

PROTESTS, INSURRECTION, AND THE SECOND AMENDMENT

Beyond Law and Order in the Gun Debate

Black Lives Matter, Abolitionism, and Anti-Racist Gun Policy

By **Jennifer Carlson**, Associate Professor, School of Sociology and School of Government and Public Policy, University of Arizona

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Introduction

The summer of 2020 was a summer of mass unrest. Protesting the thousand-plus, disproportionately Black and Indigenous lives taken every year by police violence, millions of Americans mobilized for racial justice and police accountability under the banner of Black Lives Matter. Their message was not new — the Black Lives Matter movement was founded years earlier in the aftermath of George Zimmerman's acquittal for the murder of Trayvon Martin — but its urgency felt renewed amid egregious cases of anti-Black racism, police violence, growing political polarization, and white supremacist extremism. The killings of Ahmaud Arbery, George Floyd, Dion Johnson, and Breonna Taylor — a handful among thousands — yet again spotlighted police complicity with and perpetuation of anti-Black violence, invigorating months of protests and calls for police accountability, police demilitarization, police defunding, and even police abolition. The demands themselves differed in substance; some focused on closing down police departments altogether, while others emphasized the fiscal necessity of redirecting public funding from police to other agencies. But the gist of these calls was unanimous: they insist that to transform rather than merely reform the institutions within American society that perpetuate anti-Black racism, police must be decentered as the go-to institution for solving not just problems of crime but social problems more generally.

Anti-Black racism within policing is one slice of the entrenched tendency in 20th- and 21st-century America to treat a wide panoply of social problems as problems of crime and bloat the criminal justice system as the catchall state apparatus to address those problems — a dynamic that legal scholar Jonathan Simon describes as "governing through crime." The protests, the demands, and the community organizing of 2020 may have been immediately focused on the criminal justice system, but because that system has so thoroughly penetrated vast realms of American society as a core vector of anti-Black racism, the message carried by the protesters reached far and wide — including gun politics. Often buttressing the well-worn terms of the gun debate, those in favor of increased gun regulations declared that "police violence is gun violence," while others promoted gun ownership as a way to put the message to "defund the police" into practice. But the challenge that the summer 2020 Black Lives Matter protests have posed to American gun politics goes far beyond rehashing the usual sides of the gun debate in the key of anti-Black police violence. Rather, this challenge invites those invested in the gun debate to consider their own complicity with the criminal justice system and how, by decentering crime and criminalization within the gun debate, that debate might be transformed. In short, the summer 2020 protests challenge us to imagine anti-racist gun politics.

Criminalizing Gun Politics

Since its inception in the 1960s, the so-called war on crime has provided fodder for gun rights *and* gun reform advocates as they rallied around their respective agendas by trying to situate themselves as the defenders of law and order. These maneuvers have not been unique to the gun debate; indeed, America was so crime-crazy by the 1980s and 1990s that there was often no position to take *other* than a "tough on crime" one. This was famously illustrated by then-President Bill Clinton's own agenda as an elected Democrat: a member of the party pegged as being "soft on crime," Clinton advocated for and implemented an array of "tough on crime" measures that would swell prisons in the 1990s, disproportionately with people of color. Clinton's gun control measures — particularly the assault weapons ban — gained the approval of police precisely because they were framed as a crucial element of the war on crime: disarming the enemy to empower the soldiers — that is, public law enforcement — who were fighting on the frontlines of this war on crime throughout American cities. 4

To understand how race, gun control, and crime control have come together, consider then—Los Angeles Police Department (LAPD) Chief Darryl Gates. Gates is known for many things. He took credit for inventing the notion of SWAT units within police departments in the 1960s, which would become the symbol of rampant police militarization that unfolded decades later. He routinely and racistly dismissed the LAPD's unchecked police misconduct and abuse, disproportionately aimed at people of color, and even called his own officers of color "lazy;" indeed, he oversaw the LAPD during the 1991 Rodney King beating, which ultimately ended his career in law enforcement.

