<sup>38</sup>

The Unite the Right rally provided one White nationalist bookend to the Trump presidency. The other was the January 6<sup>th</sup> insurrection at the United States Capitol. After that event, the issue of political violence rose to the forefront of the modern political landscape. It became clear to commentators that violence in the name of certain political goals was more likely than ever. Much of this support has come from the political Right. Thirty-nine percent of Republicans believe that it is appropriate for the people to use violence, where their elected leaders cannot or will not act.<sup>39</sup> Senses of patriotism and nationalism also motivate one’s propensity for accepting violence; thirty percent of Republicans believe that “‘because things have gotten so far off track, true American patriots may have to resort to violence in order to save our country.’”<sup>40</sup>

Much of the propensity for violence that pollsters have uncovered has been sparked by Republican party leaders’ rhetoric. While some Republican leaders uniformly condemned the actions of the insurrectionists in the immediate wake of January 6, others either excused the violence or contended that the level of violence was overstated in the media. Trump’s own rhetoric encouraged the protestors to use violence, with words like “liberate” and phrases like “if you don’t fight like hell you’re not going to have a country anymore” that seemed to encourage violence. In an American Enterprise Institute survey after January 6, fifty-six percent Republicans agreed that “the traditional American way of life is disappearing so fast that we may have to use force to save it.” As journalist Doyle McManus noted, consequently, the GOP “can’t risk alienating loyal supporters, even if they embrace violence,” putting the party in a tough situation as a party seeking to utilize Trump’s fervent support while simultaneously questioning their actions/ethics at the Capitol. Furthermore, the Republican Party has elevated the positions of those with more radically conservative views on the 2020 election over those who reject such perspectives and belong to more moderate, and therefore less violent, factions.<sup>41</sup>

We, now, live in a country where far-right terror poses a bigger threat to and within the United States than foreign adversaries. Since the September 11 attack, far-right extremists have killed

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<sup>37</sup> See Vanessa Williamson & Isabella Gelfand, *Trump and Racism: What Do the Data Say?*, BROOKINGS (Aug. 14, 2019).

<sup>38</sup> See Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L.J. FORUM 685 (2018).

<sup>39</sup> See Tom Gjelten, *A ‘Scary’ Survey Finding: 4 In 10 Republicans Say Political Violence May Be Necessary*, NPR (Feb. 11, 2021).

<sup>40</sup> See Adam Gabbatt, *Almost One in Three of Republicans Say Violence May Be Necessary to ‘Save’ US*, THE GUARDIAN (Nov. 1, 2021).

<sup>41</sup> See Doyle McManus, *Why Republicans are Suddenly Reluctant to Condemn Political Violence*, L.A. TIMES (June 20, 2021).



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more people in the United States than American-based Islamist fundamentalists.<sup>42</sup> As FBI Director Christopher Wray indicated in a March 2021 Congressional hearing:

[R]acially motivated violent extremism, specifically of the sort that advocates for the superiority of the white race, is a persistent, evolving threat ... It's the biggest chunk of our racially motivated violent extremism cases for sure. And racially motivated violent extremism is the biggest chunk of our domestic terrorism portfolio, if you will, overall.<sup>43</sup>

These are ripe conditions for Blacks to take steps to protect themselves and their loved ones. Not surprisingly, Black gun ownership has skyrocketed in recent years. Membership in the National African American Gun Association (“NAAGA”) spiked after Trump was sworn into office.<sup>44</sup> In 2020, there was a twenty-five percent increase in NAAGA membership. The majority of NAAGA members are driven to their interest in guns by a desire for self-protection.<sup>45</sup> In fact, much of the rise in Black gun ownership is rooted in concerns about the rise in White supremacy groups, emboldened by Trump, who has refused to disavow militia groups and White supremacists.<sup>46</sup>

### III

#### Interest Convergence

Where Blacks’ rights are only meaningfully advanced when they align with those of White elites, Blacks find themselves between a rock and a hard place when it comes to gun ownership. Republicans may support the advancement of Second Amendment rights, in general terms, but too often have regressive views and policies regarding racial progress.<sup>47</sup> Conversely, Democrats may have more progressive views and policies on race, but their approach on the Second Amendment is quite constrained.

Politics, guns, and race are interconnected. In the United States, gun owners are more likely to vote than non-gun owners, and the propensity for an individual to vote Republican increases with the number of guns they own.<sup>48</sup> Moreover, while the number of firearms manufactured in the United States has tripled since 2008, the percentage of households that have guns has changed little. Roughly three percent of the country’s population owns over fifty percent of the guns. Most of these “stockpilers” fit into a specific profile. They are White men, who have often experienced

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<sup>42</sup> See Joanna Walters & Alvin Chang, *Far-right Terror Poses Bigger Threat to US than Islamist Extremism Post-9/11*, THE GUARDIAN (Sept. 9, 2021).

<sup>43</sup> See Philip Bump, *FBI Director Wray Reconfirms the Threat Posed by Racist Extremists*, WASH. POST (Mar. 2, 2021).

<sup>44</sup> See Braktkton Booker, *With A Growing Membership Since Trump, Black Gun Group Considers Getting Political*, NPR (July 10, 2019).

<sup>45</sup> See Lakeidra Chavis, *Black And Up In Arms*, NPR (Dec. 16, 2020).

<sup>46</sup> See Melissa Chan, *Racial Tensions in the U.S. Are Helping to Fuel a Rise in Black Gun Ownership*, TIME (Nov. 17, 2020).

<sup>47</sup> See Darrell A.H. Miller, *Conservatives Sound Like Anti-racists - When the Cause is Gun Rights*, WASH. POST (Nov. 7, 2021).

