

PROTESTS, INSURRECTION, AND THE SECOND AMENDMENT

# Guns and the Tyranny of American Republicanism

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# Introduction

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The constitutional purpose of guns in the American republic has had a protean quality since the country's founding. Self-defense has consistently been at the core of the justification behind the right to bear arms, with the goal being to defend against tyranny of some sort.<sup>1</sup> The nature of the tyrannical threat has shifted — sometimes dramatically — over time and has varied according to the subjective vantage point of different groups of Americans at different times in the history of the republic. Those tyrannical threats have ranged from a standing army at the founding to former Confederate rebels during Reconstruction to white police officers in the ghettos of America during the 1960s and 1970s to an overreaching federal government since the 1990s.<sup>2</sup>

On January 6, 2021, a group of Americans stormed the U.S. Capitol building to defend against what they understood as another tyrannical threat. Some of them were armed and clad in military garb and many of them were there to exercise what they deemed to be their constitutional right “to alter or abolish” a tyrannous government.<sup>3</sup> The U.S. Capitol insurrectionists came armed, ready to resist America's core governing principle to which they had assigned that tyrannical label: the transfer of power through a fair and legitimate election. In other words, the tyranny was American republicanism itself.

Although the insurrectionists' immediate target was an election they claimed to be stolen, their repudiation of republicanism goes far deeper. The Oath Keepers, a militia group at the center of the insurrection, developed as an offshoot of the Tea Party that emerged as a political force during the presidency of Barack Obama.<sup>4</sup> Both the Tea Party and the Oath Keepers embraced the traditional conservative idea of limited government, but both groups also used race to mobilize opposition to President Obama and the Democratic Party.<sup>5</sup> For these groups, the tyrannical threat was not simply the federal overreach that had been the target of right-wing groups in the past. Instead, they feared an enfranchised, multiracial polity that was growing more diverse every day. For militia groups like the Oath Keepers, the Three Percenters, and others, guns are the means of defending against what they deem to be the tyranny of American multiracial republicanism.

Despite the insurrection, the United States, as it grows more diverse, will continue on its trajectory toward an increasingly multiracial republic. However, without changes, there is the potential that it will be a multiracial republic under constant violent threat from domestic extremism. A likely response to growing multiracialism is the continued and accelerated alignment between militia groups and white supremacists.<sup>6</sup> This coalition will seek to mobilize broader swaths of white Americans around the idea that their country is being taken away from them and that Black and brown people are to blame for their political, economic, and status decline. Disarming these groups is not an option under the Supreme Court's interpretation of the Second Amendment, and infiltrating and interrupting violent plots is neither sustainable nor guaranteed to be successful over the long term.<sup>7</sup>

Why did the Capitol insurrectionists see American republicanism as a tyrannical threat? Racism is certainly an important part of the story. The armed militiamen had aligned themselves with white supremacist groups like the Proud Boys to carry out the insurrection in support of a president who stoked racial divisions and embraced white identity politics. And what they opposed as tyrannical was the multiracial coalition that rejected President Donald Trump and elected Joe Biden. Racism has many roots — cultural, sociological, and psychological. Yet in accounting for the insurrection, another root that should not be overlooked arises from the failure of American republicanism itself.

# The American Republican Foundations of Inequality

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The United States, through its embrace and effectuation of the principles of fair and free elections and peaceful transfers of power, is among the longest-standing and most successful republics in world history. Global and domestic shock and surprise over the U.S. Capitol insurrection arose from the sense that those core republican principles had been challenged. But there was something deeper and easily overlooked by both the participants and observers.

The insurrectionists' challenge to the fairness and legitimacy of the election and attempted disruption of the peaceful transfer of power followed from the anti-republican foundations of the United States. Behind the veneer of republican procedure and constitutional text proclaiming the United States to be a "Republican Form of Government" is a deeply anti-republican embrace of inequality that throughout American history has served to trigger and inflame racial divisions and animosity.

Seventeenth-century English theorists considered economic equality to be the central predicate to republicanism.<sup>8</sup> Economic equality was considered vital to creating the necessary attachment between the governors and the governed because under conditions of economic equality, the governors and governed alike would be impacted the same by laws adopted and rejected. The self-interest of the governors would therefore be married to the public good of the governed, and a system of accountability and trust could be maintained.