Just prior to the LAPD's beating of Rodney King, however, Gates helped push an assault weapons ban first through California and then at the federal level. As he testified to the U.S. Senate Judiciary Committee in 1989, "My police department has already lost two officers who were killed by assault weapons. . . . I do not want any more officers to be spray-gunned to death by street punks armed with high-tech killing machines." The assault weapons ban was perhaps about gun regulation, but it was not merely gun regulation — at least not to the police who supported it at the time. Rather, it was more akin to an article in the police officers' bill of rights that some states have passed: the right not to be outgunned by violent criminals. Police embraced gun control in the 1980s and 1990s as a strategy in the war on urban street violence that they thought they were losing; not unlike supporters of gun rights, their support for gun control appeared rooted in a racist and racializing view of the world as divided between the good guys with guns (in this case, police) and the enemy (racialized through tropes of drug dealers, gangs, and the so-called superpredators).

This stark and highly racialized division between the "good guys with guns" and the "bad guys with guns" is obviously not unique to one side of the gun control debate. Though the National Rifle Association (NRA) has framed guns as the "great equalizer," burban crime — and the associations with dangerous people of color that it evokes — is a galvanizing element of NRA discourse that dates back at least to the 1960s and is well-documented by scholars like Adam Winkler. Indeed, what gun rights advocates historically have wanted in place of gun control was not a fair and racially unbiased criminal justice system; it was a system of mandatory minimums aimed at gun offenders that would further criminalize the "bad guys with guns." Legal scholar James Forman, the author of *Locking Up Our Own: Crime and Punishment in Black America*, describes the mandatory minimum sentencing laws that were debated at the advent of the war on crime by noting, "The racial impact of such proposals was obvious — nobody doubted that blacks would be the ones locked up." 10

Tracing out the relationship between "tough on crime" politics and gun politics thus reveals a bind that gun rights *and* gun reform advocates must face: taking a stand on guns has largely meant fitting that stand within the broader "tough on crime" mentality that has taken hold of the American psyche, and embracing "tough on crime" politics has often meant colluding with the racist and racializing apparatus of the American criminal justice system.

From Gun Control/Gun Rights to Gun Populism/ Gun Militarism

As protesters flooded the streets in the summer of 2020, police coddled and encouraged armed white counterprotesters, and some people of color turned to guns as tools of defense amid a hostile police force, the hitherto separate debates about the politics of police on the one hand and gun politics on the other became undeniably inextricable. In the midst of racial unrest at the behest of police violence, some gun rights and gun reform advocates have turned to a familiar refrain: accusing the other side of being racist and advocating one's own

position as the one most beneficial to people of color — often while overlooking how that agenda engenders complicity in the very structures that reproduce racial inequality and domination.

I admit that it is tempting to adjudicate between the two sides of the gun debate, especially on the question of racism within these respective agendas. But this temptation, as Ibram X. Kendi reminds us, rests on a faulty understanding of how racism operates in — and shapes — the United States. In *Stamped from the Beginning*, Kendi invites us to look at the racial history of the United States as one of dueling *racisms*. Here, we can understand racism as an interlocking collection of ideologies and institutions that justify an unequal distribution of resources (time, money, treatment, freedom, and so forth) by dehumanizing a group of people based on biological or cultural essentialism. Rather than an arc toward justice battled between racism and anti-racism, Kendi sees *different kinds* of racism — from the overt Jim Crow—style racism of the 20th-century South to the color-blind racism that pervades even the most putatively liberal U.S. institutions — as shaping the history of race in the United States. Following Kendi, we might set aside the urge to label one side of the gun debate as "racist" — an urge, scholars of whiteness remind us, ¹² that often does more to address white discomfort than deal with dismantling racism. Instead, we might view the common allegiance of *both* sides of the gun debate to the criminal justice system as evidence of Kendi's thesis: namely, that complicity and even collusion with the ideologies and institutions that reproduce racial inequality — such as the criminal justice system and its attendant justifications — is the default in American society.

Kendi's insights are thus vital to unraveling the gun debate — and how different positions within it are structured by race. In interviews with nearly 80 police chiefs across Arizona, California, and Michigan, I found that race shaped how law enforcement agents talked about and made sense of gun politics and gun violence, but not necessarily in ways that neatly lined up with the usual sides of the gun debate: gun control versus gun rights. In *Policing the Second Amendment*, ¹³ I instead detail two brands of gun talk I found — gun militarism and gun populism — and how they frame racial presumptions about who is a good guy with a gun, who is a bad guy with a gun, and what should be done to enforce the line between the two.

