

PROTESTS, INSURRECTION, AND THE SECOND AMENDMENT

African Americans and the Insurrectionary Second Amendment

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Introduction

Insurrectionist theories of the Second Amendment typically begin with Thomas Jefferson and Lexington, Massachusetts, rather than Cato and Charleston, South Carolina. To an external observer unfamiliar with American history and inclined to take the framers' generation at their word, the moral and historical foundations of the insurrectionary Second Amendment must look bizarre. Instead of building an insurrectionist theory around the one group — enslaved Africans — who, by the framers' own measure, had the most right to resist tyranny, we have a Second Amendment theory of righteous revolution built on the grievances of slave owners. But the peculiarity does not stop there. It must seem equally odd to this outsider that Second Amendment insurrectionist theory never adequately accounts for the fact that this one group, African Americans — with centuries of moral justification behind them — decided in the middle of the 20th century to *reject* violent political dynamism in favor of nonviolence. Instead of using the insurrectionist theory of the Second Amendment to bolster a separatist movement in the South or justify a sustained campaign of political violence against Jim Crow and its enablers, African Americans and their allies in the 1950s and '60s committed themselves to passive resistance, moral suasion, and peaceful regime change.

What would Second Amendment insurrectionism look like if it started with the enslaved African and ended with the march across the Edmund Pettus Bridge? This essay attempts to reckon with these twin paradoxes and reorient our thinking about the credibility of the insurrectionary Second Amendment.

The Insurrectionary Second Amendment

America's founding fathers were slaves — at least, that's how they described themselves.¹ “Slavery’ was a central concept in 18th century political discourse.”² It was “the absolute political evil” and during the Revolutionary era manifested in “every statement of political principle, in every discussion of constitutionalism or legal rights, in every exhortation to resistance.”³ John Dickinson, Josiah Quincy, and John Adams all referred to themselves as “slaves” when describing their political powerlessness.⁴ Slavery in 18th-century terms connoted a “specific political condition,” one marked by total subjugation, a manifest incapacity to maintain any material interest or abstract right. It was an evil in itself, an intolerable abasement of the human condition quite apart from any physical harm that the despot did or did not inflict.⁵ As John Locke wrote, “he who makes an *attempt to enslave* me, thereby puts himself into a State of War with me.”⁶ And the threat to the colonists of being reduced to slavery justified any measure of resistance, even violence.

Although the Declaration of Independence asserts that the justification for violent revolution is “self-evident,” it offers reasons out of “a decent respect to the opinions of mankind.” The colonists claimed to have suffered a “long train of abuses and usurpations . . . design[ed] to reduce them under absolute Despotism.” Under such conditions, “it is their right, it is their duty, to throw off such Government” and form a new one.⁷ The bill of particulars against King George includes, among other evils,

- kidnapping and transportation away to foreign shores;⁸
- withdrawing protection from the violence of others,⁹ including denying victims justice for such violence;¹⁰
- the imposition of foreign laws, in derogation of the common law;¹¹
- the denial of trial by jury;¹²
- the denial of trade;¹³ and
- the dissolution of assemblies for having asserted the rights of the people.¹⁴

The Declaration insists that violent revolution was the last resort, the result of every reasonable, peaceful petition to both the government of England and its people being rebuffed. It ends with an injunction that the English remember “the circumstances of [American] emigration and settlement here.”¹⁵

Nine decades later, the newly created Confederate States of America would take up the tropes of slavery and debasement and resistance to justify their own attempt to violently overthrow the government and preserve a slaveocracy. Jefferson Davis, in justifying the Southern rebellion, cited the Declaration in his inaugural address:

[G]overnments rest on the consent of the governed, and that it is the right of the people to alter or abolish them at will whenever they become destructive of the ends for which they were established. . . . In this [the Confederate States] merely asserted the right which the Declaration of Independence of July 4, 1776, defined to be “inalienable.”¹⁶

The Mississippi Declaration of the Causes of Secession warned that

[u]tter subjugation awaits us in the Union, if we should consent longer to remain in it. It is not a matter of choice, but of necessity. We must either submit to degradation . . . or we must secede from the Union framed by our fathers, to secure this as well as every other species of property. For far less cause than this, our fathers separated from the Crown of England.¹⁷

Even after the Confederacy was crushed, its dead-enders who formed white supremacist terrorist organizations like the Knights of the White Camellia and the Ku Klux Klan appealed to natural rights to resist tyranny. One of the first questions to supplicants to the Klan was, “Do you believe in the inalienable right of self-preservation of the people against the exercise of arbitrary and unlicensed power?”¹⁸

In America, “[the] right of revolution has been and is a part of the fabric of our institutions.”¹⁹ However, unlike in other nations,²⁰ and even some state constitutions,²¹ a right to alter or abolish tyrannical government is not actually set down in the American Constitution. It is expressed in the Declaration of Independence.²² But the Declaration is not law and does not command the same kind of respect in the political imagination as the Constitution.