The American Constitution's founders denigrated and feared this idealized form of republicanism. When Revolutionary era republicans sought to actualize the theory in the states through their support for economic reforms that would contribute to the economic leveling of society, the elite reached for a national constitution that would advance a bastardized form of republicanism. James Madison, in a speech at the Constitutional Convention, affirmed to the other elites in the room that "we cannot . . . be regarded even at this time, as one homogenous mass, in which everything that affects a part will affect in the same manner the whole."<sup>9</sup> Those participants in the convention therefore needed to develop a frame of government that would protect the economic elite from the redistributive demands of the masses. As Madison expressed:

In framing a system of government which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indignence. . . . [W]hen the number of landholders shall be comparatively small, will not the landed interest be overbalanced in future elections, and unless wisely provided against, what will become of our government?<sup>10</sup>

Madison shared the anti-republican elitism of other members of his class. Rather than constructing an economic and political framework that would better accord with egalitarian republican values, the framers of the U.S. Constitution sought to create one that would reify the extant inequalities. For example, John Adams in his *Defence of the Constitution* posed the following hypothetical to support his opposition to a republican form of government that would provide for political equality:

Suppose a nation, rich and poor, high and low, ten million in number, all assembled together, not more than two million have lands, houses, or any personal property. If all were to decide by a vote of the majority, do you think the eight or nine million who have no property would not think of usurping the

rights of one or two million who have? Debts would be abolished first, taxes laid heavy on the rich, and not at all on the others, and at last a downright equal division of everything be demanded. What would be the consequence of this? The idle, the vicious, the intemperate, would rush into the utmost extravagance of debauchery, sell and spend all their share, and then demand a new division of those who purchased from them.<sup>11</sup>

To avoid these evils, the American degraded form of republicanism not only repudiated government reforms that would contribute to greater economic equality but also sought to establish political barriers against any such reforms in the future. It did so through its embrace of political structures designed to ensure that the governors would hail from a different economic class (“the natural aristocracy”) than most of the governed.<sup>12</sup> No longer would the governors and the governed be impacted in the same way by the laws adopted or rejected. Instead, the governors’ interests would be divorced from the interests of the governed because of differences in the two groups’ economic statuses.

In this American republicanism, the governed had only limited tools by which they could hold their governors accountable. Initially, most could not vote, and by the time the vote was expanded to the many, politics had crystalized into the domain of the elite in which the voice of the marginalized went mostly unheard.<sup>13</sup> The political elite served the economic elite, the economic elite served the political elite, and the politically and economically marginalized suffered the consequences of rising economic inequality throughout American history — a rise that would only occasionally and temporarily be slowed by wars and economic depressions.

In the period surrounding the adoption and ratification of the U.S. Constitution, armed rebellions challenged the unequal products of American republicanism. In Massachusetts, farmers who had gone uncompensated during the war rose up in armed rebellion against state taxes designed to secure from them repayment of public debts owed to the governor’s business associates. The rebellion was suppressed, but the newly elected state legislature suspended the payment of debts and cut taxes.<sup>14</sup> Ultimately, the rebellion served as a critical source of inspiration for America’s natural aristocrats to construct a new national constitutional framework that would better protect their interests.

The resulting new constitutional frame of government did not end the armed rebellions; rather, it provided a clearer target for the economic angst that motivated them. For example, when the new federal government imposed a tax on whiskey that favored large producers over small producers and farmers, the latter rebelled in arms, posing a direct challenge to the federal government’s authority.<sup>15</sup> The federal government ultimately met the challenge and suppressed the rebellion. But it took the rise of racial division and hierarchy to truly redirect the masses’ egalitarian drive against American republicanism.

## **Racial Hierarchy and the Insulation of American Republicanism**

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Many white Americans who had previously rebelled against the inequalities embedded within American republicanism found a new focal point in defending slavery and racial subordination. Although few in the nonslaveholding class economically benefited from slavery (and many in fact suffered against the competition of unfree labor), they benefited enough from the psychological feeling of racial superiority to rebel less against the systems that contributed so much to their own economic disadvantage.<sup>16</sup> The series of armed rebellions

that culminated in the Civil War focused on protecting the racial hierarchy embodied in the brutality of human bondage. When that rebellion's failure resulted in the emancipation of slaves and the parchment protection of civil and political rights for African Americans, arms and violence reemerged as tools for maintaining racial subordination in an unreconstructed America. Many whites who were in the class of the economically oppressed became the racial oppressors in defense of a constitutional system that for decades turned a blind eye to ongoing racial subordination and violations of African Americans' civil and political rights.<sup>17</sup>

America would remain unreconstructed for over a century after the passage of the 13th, 14th, and 15th Amendments. In this period, state actors throughout the United States both sanctioned private armed violence against African Americans and employed in their police forces those who were committed to maintaining racial hierarchy through the use of armed violence when necessary.<sup>18</sup> Many of the white federal, state, and local police officers whom the state authorized to violently use guns to oppress African Americans were the racial and class descendants of those who had once rebelled against the inequalities of American republicanism. The state had not only succeeded in stemming the potential violent threats to American republicanism, it had also effectively mobilized those economically disadvantaged by American republicanism to defend the system against other groups similarly disadvantaged by the economic and political inequalities embedded within the system. Racial division emerged as the protective insulant for the inequalities at the core of American republicanism.