Usually discussed in the context of urban crimes associated with people of color (such as gangbanging or drug-dealing), gun militarism depends on the racializing trope of "bad guys with guns" to justify aggressive gun law enforcement, including the embrace of the "warrior mindset" in the policing of communities of color. ¹⁴ I heard gun militarism, for example, when police chiefs cut up the boundaries between urban spaces by saying "we like to keep our enemies on the other side of the gate," or when they separately tallied gangrelated and non-gang-related shootings, minimizing victimization by noting that "90 percent of [gun violence in a particular jurisdiction] is targeted. It's people who are involved in a criminal lifestyle." ¹⁵

In contrast, police populism celebrates the "good guys with guns" as a boon for personal safety and even public order — some police chiefs I interviewed even characterized armed private civilians as fellow "first-responders." As one chief explained to me, "if there's an off-duty cop next to me in the store when I need back up, I'm going to want that back up. And I don't see what's the difference between that off-duty cop and the responsible citizen. There is zero difference." ¹⁶ Gun populism frequently appeared alongside color-blind ideals of lawfulness and innocence that nevertheless reflect values, dispositions, and sensibilities associated with whiteness: "normal people," the "rancher with a gun," the "teacher with a gun," and "the farmer." ¹⁷ Further, gun populism was often articulated in the context of active shootings commonly associated with predominantly white rural and suburban spaces, and police chiefs talked about these victims differently from how they described victims in the context of urban gun violence. Rather than minimizing victims as already involved in a criminal lifestyle, they often expressed the shame and devastation they would feel if they were unable to intervene to save innocent victims. ¹⁸

Always coexisting, oftentimes complementary, and sometimes dueling, gun militarism and gun populism illustrate Kendi's framework: rather than being characterized by opposing racist and anti-racist agendas that neatly map onto the two sides of the gun debate, gun militarism and gun populism demonstrate the persistent and pernicious way that race undergirds the very terms of our disagreements over guns. It was hard not to notice, as I looked beyond my interviews with police chiefs to the broader terrain of gun politics and its historical vicissitudes, that gun militarism and gun populism were shaping the terrain over which gun politics was fought. Together, these two concepts helped explain curiosities across the gun debate, especially the ways that both sides of the gun debate have historically supported criminal justice solutions in response to gun violence (though, as detailed below, this support has been splintering increasingly in the last five years — at least on the gun reform side). As such, gun militarism and gun populism help to clarify the stakes in American debates about guns. Much more than a disagreement over private gun regulation, the U.S. gun debate is fundamentally a debate about the license for and the limit of legitimate violence — of private civilians as well as of the state — that is grounded in racializing ideologies and institutions that shape the terrain of criminality and blameworthiness on the one hand and innocence and impunity on the other.

But if gun militarism and gun populism cannot transform the racist and racializing foundations of the contemporary gun debate, what might an alternative gun debate look like? To put it directly, what shape would anti-racist gun politics take?

Anti-Racism in Action

Under Kendi's framework, "anti-racism" entails more than an absence of overt animus or a reformist recognition of racist ideologies or institutions. Anti-racism involves a proactive and overt dismantling of racist institutions and ideologies. Though anti-racism has appeared in fits and starts throughout U.S. history, today it is perhaps best illustrated by the contemporary abolitionist movement. When Clarence Darrow remarked in 1902 that "there should be no jails, they do not accomplish what they pretend to accomplish," 19 he was articulating a viewpoint that would be taken up by activists and academics increasingly after the 1960s: abolitionism applied to the criminal justice system.

Those who describe themselves as contemporary abolitionists work toward the end of prisons and other punitive mechanisms of criminal justice. Angela Davis, who "began to explore what it might mean to combine our call for the freedom of political prisoners with an embryonic call for the abolition of prisons" in the early 1970s and has since become one of the thought leaders of abolitionism, ²⁰ explained: "Prison needs to be abolished as the dominant mode of addressing social problems that are better solved by other institutions and other means.

The call for prison abolition urges us to imagine and strive for a very different social landscape."²¹ Likewise, Ruth Wilson Gilmore and James Kilgore, writing for the Marshall Project, note that "[t]o imagine a world without prisons and jails is to imagine a world in which social welfare is a right, not a luxury. . . . [W]e work the entire ecology of precarious existence that shapes, but is not bounded by, the aggrandizing 'criminal justice system,' including housing, jobs, education, income, faith, environment, status."²² Far from a monolithic or even broadly united social movement, abolitionism coheres through a commitment to decenter the criminal justice system and compels us to rethink social problems and solutions to those problems without recourse to the criminal justice system, instead emphasizing economic justice, mutual aid, and community empowerment.