Instead, the framing for a right to rebel against tyranny has migrated over the last half-century from a political document (the Declaration of Independence) to a legal one (the Second Amendment). It appears in academic journals that focus on gun regulations²³ or military encounters — especially the securing of arms — as precipitating the Revolution.²⁴ It shows up in alarming declarations like the one that the Second Amendment “isn’t about hunting ducks; it’s about hunting politicians.”²⁵ The insurrectionary Second Amendment takes a number of forms, but at its most plausible, it seems to contemplate some kind of ability of individuals to wage a long-term guerilla campaign against the forces of despotism — once all the other forms of peaceful political change have failed. A Ninth Circuit judge once referred to it as the “doomsday provision.”²⁶ Even the late Supreme Court Justice Antonin Scalia, in his headier moments in *District of Columbia v. Heller* (2008), seemed rapt about the idea of violent resistance to government, writing “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.”²⁷

Almost always, though, the public image of Second Amendment insurrectionism is the minuteman with his musket, tricorne hat, and *Common Sense* rolled up in his pocket or (in some quarters) the Confederate soldier charging the Union line with his rifle in one hand and the Stars and Bars in the other. In the American constitutional imagination, the right to resist tyranny is symbolized by the counterfeit slave, not the real one.

Slave Laws, Slave Revolts, and Insurrectionist Theory

Even as Locke was writing down his political theory of justified rebellion (to be liberally borrowed by Thomas Jefferson in 1776), the colonists were steadily degrading the material, legal, and political position of Africans in North America.²⁸ Africans were brought to the swampy shores of Jamestown in 1619, and, following a brief period of legal limbo, their treatment hardened into the brutal, hereditary, and thoroughly racialized form of slavery that became the exceptional version of the institution in the United States.

South Carolina updated its Slave Act in 1701, which among other things authorized government officials to impress local whites to chase down escapees and fined those whites who refused to be conscripted into service. Whites performing this duty were permitted to beat and, if necessary, kill any enslaved person who resisted.²⁹ Authorities were permitted to search homes for runaways, and any person caught after an unsuccessful self-emancipation was subject to castration (if male), cropping of ears, or (for repeat offenses) crippling by cutting of the Achilles tendon.³⁰

In 1705, Virginia passed a similar “Act Concerning Servants and Slaves.” It confirmed the civil law concept of *partus sequitur ventrem* — that slave status was inherited through the mother — in derogation of English common law. It criminalized marriage and sex between races. It empowered private citizens to capture and kill those who attempted to emancipate themselves and authorized their mutilation upon return to their owners. It cut off enslaved persons’ independent ability to engage in trade. It forbade slaves from carrying firearms. And it reinforced the absolute power of the owner, specifying that owners be acquitted of murder “as if such incident had never happened” if they should kill a slave for daring to resist his enslavement.³¹

A 1712 slave rebellion scare in New York led to brutal repression of suspected participants and imposition of the “Act for preventing Suppressing and punishing the Conspiracy and Insurrection of Negroes and other Slaves,” which prohibited slaves from owning property or arms, specified a set of punishments for harboring slaves away from their owners without permission, created unique tribunals for slaves charged with capital crimes, and essentially authorized cruel and exemplary punishments for murder and rape.³²

Although passed by different colonial legislatures, many features of these laws were similar. They

- permitted the kidnapping, transportation, and sale of the enslaved from their homes to foreign places;
- protected and encouraged the infliction of private violence on the enslaved;
- imposed civil law concepts like *partus sequitur ventrem* on the enslaved and denied them the benefits of common law;
- denied the enslaved trial by a jury of their peers;
- denied the enslaved the opportunity to engage in a trade;
- denied the enslaved an ability to possess arms; and
- punished assemblies and imposed group punishment for acts of rebellion or resistance.

Generations before Thomas Jefferson would itemize the abuses of George III (among them, the imposition of laws alien to English common law; transportation to foreign shores across the sea; impressment of Americans “to become the executioners of . . . friends and Brethren”; the cutting off of trade; the withdrawal of the protection of the law), the colonists instituted their own “long train of abuses and usurpations” with respect to African Americans.

