Kristian Williams and Peter Little
Gun rights are civil rights
September 2008

Retrieved on 8th June 2021 from libcom.org
A shorter version of this article was published in *In These Times*, in response to the Heller vs. Washington D.C. decision outlawing the city's handgun ban in 2008.

usa.anarchistlibraries.net

Gun rights are civil rights

Kristian Williams and Peter Little

September 2008

> *"One of the quickest ways for an Afro-American to lose some of his white friends is to advocate self-defense against white racist savages... Our belief in this principle has cost us some of our phoney white friends, however, we have also gained some true ones."*
>
> -Robert F. Williams, writing in The Crusader, 1960

Conventional wisdom identifies gun control as a "liberal" agenda and gun rights as "conservative." In practice, history demonstrates a telling unity between the two "opposing" camps on gun control policy. The current debates reflect historic and contemporary struggles over race, class, and the politics of violence and power in society as a whole.

The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." The focal debate over gun control hinges on a couple of questions about what this sentences really means. It appears to secure the states' right to organize their own militia, but does it also establish the individual's right to keep a gun? And if it does,

does that right depend on his (real or potential) participation in the militia system? Is the individual gun owner protected against interference by the state, or from other private citizens, or only from the federal government? The Amendment contains a deep ambiguity about the relationships between individual gun owners, the militia, the state, and the federal government.

The rest of the Constitution does nothing to clarify matters. Article I, Section 8 grants Congress the power to create "Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions"; Congress was also made responsible for "organizing, arming, and disciplining, the militia." James Madison asked, rhetorically, "For whose benefit is the militia organized, armed and disciplined? for the benefit of the Untied States." Yet he also argued in The Federalist Papers that armed citizens, organized into a state militia, provided a safeguard against the power of the national government. Was the militia, then, a check on government authority, or its instrument?

Amidst the questions and confusions, two things are clear: The Second Amendment is not about hunting, and it was never the intention of the framers to arm blacks.

There has always been gun control in America. Starting in the colonial period and continuing after the revolution, the law was careful to identify whole categories of people who were barred from carrying guns — slaves, free blacks, Indians, poor whites, non-Protestants, and even some heterodox Protestant sects. The militia — which never performed particularly well in military engagements — was chiefly responsible for putting down insurrections, and in the South, for organizing slave patrols to police the black population.

After the Civil War, Southern states sought to preserve this tradition with "Black Codes" that barred Blacks from owning guns, serving as jurors, and otherwise participating in society as full citizens; at the same time, terrorist organizations like the Ku Klux Klan simply continued the work of the slave patrols,

In this context, the dispute between "liberal" gun control proponents and "conservative" gun rights advocates is a sustained disagreement about the relationship between armed whites and the government. Liberals trust the state to respect the rights of individuals and to protect them against crime and disorder; they see no role for gun ownership under the rule of law. Conservatives retain some suspicion of government regulation and don't believe the state capable of protecting decent law-abiding people; they see gun ownership both as an emblem of citizenship and as a protection against those they see as criminals — historically, blacks, and at present, immigrants as well. The disagreement is over who should have guns; the point of agreement is over who shouldn't. As presently construed, both the gun control and the gun rights arguments — that is, both the liberal and the conservative positions — represent the defense of white supremacy.

using violence to restrict Blacks' travel, suppress their political activity, and disarm them.

Blacks resisted, of course, sometimes with their own armed militias — and, for the brief flowering of Democracy referred to as Reconstruction, they did so with the backing of the federal government. In 1867 Congress dissolved the entire Southern militia system because it excluded blacks, and some states barred ex-Confederates from carrying guns. In 1871 the federal government sent 10,000 obsolete muskets to South Carolina for use by the Black militia. The state government invested another $90,000 to convert the guns to breech-loaders, and bought 1,000 additional rifles as well. It was less than a year, though, before Governor Robert Scott caved in to white pressure and disarmed South Carolina's black militia.