<sup>48</sup> See MARK R. JOSLYN, *THE GUN GAP: THE INFLUENCE OF GUN OWNERSHIP ON POLITICAL BEHAVIOR AND ATTITUDES* (2020).

economic struggles and are, therefore, “anxious about their ability to protect their families, insecure about their place in the job market, and beset by racial fears.”<sup>49</sup> This latter point has been consistently found in the research literature. Symbolic racism—characterized by beliefs that (1) Blacks no longer face much prejudice or discrimination, (2) the failure of Black racial progress results from their unwillingness to work hard, (3) Blacks are demanding too much too fast, and (4) Blacks have gotten more than they deserve—among Whites predicts their likelihood of having a gun in the home and resistance to gun control.<sup>50</sup> And symbolic racism is highly correlated with political conservatism.<sup>51</sup> In addition, many Whites are less supportive of Blacks, as opposed to Whites, owning guns.<sup>52</sup> Much of what drives White gun ownership and a desire to not have Blacks own guns are stereotypes about Black criminality.<sup>53</sup>

What has been striking is that, paradoxically, Republicans have sought to align with Blacks in an effort to advance Second Amendment rights. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, a case before the U.S. Supreme Court, twenty-three Republican state attorneys general have aligned themselves with Black criminal defense lawyers and public-defender organizations who, collectively, have highlighted the racial dimensions of gun control. Their alignment is around the disparate impact that gun regulations have on low-income people of color.<sup>54</sup> Ironically, they could care less about disparate treatment in other contexts.<sup>55</sup>

Not surprisingly, Republicans and Republican-leaning independents are more likely to own a gun than Democrats and Democratic-leaning independents, forty percent and twenty percent, respectively. And gun ownership predicts views on gun policies, even among gun owners and non-owners of the same political affiliation. For example, among Republicans, gun owners tend to be less likely than non-owners to favor more restrictive gun policies. Democratic non-gun owners tend to be the most likely to favor restrictions.<sup>56</sup> The challenge that Democrats face is that they have a growing problem with independents, Latinos, non-college-educated women, rural, and working-class voters. If Democrats want to shore up certain of these voters, they need a more thoughtful approach on gun rights and crime without demonizing gun owners.<sup>57</sup> That includes being mindful of the most loyal voters to the Democratic party—Blacks—their increased gun ownership and their concerns about right-wing violent extremists and self-deputized White

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<sup>49</sup> See Jeremy Adam Smith, *Why Are White Men Stockpiling Guns?*, SCI. AMERICAN (Mar. 14, 2018).

<sup>50</sup> See Kerry O’Brien et al., *Racism, Gun Ownership and Gun Control: Biased Attitudes in US Whites May Influence Policy Decisions*, 8 PLOS ONE 1 (2013).

<sup>51</sup> See David O. Sears & P.J. Henry, *The Origins of Symbolic Racism*, 85 J. PERSONALITY & SOCIAL PSYCHOL. 259 (2003).

<sup>52</sup> See Matthew Hayes et al., *Race–Gender Bias in White Americans’ Preferences for Gun Availability*, 41 J. PUBLIC POLICY 818 (2021).

<sup>53</sup> See *id.*; See also O’Brien et al., *supra*.

<sup>54</sup> See Miller, *supra*.

<sup>55</sup> See Joshua L. Rabinowitz et al., *Why Do White Americans Oppose Race-Targeted Policies? Clarifying the Impact of Symbolic Racism*, 30 POLIT. PSYCHOL. 805 (2009); Eva G.T. Green et al., *Symbolic Racism and Whites’ Attitudes towards Punitive and Preventive Crime Policies*, 30 L. HUMAN BEHAV. 435 (2006);

<sup>56</sup> See Katherine Schaeffer, *Key Facts about Americans and Guns*, PEW RES. CENTER (Sept. 13, 2021).

<sup>57</sup> See Richard Feldman, *Democrats Should Ditch the Anti-Gun Rhetoric If They Want to Survive 2022*, POLITICO (Nov. 16, 2021).



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vigilante “heroes.”<sup>58</sup> In short, Blacks would be better served, policy-wise, if aligned with the Democratic party, but the Democrats need what they keep calling for, actual “common-sense gun legislation.”

### **Conclusion**

#### **The Critique of Liberalism and the Myths of Colorblindness and Equality**

The law gives police considerable leeway in deciding when to use deadly force to save themselves or others. All an officer needs in order to justifiably use such force is the reasonable belief that they, or others, are in imminent danger. The value that the law places on the officer’s perspective is underscored by a police saying: “Rather be judged by 12 than carried by 6.”<sup>59</sup> The basic premise of the saying is to act to preserve one’s life and deal with the legal consequences later. As the other essays in this collection underscore, when it comes to race, guns, and law, Blacks disproportionately receive the short end of the stick. It would be naïve to encourage Black people to be armed for self-preservation and self-defense and not be honest about the risks of doing so. If Black persons need to defend themselves with a gun, onlookers may assume that they are the criminal. Police and the criminal justice may treat them accordingly, which, in and of itself, could be a life and death situation. However, I believe the alternative is worse—to live in a world of racialized threats to one’s very existence. Black people have long had to choose between non-ideal options. I believe, in the world we live in today, the better of those options is to be armed and well-trained.

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<sup>58</sup> See Shermichael Singleton, *Why African Americans Should Strictly Oppose the War on Guns*, THE HILL (Apr. 2, 2021).

<sup>59</sup> See Carol D. Leonnig, *Current Law Gives Police Wide Latitude to Use Deadly Force*, WASH. POST (Aug. 28, 2014)