Of course, such self-evident injustice was bound to provoke a response. One occurred just outside what was then known as Charles Town (now Charleston), South Carolina. On an early Sunday morning in September 1739, a band of about 20 enslaved Africans, mostly Kongoleses from modern-day Angola, assembled at the western branch of the Stono River, about 20 miles from Charles Town.³³ The Kongoleses were Catholic Christians and “believed . . . them[selves] a distinctive people.”³⁴ Some of these men may have had military training, and some may have been familiar with firearms.³⁵ Their leader was a man known as either Jemmy or Cato, and their first act of rebellion was to seize the small arms and gunpowder at Hutchinson’s store near the Stono River Bridge. They must have figured that if they got to the guns first, then freedom would soon follow.

After taking the weapons and killing the two men at the store, they marched southward, swelling in number until they numbered nearly 100. They raised a standard and marched to the beat of drums and shouts of “Liberty!” Their object was perhaps to cross through Georgia to what is now St. Augustine, Florida, where the Spanish governor had proclaimed that any African who had escaped the British would be free.

They had to know that their actions, if they failed, would mean death. Individual acts of rebellion by the enslaved had culminated in execution in the past.³⁶ Just that spring, in response to several serial cases of self-emancipation and as a warning to others tempted to flee to freedom, one escapee was whipped and another hanged and left to rot.³⁷ At the banks of the Edisto River, the rebels stopped, expecting their ranks to swell further until they became an unstoppable train to freedom.

But by noon, whites in the county were on alert, and by mid-afternoon, a posse of close to 100 had assembled and moved onto the rebels’ positions. The fight was not suppressed all at once. Employing what General George Washington would later call a “war of posts” or “Fabian” strategy, the Stono rebels “withdrew after a brief encounter, relocated, and fought several battles over a protracted period.”³⁸ Only after several weeks was the bulk of the rebellion quashed, and even then, one leader remained at large and was only captured and executed three years later. According to what amounts to the “official” report of the rebellion, the enslaved “fought for Liberty and Life,” prompting a later commentator to ask whether the Stono rebels were “the first Revolutionary Americans.”³⁹

The Stono Rebellion was just one of a series of insurrections by enslaved persons that began almost as soon as Africans were brought to America and continued until the Thirteenth Amendment abolished *de jure* slavery in the United States in 1865. The list is long.

In 1800, a man named Gabriel owned as chattel by Thomas Prosser planned an uprising near Richmond, Virginia. He may have been inspired by the successful revolution of enslaved Africans on the island of Saint-Domingue, now Haiti, in the 1790s. Gabriel’s unsuccessful plot enlisted thousands of individuals and involved homemade weapons and then a march to seize arms and ammunition at the magazine at Richmond.⁴⁰ He even planned to hoist a standard with the echoes of Patrick Henry emblazoned upon it: “Death or Liberty!”⁴¹

Approximately 20 years later, in South Carolina, a free Black man named Denmark Vesey preached against slavery with appeals to Christian morality and the Declaration of Independence. His plan was to seize the armories and stables in Charleston, South Carolina, at midnight on June 16, 1822. The plot was thwarted by white military repression, but talk of an incipient battle for freedom remained for years after.⁴² Seven years following, the Christian mystic Nat Turner planned another uprising in Southampton, Virginia, in 1831 to take place on July 4, “fifty-years from the day the Continental Congress approved the wording of the Declaration of Independence.”⁴³

Then there are the hundreds of unnamed patriots whose names were never recorded, among them: The Black insurrectionist who went to the gallows declaring, “I have nothing more to offer than what George Washington would have had to offer, had he been taken by the British and put to trial by them. I have adventured my life in endeavoring to obtain the liberty of my countrymen.”⁴⁴ The anonymous “Free Negro” who penned a 1789 article recognizing that the same efforts to obtain freedom for which whites were valorized as heroes and martyrs are treated with derision and contempt when employed by African Americans.⁴⁵ “Do rights of nature cease to be such when a Negro is to enjoy them?” the unnamed writer asked, “[o]r does patriotism in the heart of an African rankle into treason?”⁴⁶

And of course, this list leaves out all the small, successful rebellions that occurred regularly in North America from 1619 to the end of slavery in 1865: Men, women, children, and the old who self-emancipated at great risk to themselves, their families, and those they left behind. A hundred thousand individual Lexingtons and Concordes.⁴⁷

Insurrectionism and the American Civil Rights Movement

To a disinterested observer less invested in America’s founding myths and less inured to its hypocrisies, America’s insurrectionary constitutionalism must look all wrong — wrong dates, wrong reasons, wrong people. The model of righteous violence in service of liberty must be the self-emancipated African American slave who overpowers and outwits her captors; it’s certainly not her owner. How much more incomprehensible it must appear, then, that this same group — African Americans — with the most warrant to resort to political violence foreswore that tool as a political strategy in the middle of the 1960s.

