



THE SECRET HISTORY OF THE SECOND AMENDMENT AS AN AFRICAN–AMERICAN CIVIL RIGHT

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The inherent right to bear arms enshrined in the Second Amendment has provided critical protections for the civil rights of African Americans through American history. The Founders' understanding of the right to bear arms grew out of their historical memory of state deprivation of the right to politically unpopular populations. Catholic Kings of England had used an early gun control law, the 1671 Game Act, to disarm Protestant homes, which later led to the protection of the right to bear arms among Protestants in the English Declaration of Rights (Malcolm, 1996). Later, it was Catholics who were “often subject to being disarmed as potential subversives after the English reformation,” ([Cottrol, 1991](#)). The drafters of the Second Amendment understood the problem of minority groups being deprived of their civil liberties. Sir William Blackstone saw the right to bear arms as one of the “fundamental rights of Englishmen” (*District of Columbia v. Heller*, 554 U.S. 570, 594 (2008)).

In the years after the Founding, the deprivation of the right to bear arms among the Black population grew as the brutal system of chattel slavery hardened the racial divide in America. Scholar Robert Cottrol noted this shift in Virginia Law in the 1600s: laws from 1639 required the White male population's arming at public expense but did not bar gun ownership among Blacks, while a 1680 statute prohibited Blacks—both slave and free—from gun ownership ([Cottrol, 1991](#)). Cottrol also noted an 1825 Florida Law “provided that White citizen patrols ‘shall enter into all negro houses and suspected places, and search for arms and other offensive or improper weapons, and may lawfully seize and take away all such arms, weapons, and ammunition . . .’” ([Cottrol, 1991](#)). By 1857, Justice Roger B. Taney decried the notion of Black citizenship in the infamous *Dred Scott* decision by noting that such a determination “would give to persons of the negro race . . . the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went” (*Scott v. Sandford*, 60 U.S. 393 (1857)). After the Civil War, the Supreme Court failed to ensure the national protection of the Second Amendment as a privilege and immunity of citizenship for African Americans (*United States v. Cruikshank*, 92 U.S. 542 (1876)).

Despite these prohibitions and prejudices, African Americans continued to use arms to defend themselves from violence where they could, individually and collectively. Collective

action by armed African Americans staved off violence in anti-Black race riots, such as the 1841 Cincinnati riot, until city authorities disarmed the Black population, ostensibly for their protection, only to see the Black neighborhoods damaged by additional mayhem ([Cottrol, 1991](#)). Victims of lynching, such as Jim McIlherron, fought back against unjust attacks by “exchang[ing] over one thousand rounds with his pursuers,” and Black antilynching activist Ida Wells-Barnett carried a pistol with her because she believed “that one had better die fighting against injustice than to die like a dog...” ([Cottrol, 1991](#)). In the 20th Century, Black gun rights proponents such as the Deacons for Defense and Justice played a critical role in defending civil-rights campaigners and suppressing violence from the Ku Klux Klan ([Umoja, 1999](#)).

Advocates of the Second Amendment have always recognized the need for self-defense in high crime areas. The militia and the posse needed to possess weapons to respond when a military or professional police could not ([Cottrol, 1991](#)). Much has been made of “contemporary crime in poor Black neighborhoods” as a rationale for gun control, “But another, perhaps stronger case can be made that a society with a dismal record of protecting a people has a dubious claim on the right to disarm them” ([Cottrol, 1991](#)). As rising crime and cuts to police funding leave longer law enforcement wait times for vulnerable Americans ([Kamb 2021](#)), a “vast majority of voters say more police are needed” ([Axelrod, 2021](#)). Studies on the effect of police in Black communities show that “larger police forces disproportionately abate homicides with Black victims” (Chalfin et al., 2020). In the absence of these police, though, the Second Amendment still stands as a civil right for self-protection to Americans of all races.

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