The balance swung fatally back in the favor of whites following the Colfax Massacre of 1873. It is only the scale of the violence that marks Colfax as unusual for the period of reaction. A contested election, a battle between black and white militia, and the massacre of black prisoners ended with more than 100 dead black men and three dead whites. The local authorities declined to proffer murder charges, but the federal government charged 98 people with violating the 1870 Enforcement Act, which made violations of the Fourteenth Amendment a federal crime.

Part of the government's case centered on the right of blacks to bear arms. Prosecutors argued that because the whites attacked in part to disarm the black militia, they were guilty of violating their Second Amendment rights. But in the decision US v. Cruikshank, the Supreme Court determined: "bearing arms for a lawful purpose is not a right granted by the Constitution… This is one of those amendments that has no other effect than to restrict the power of the national government." The Court further decreed that the fourteenth Amendment "prohibits a State from depriving any person of life, liberty, or property,

without due process of law; but this adds nothing to the rights of one citizen as against another."

In principle the Court denied both the individual right to bear arms and the national government's ability to protect civil rights. In practice, the court sided with the organized and armed white population against the black, and determined that the constitution did nothing to establish or protect the rights of the latter against the former. Cruikshank practically marked the end of Reconstruction.

Over the course of the next hundred years the Court slowly came to recognize that the Bill of Rights limited state, as well as federal, action and civil rights legislation made individual violations actionable. Somehow the right to bear arms was left behind.

At both the state and national levels, gun regulations continued to be drafted, passed, and enforced in ways that selectively disarmed the poor and minorities. In the 1941 case Watson v. Stone, the Florida Supreme Court overturned the gun conviction of a white man; Justice Buford wrote in his concurring opinion that "The Act was passed for the purpose of disarming negro laborers… [It] was never intended to be applied to the white population and in practice has never been so applied." A quarter century later, Robert Sherill, a gun control supporter, said that the 1968 federal Gun Control Act was "passed not to control guns but to control blacks." Even less subtle was California's "Panther Law", passed in 1967 for the specific purpose of ending the Black Panther Party's armed patrols against police brutality.

As white supremacy has refined its presentation, judges and politicians have learned subtlety. Since the Civil Rights period the language of white supremacy has shifted, hiding behind the veneer of judiciality and racialized notions of criminality. Beyond this, the changing relationship of old form white supremacists to a globalized, multicultural state has shifted the politics of Klan and militia groups from a proxy to a potentially

insurgent role. This has resulted in a federal government less sanguine about white paramilitaries (the warm reception of the Minutemen in some border areas notwithstanding).

Many gun regulations continue to disproportionately affect people of color — bans on guns in housing projects, "Saturday Night Special" laws that take the cheapest pistols off the market, and laws that prevent felons or probationers (even those accused of non-violent crimes) from owning firearms. Although the NRA sometimes argues that gun laws discriminate against the poor and minorities, the organization has repeatedly demonstrated a telling unity with gun control advocates in its support for mandatory sentences, federalized prosecutions, increased policing, and other "tough-on-crime" policies that also disproportionately affect these same groups. The race-coded rhetoric stresses keeping guns out of the hands of "criminals" while respecting the rights of "law-abiding, responsible, hunters, sport shooters, and collectors".

Significantly, the Heller decision, while establishing the individual right to bear arms, also leaves in place the prohibition against felons owning guns.

There's a common-sense appeal to denying guns to criminals, if it is assumed that "criminals" constitute a static and readily-identifiable class of people. In practice, such policies are a handy way of institutionalizing racism: The police pay disproportionate attention to people of color, so those people are more likely to have records — which can be used, with circular logic, to justify more scrutiny. With more scrutiny and less leeway, people who have already been to prison are more likely to return, usually on some technicality like a parole violation. Thus the criminal justice system serves as, not just as a means of punishing crime, but also a legal mechanism for stripping minorities of their basic rights. It probably shouldn't be surprising that it works that way to deny them guns, given that most states also use it to deny them the vote.