Although the Thirteenth Amendment formally ended slavery in 1865, and African Americans obtained birthright citizenship in 1868 and the franchise (at least for males) in 1870, the social, material, and political position of Africans in America remained stunted for more than a century afterward. Severe and violent responses to even the most modest expression of African American social and political participation occurred regularly from the Gilded Age to the early 1950s.

One would think that this legacy of oppression would have generated a broad and sustained guerilla campaign in the United States by African Americans and their allies. But it did not. As far back as 1865, the predominant goal of African Americans was to integrate into the political and social culture, not to separate from it. The appeal from the “Address from the Colored Folk of Norfolk Virginia” declared that “We are Americans, we know no other country, we love the land of our birth and our fathers.”

Even when African Americans’ peaceful attempts to assert basic social and political rights generated violent backlash, civil rights soldiers were taught not to respond in kind. Legions of students — some barely out of their teens — were trained to submit to public violence rather than lash out during the “sit-in” movement of the early 1960s, a movement that began with four young men from North Carolina A&T State University in a Woolworths in Greensboro.⁴⁸

As the movement spread, it kept its focus on nonviolent direct action.⁴⁹ Martin Luther King Jr., articulating his philosophy of nonviolent, passive resistance, said that one essential characteristic was “a willingness to accept suffering without retaliation, to accept blows from the opponent without striking back.” It is the

suffering — and the love — required to restore the community that is the central feature of this kind of revolution.⁵⁰

This courage to renounce political violence was on full display on Edmund Pettus Bridge on Bloody Sunday, March 7, 1965, in a march for voting rights. The images of Black martyrs and their allies, including a young John Lewis, broken and bloody at the hands of state law enforcement, gripped the nation. President Lyndon Johnson, for one, caught the significance of the event. Announcing his plans to send the Voting Rights Act to Congress, he said this: “At times history and fate meet at a single time in a single place to shape a turning point in man’s unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama.”⁵¹

Political Process, Political Morality, and Equitable Estoppel

Political process theory, famously articulated in John Hart Ely’s *Democracy and Distrust*,⁵² is a theory of judicial review of political institutions when minorities are consistently on the losing end of every political argument. But what happens when judicial review also fails? Isn’t that the moment when violent political dynamism becomes the only recourse? And what happens when the group that is entitled to use such violence rejects it, and instead opts for nonviolent resistance?

On January 6, 2021, mobilized by the most chimerical of threats, members of the ethnic majority assailed the Capitol of the United States, leading to the deaths of five people. In a spectacular case of saying the quiet part loud, a sitting senator of the United States, Ron Johnson of Wisconsin — who literally had to take refuge from this mob — said this about the January 6 insurrectionists: “Even though those thousands of people that were marching to the Capitol were trying to pressure people like me to vote the way they wanted me to vote, I knew those were people that love this country . . . so I wasn’t concerned. Now . . . had the tables been turned . . . and those were tens of thousands of Black Lives Matter and Antifa protesters, I might have been a little concerned.” The senator’s implication is as clear as it is despicable — only whites can use violence to overthrow a white man’s government.

But there’s also another principle coming from the history of African Americans and insurrectionary theory. Call it the political morality version of equitable estoppel. Equitable estoppel is the legal doctrine that states that courts will not grant relief to a party who has not acted fairly. When one party forbears — repeatedly — to deploy the full force of the law in response to a clear breach of rights but instead seeks accommodation and peaceful resolution, the counterparty is estopped from seeking punitive redress at the slightest failure in performance by the other.