For some white Americans, this racial-economic alignment between economically elite and other white Americans based in white racial supremacy slowly began to break down in the middle of the 20th century. Pressure from the civil rights movement forced the federal government to accede to the movement's demands to enforce the mostly dormant Civil War Amendments. Through pivotal legislation, including the Civil Rights Act of 1964 and the Voting Rights Act of 1965, African Americans gained economic and political power. As a result of those legal protections, African Americans were gradually able to integrate themselves into universities, businesses, professions, and political bodies, thereby exercising more economic and political power than they ever had before. And as they did, parts of the white economic and political elite started to align their interests with those of African Americans.

For a period, the economically oppressed whites who had served as tools of the state in the violent oppression of African Americans found themselves in the political minority in many parts of the country.<sup>19</sup> The ideology of white racial supremacy that had served as the linkage between themselves and the economic elite fell into disfavor in the American mainstream. White racial supremacy continued to be prevalent in America and adherents to that ideology continued to serve on state police forces involved in armed violence against African Americans. But both the ideology and the racial violence that followed from it were subject to more widespread disapprobation in the latter third of the twentieth century than at any other time in American history.

After Barack Obama became the first African American U.S. president, there was a reversal in America's move away from the most blatant forms of racism and white supremacy. The election that put President Obama in the White House brought together an economically diverse coalition of white, Black, and brown Americans behind a political program targeting inequality.<sup>20</sup> That coalition not only voted President Obama into office but gave Democrats a majority in the House and a filibuster-proof majority in the Senate as well.

After the election, Republicans seemed to lack a clear coalitional path back to power in the immediate future — that is, until they turned to the proven tool of mobilizing racial division. Their primary target was the president,

who embodied the multiracial democracy that Republican Party elites convinced their constituents to view as a threat to whites in a demographically changing America.<sup>21</sup>

Unfortunately, enough white Americans bought into the politics of racial fear, leading them to vilify the very Obama policies and programs designed to benefit middle- and working-class Americans alike. Republican politicians stoked racial fears and advanced misleading assertions that the Democrats wanted to take their guns away. In doing so, they constructed a false image of white Americans under siege from a racial minority cabal seeking to take America from them.<sup>22</sup> For many white Americans, the multiracial coalition of Democrats emerged as the tyranny to be feared, against which President Trump provided the first line of defense and guns the last.

## Shifting the Tyrannical Threat

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During the Trump presidency, the real tyranny of American republicanism once again avoided scrutiny. As the president advanced a policy program that favored the wealthy to the relative disadvantage of working-class and poor whites, the latter group's support for him only grew stronger behind his rhetoric of white racial supremacy and racial division. When Trump lost the election in favor of a candidate vowing to even the economic playing field, racial fears moved economically vulnerable whites to engage in armed insurrection against the false tyranny of multiracial democracy. Notably, more than half of those arrested in conjunction with the U.S. Capitol riot had a history of financial trouble and stood to benefit from a policy program focused on economic inequality — yet none of that mattered.<sup>23</sup> And it will not matter to the future decisions of like-minded Americans to engage in armed insurrection against the state, unless and until the politics of racial division can be effectively countered.

One possible means of doing so is shifting the focus from the perceived tyranny of democratic multiracialism to the real tyranny of political and economic inequalities embedded in American republicanism. Such a shift is no easy task. But a step in the right direction involves a concerted and responsive countermobilization effort. White Americans embracing white racial supremacy are propping up leaders and interests that profit from economic and political inequality. Campaigns, candidates, and parties promoting economic and political equality must deeply engage those white Americans in a way that goes beyond shaming and blaming them for voting against their economic interest. It requires accounting for the multiple reasons why white Americans embrace white supremacy beyond mere racism itself and how profiteers of inequality have been able to tap into a psychological need to avoid the bottom of the American racial hierarchy. Ultimately, such deep engagement must be followed up with tangible policies that traceably and fundamentally improve the well-being of Americans on the economic margins.

# Endnotes

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<sup>1</sup> See, e.g., STEPHEN P. HALBROOK, *THE FOUNDERS' SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS* 3 (2008) (underlying the right to bear arms was the philosophy that the people “may wage armed resistance when injustice becomes tyranny”).