The summer 2020 uprisings mainstreamed abolitionism in an unprecedented manner as activists across the United States called to "defund the police." Acknowledging that "[w]e can't reform the police," Mariame Kaba noted in a *New York Times* op-ed that abolitionism doesn't simply mean "clos[ing] police departments. We want to make them obsolete." If abolitionism means decentering and deconstructing the criminal justice system in our social imaginations, then it necessarily entails rethinking not just the place of police and prisons, but also the wide range of social and political agendas dependent on police and prisons for their execution — to resist the default of "governing through crime."

Gun Abolitionism

To take seriously the challenge that the summer 2020 Black Lives Matter protests pose to the contemporary terms of the gun debate would entail not simply acknowledging the intersection of racism and gun politics, but also eradicating the centrality of criminal justice thinking in imagining the problem of and solutions to gun violence. As criminologist Jeffrey Butts and his coauthors note, "the most celebrated models in the United States are usually led by law enforcement and rely on the influence of suppression, deterrence, or both. . . . Enforcement-based violence reduction approaches can generate immediate results, but they require the continued coordination of complex bureaucracies that must be supported and sustained to have a lasting impact on violence. Furthermore, these models do not necessarily lead to deeper social change."²⁴ Likewise, Amber K. Goodwin, founder and executive director of the Community Justice Action Fund, and legal scholar T. J. Grayson note, "the United States' focus on policing first strategies to address gun violence has contributed to the persistence of gun violence in communities of color. . . . [I]f we value the lives of marginalized communities, we need a new approach to gun violence in communities of color." Indeed, alternative, "self-help" approaches to gun violence have long taken shape in communities — particularly underserved communities of color — throughout the United States.²⁶

The Cure Violence initiative, founded by public health scholar Gary Slutkin, stands out as a striking alternative to criminal justice—centered approaches to gun violence. Providing a window into what gun abolitionism might look like, Cure Violence emphasizes gun violence not as a problem of individual criminality but as a contagious problem best addressed by "interrupting transmission directly, identifying and changing the thinking of potential transmitters (i.e., those at highest risk of perpetrating violence), and changing group norms regarding violence."²⁷ Programs throughout the United States and the world have adopted elements of the initiative, and although crime rates are notoriously difficult to trace back to a particular intervention, the Cure Violence initiative has been associated with dramatic drops in shootings and gun homicides.

One example of the Cure Violence approach is Chicago's Violence Interrupters initiative. Focused on gang violence, the Violence Interrupters include former gang members and leaders, many of whom have experienced incarceration themselves. Working on the ground to literally "interrupt" violence by developing action plans to disrupt surging conflicts, the Violence Interrupters mentor young people at risk of becoming victims or perpetrators of gun violence, support them in addressing basic needs such as employment, and even put themselves — literally — in the line of fire when conflicts escalate to violence. To gain the confidence of youth and develop authentic mentorship relationships, the Violence Interrupters keep their distance from police. Charles Ransford, Cure Violence's policy director, told *The Trace*, "If we were to be talking to the police, our workers would no longer have the trust and faith of the people they work with, and it would put their lives in danger."²⁸

While Chicago's Violence Interrupters minimizes contact with police, other Cure Violence approaches find ways to work with police without centering them as the cure-all for gun violence. Oakland's Youth ALIVE!, for example, works with local police to provide rapid support to gun violence victims; the vast majority of gun violence victims in Oakland receive resources on trauma, healing, and resiliency thanks to Youth ALIVE!'s arrangement. Understanding that "trauma is the virus" that drives the spread of gun violence, Youth ALIVE! illustrates what many proponents of defunding the police are advocating: a society in which the first response to violent victimization is one of healing rather than re-traumatization.

Although such initiatives have often taken shape at local levels, outside of the purview of the major players within the gun debate, gun reform advocates have increasingly recognized the promise of community-led initiatives to address gun violence. Since 2016, Giffords — the organization headed by former Congresswoman Gabrielle Giffords, herself a victim of gun violence — has reported on the efficacy of Cure Violence and similar initiatives; ²⁹ lobbied alongside community-led violence prevention groups like YouthALIVE! for sustained violence intervention funding; ³⁰ and partnered with Sen. Cory Booker (D-NJ) and Rep. Steven Horsford (D-NV) to introduce the federal Break the Cycle of Violence Act, which would invest nearly \$100 million in "strategies like group violence intervention, street outreach, and hospital-based violence intervention programs." When President Joe Biden proposed designating \$5 billion to fund community gun violence prevention in March 2021, Giffords and the Brady Campaign to Prevent Gun Violence applauded the move — the latter recognizing that "this historic investment is the result of years of leadership by Black- and Brown-led gun violence prevention groups." ³²