Translated into public morality, the argument goes like this: African Americans have 400 years of moral and political justification to violently dissolve the bonds that tie them to this country and its political leaders, and they’ve spent 400 years offering grace. As former President Barack Obama put it so eloquently during the 2020 presidential election campaign:

If anyone had a right to believe that this democracy did not work, and could not work, it was those Americans. Our ancestors. They were on the receiving end of a democracy that had fallen short all their

lives. They knew how far the daily reality of America strayed from the myth. And yet, instead of giving up, they joined together and said somehow, some way, we are going to make this work. We are going to bring those words, in our founding documents, to life.⁵³

It is Black struggles, Black tolerances, and Black forbearance that set the baseline for the legitimate use of political violence in America. It is theirs to claim, and only theirs. No one gets to cut in line; no one today possesses a greater right to alter or abolish government through violent means. And as long as African Americans continue to forswear violence as a tool of political change in favor of nonviolence and a peaceful political solution — as they've done in Norfolk, Virginia, in 1865, in Greensboro, North Carolina, in 1960, and in Atlanta, Georgia, in 2021 — then that grace continues to expose the lie of any lesser claim.

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Endnotes

¹ Jack M. Balkin & Sanford Levinson, *The Dangerous Thirteenth Amendment*, 112 COLUM. L. REV. 1459, 1482 (2012).

² BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 232 (50th anniv. ed. 2017).

³ *Id.*

⁴ *Id.* at 232–33.

⁵ *See id.* at 234.

⁶ JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 297 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690) (emphasis in original).

⁷ THE DECLARATION OF INDEPENDENCE para. 1, 2 (U.S. 1776).

⁸ *Id.* at para. 21 (“For transporting us beyond Seas to be tried for pretended offences.”).

⁹ *Id.* at para. 8 (“He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.”); *see also id.* para. 25 (“He has abdicated Government here, by declaring us out of his Protection and waging War against us.”).

¹⁰ *Id.* at para. 17 (“For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States.”).

¹¹ *Id.* at para. 15 (“He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation.”).

¹² *Id.* at para. 20 (“For depriving us in many cases, of the benefits of Trial by Jury.”).

¹³ *Id.* at para. 18 (“For cutting off our Trade with all parts of the world.”).

¹⁴ *Id.* at para. 7 (“He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.”).

¹⁵ *Id.* at para. 31.

¹⁶ Jefferson Davis, Inaugural Address of the President of the Provisional Government (Feb. 18, 1861), http://avalon.law.yale.edu/19th_century/csa_csainau.asp.

¹⁷ A Declaration of the Immediate Causes Which Induce and Justify the Secession of the State of Mississippi from the Federal Union (1861), http://avalon.law.yale.edu/19th_century/csa_missec.asp.

¹⁸ *Organization and Principles of the Ku Klux Klan*, reprinted in 1 DOCUMENTS OF AMERICAN HISTORY 500 (Henry Steele Commager ed., Prentice Hall 1975) (1938).

¹⁹ *Scales v. United States*, 367 U.S. 203, 269 (1961) (Douglas, J., dissenting).

²⁰ *See* Tom Ginsburg, Daniel Lansberg-Rodriguez & Mila Versteeg, *When to Overthrow Your Government: The Right to Resist in the World's Constitutions*, 60 UCLA L. REV. 1184, 1196–206 (2013).

²¹ TENN. CONST. art. I, § 1 (describing “an unalienable and indefeasible right to alter, reform, or abolish the government”).

²² DECLARATION OF INDEPENDENCE, *supra* note 7.

²³ *See, e.g.,* David B. Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 CHARLESTON L. REV. 283, 324 (2012) (“The British never lost sight of the fact that without their gun control program, they could never control America.”).

²⁴ *See* Stephen P. Halbrook, *Encroachments of the Crown on the Liberty of the Subject: Pre-Revolutionary Origins of the Second Amendment*, 15 U. DAYTON L. REV. 91, 119 (1989) (“[T]he British could not take away the arms of all of the people, and independence was won.”).

- ²⁵ David C. Williams, *The Militia Movement and Second Amendment Revolution: Conjuring with the People*, 81 CORNELL L. REV. 879, 952 (1996) (quoting Linda Thompson, *Six O’Clock Newscast* (Indianapolis Eyewitness News, May 1, 1995)).
- ²⁶ *Silveira v. Lockyer*, 328 F.3d 567, 570 (9th Cir. 2003) (Kozinski, J., dissenting).
- ²⁷ *Dist. of Columbia v. Heller*, 554 U.S. 570, 598 (2008).
- ²⁸ For a discussion of Locke’s problematic contribution to this history, see David Armitage, *John Locke, Carolina, and The Two Treatises of Government*, 32 POLITICAL THEORY 602, 609 (2004).
- ²⁹ L.H. Roper, *The 1701 “Act for the Better Ordering of Slaves”: Reconsidering the History of Slavery in Proprietary South Carolina*, 64 WM. & MARY Q. 395, 402–03 (2007).
- ³⁰ *Id.*
- ³¹ *An Act Concerning Servants and Slaves (1705)*, reprinted in 1 SLAVERY IN THE UNITED STATES: A SOCIAL, POLITICAL, AND HISTORICAL ENCYCLOPEDIA 540 (Junius Rodriguez ed., 2007).
- ³² William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 CARDOZO L. REV. 1711, 1767–68 (1996).
- ³³ Peter H. Wood, *Anatomy of a Revolt*, in STONO: DOCUMENTING AND INTERPRETING A SOUTHERN SLAVE REVOLT 63 (Mark M. Smith ed., 2005).
- ³⁴ John K. Thornton, *African Dimensions of the Stono Rebellion*, 96 AM. HIST. REV. 1101, 1103 (1991).
- ³⁵ *Id.*
- ³⁶ PETER H. WOOD, BLACK MAJORITY: NEGROES IN COLONIAL SOUTH CAROLINA FROM 1670 THROUGH THE STONO REBELLION 286 (1974).
- ³⁷ *Id.* at 311.
- ³⁸ Thornton, *supra* note 34, at 1113.
- ³⁹ STONO, *supra* note 33, at 28.
- ⁴⁰ *Gabriel’s Attempted Uprising in Richmond, 1800*, in A DOCUMENTARY HISTORY OF SLAVERY IN NORTH AMERICA (Willie Lee Rose ed., 1976).
- ⁴¹ Susan DeFord, *Gabriel’s Rebellion*, WASH. POST (Feb. 6, 2000), <https://www.washingtonpost.com/archive/lifestyle/2000/02/06/gabriels-rebellion/33c9061a-e33d-4f18-bf02-fe3cd294f5df>.
- ⁴² William J. Rich, *Lessons of Charleston Harbor: The Rise, Fall and Revival of Pro-Slavery Federalism*, 36 MCGEORGE L. REV. 569, 579 (2005).
- ⁴³ Seth Davis, *The Thirteenth Amendment and Self-Determination*, 104 CORNELL L. REV. ONLINE 88, 100–01 (2019).
- ⁴⁴ *Id.*
- ⁴⁵ Peggy Cooper Davis, *Neglected Stories and the Lawfulness of Roe v. Wade*, 28 HARV. C.R.-C.L. L. REV. 299, 390 (1993).
- ⁴⁶ Herbert Aptheker, *The Negro in the Abolitionist Movement*, 5 SCI. & SOC’Y 148, 153 (1941) (quoting THE AMERICAN MUSEUM, 1788, V, 72; VI).
- ⁴⁷ It is estimated that approximately 100,000 persons successfully escaped slavery in the United States. Mary Niall Mitchell et al., *Rediscovering the Lives of the Enslaved People Who Freed Themselves*, WASH. POST (Feb. 20, 2019), <https://www.washingtonpost.com/outlook/2019/02/20/rediscovering-lives-enslaved-people-who-freed-themselves>.
- ⁴⁸ Even some civil rights revisionists like Charles Cobb Jr. recognize that the political tactics of the civil rights movement and the training of the movement’s core figures was in nonviolent direct action, not guerilla warfare. See CHARLES E. COBB JR., THIS NONVIOLENT STUFF’LL GET YOU KILLED: HOW GUNS MADE THE CIVIL RIGHTS MOVEMENT POSSIBLE 160–61 (2014).
- ⁴⁹ Bayard Rustin saw nonviolent direct action as an alternative tool to violence. “The simple truth is this,” he wrote, “unless we find non-violent methods which can be used by the rank-and-file who more and more tend to resist, they will more and more resort to violence.” RAYMOND ARSENAULT, FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE 31 (abridged ed. 2011).

⁵⁰ Martin Luther King Jr., *Pilgrimage to Nonviolence*, in *NONVIOLENCE IN AMERICA: A DOCUMENTARY HISTORY* 392 (Staughton Lynd and Alice Lynd eds., 1966).

⁵¹ Lyndon B. Johnson, Special Message to the Congress: The American Promise (Mar. 15, 1965), <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.

⁵² JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 87 (1980).

⁵³ German Lopez, *Obama's Democratic Convention Speech Gave a Clear Warning: Democracy Is at Stake in 2020*, VOX (Aug. 20, 2020), <https://www.vox.com/2020/8/20/21377118/obama-dnc-speech-trump-democracy-voting-rights>.