Cure Violence initiatives do not use the term "abolitionist" but often emphasize their work in terms of a "public health" approach, and they range broadly in terms of the extent to which they work alongside the criminal justice apparatus (hence, self-identified abolitionists may hesitate to embrace certain manifestations of this work). These initiatives nevertheless help to illustrate the beginnings of what an abolitionist approach to gun violence might look like. Decentering the police, the prison, and other criminal justice approaches to gun violence, these initiatives recenter the people whose lives are at risk, and they tend to understand the twin consequences of gun violence that devastate communities — victimization and entanglement with the criminal justice system — as intertwined outcomes resulting from the broader divestment from the communities most at risk of gun violence. Further, these initiatives demonstrate that abolitionism in practice is *not* a "tear it all down" approach to social change but rather a slow, steady, and messy process of transforming the conditions that create violence from the ground up. They also illuminate how an ethic of mutual aid rather than punishment can be mobilized to address gun violence. To borrow Mariame Kaba's words on the abolitionist imaginary, these organizations put into practice "a vision of a different society, built on cooperation instead of individualism, on mutual aid instead of self-preservation." ³³

Reimagining Safety and Justice — and the Gun Debate

Abolitionists acknowledge that calls to defund the police or to close prisons, for example, may seem like the stuff of "starry-eyed idealists" (as Gilmore and Kilgore describe), ³⁴ but they also remind us that seemingly unthinkable abolition has happened before (think of the formal institution of slavery), and that the so-called realistic reforms that are championed in place of abolitionist calls have largely failed. Transposing these lessons to the gun debate requires some retooling, of course: the issue with gun policy reform is often not that reforms have failed but that reforms cannot be passed at all. Those reforms that are passed, however, often reproduce

the centrality of the criminal justice system — with deleterious consequences for people and communities already marginalized by this institution.

Supporters of gun control often intimate a natural alliance between anti-racist politics and gun control, given the striking disparities in gun violence victimization across race, ³⁵ and gun reformers are increasingly recognizing the efficacy and urgency of community-led gun violence prevention. Yet forms of gun violence that disproportionately victimize whites (such as mass shootings) still often shape the terms of the debate and who can participate in it. As Patrisse Cullors, one of the founders of the Black Lives Matter movement, noted of the activism that emerged in the aftermath of the 2018 Parkland mass shooting, "young, white students have been able to be seen as victims — which they are — and heroes — which they also are — but we, instead of seeing us as victims and heroes, we were seen as a group of people that were aimless, that didn't have a plan, that were too angry, [that] were not doing it right. . . . So we can't help but recognize the ways in which different racial groups are treated differently when they stand up for their lives." ³⁶

As Black Lives Matter activists press for recognizing the unbearable whiteness of gun politics and critical scholars unravel the racializing consequences of criminal justice—oriented solutions to gun violence, the conversation *is* changing — and perhaps too is the range of imaginable interventions. Cure Violence initiatives point to what an abolitionist approach to gun violence — one that at the very least *decenters* the criminal justice system — might look like. Especially as they gain more notice among the major organizations within the movement for gun reform, these initiatives provide a powerful alternative for reimagining how to address gun violence and, in the process, broadening the terrain of what constitutes "gun policy" to include the crucial work of community-embedded organizations. And not only do they illustrate what an abolitionist approach to gun violence might look like, they also show that *it works*, even as these efforts often go unrecognized and underfunded in national conversations about gun violence — although President Biden's \$5 billion earmarking for community-led violence prevention work may mark a pivotal shift in this regard.³⁷

Beyond gun rights and gun control, and beyond gun militarism and gun populism, stands gun abolitionism — that is, an approach to gun violence that decenters the criminal justice system as an institution and an ideology. To take seriously the anti-racist demands forwarded by the uprisings of the summer of 2020, then, requires more than calling out the other side as "racist" or labeling police violence as "gun violence." It means revamping dominant visions of safety and justice — and reformulating the leading approaches to gun policy accordingly.

Endnotes

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- ¹³ See generally CARLSON, supra note 4.
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- ¹⁵ *Id*. at 77.
- ¹⁶ Id. at 228–29.
- ¹⁷ Id. at 131.
- ¹⁸ Id. at 99.
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