<sup>2</sup> SAUL CORNELL, *A WELL-REGULATED MILITIA: THE FOUNDING FATHERS AND THE ORIGINS OF GUN CONTROL IN AMERICA* 40–50 (2006) (describing how the fear of tyranny served as the motivation for the constitutionalization of a right to bear arms); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309, 314 (1991) (identifying as a purpose of the second amendment the prevention of “potential tyranny by a government empowered and perhaps emboldened by a monopoly of force”); Stephen P. Halbrook, *To Bear Arms for Self-Defense: A “Right of the People” or a Privilege of the Few?*, 21 FEDERALIST SOC. REV. 46, 53 (2020), <https://fedsoc.org/commentary/publications/to-bear-arms-for-self-defense-a-right-of-the-people-or-a-privilege-of-the-few> (detailing the post–Civil War threats from southern state efforts to disarm freed slaves in the south); Glenn Harlan Reynolds & Don B. Kates, *The Second Amendment and States’ Rights: A Thought Experiment*, 36 WM. & MARY L. REV. 1737, 1762 (1995) (providing the states’ rights account of the right to bear arms that militia groups embraced in the 1990s); and Adam Winkler, *The Right to Bear Arms Has Mostly Been for White People*, WASH. POST (July 15, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/07/15/the-right-to-bear-arms-has-mostly-been-reserved-for-whites> (describing how Malcolm X and the Black Panthers “interpreted the Second Amendment as providing a right to take up arms against a tyrannical government, which, in their case, meant racist police officers”).

<sup>3</sup> Harlan Ullman, *When Government Becomes Destructive*, HILL (Jan. 13, 2021), <https://thehill.com/opinion/white-house/534144-when-government-becomes-destructive>.

<sup>4</sup> See Justine Sharrock, *Oath Keepers and the Age of Treason*, MOTHER JONES (Mar./Apr. 2010), <https://www.motherjones.com/politics/2010/02/oath-keepers> (detailing the origins of the oath keepers and their relationship to the Tea Party).

<sup>5</sup> See CHRISTOPHER S. PARKER & MATT A. BARRETO, *CHANGE THEY CAN’T BELIEVE IN: THE TEA PARTY AND REACTIONARY POLITICS IN AMERICA* 35–42 (2013) (finding that race rather than principles of limited government is the primary motivator for the Tea Party movement).

<sup>6</sup> See Casey Michel, *How Militias Became the Private Police for White Supremacists*, POLITICO MAG. (Aug. 17, 2017), <https://www.politico.com/magazine/story/2017/08/17/white-supremacists-militias-private-police-215498> (describing the growing alignment between militia groups and white supremacists).

<sup>7</sup> See *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (interpreting the Second Amendment to protect the individual right to bear arms for self-defense).

<sup>8</sup> See, e.g., JAMES HARRINGTON, *THE COMMONWEALTH OF OCEANA* 22 (1656) (theorizing economic equality produced in part through agrarian laws to be foundational to domestic peace and tranquility in a republic).

<sup>9</sup> James Madison, *Convention Debates on the United States Constitution* (June 26, 1787), [https://avalon.law.yale.edu/18th\\_century/debates\\_626.asp#:~:text=In%20framing%20a%20system%20which,equal%20distribution%20of%20its%20blessings](https://avalon.law.yale.edu/18th_century/debates_626.asp#:~:text=In%20framing%20a%20system%20which,equal%20distribution%20of%20its%20blessings).

<sup>10</sup> *Id.*; and 1 MAX FARRAND, ED., *THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, 430–31 (1911).

<sup>11</sup> John Adams, *Defence of the Constitution of Government of the United States of America*, in IV *WORKS OF JOHN ADAMS* 8 (1851).

<sup>12</sup> Brutus, “*Representation Is Merely Nominal—A Mere Burlesque*,” in 2 *THE DEBATE ON THE CONSTITUTION: FEDERALIST AND ANTIFEDERALIST SPEECHES, ARTICLES, AND LETTERS DURING THE STRUGGLE OVER RATIFICATION* 321 (1993) (predicting that the structure of representation at the founding would establish rule by the natural aristocracy).

<sup>13</sup> See MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* 79–81 (2012) (finding that the unique policy preferences of the middle class and the poor have minimal impact on government policy); see generally ALEXANDER KEYSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (2000) (describing the history of group disfranchisement that resulted in the political marginalization of different classes of Americans through the civil rights movement).

<sup>14</sup> See CORNELL, *supra* note 2, at 30–35 (describing Shays’ Rebellion).

<sup>15</sup> *Id.* at 76–79 (describing the Whiskey Rebellion).

<sup>16</sup> See, e.g., ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* 47–48, 263–64 (1995 ed.) (providing a historical account of the degraded economic condition of the white nonslaveholder in the South prior to the Civil War and the racist resistance to the anti-slavery cause).

<sup>17</sup> See generally ROBERT M. GOLDMAN, RECONSTRUCTION AND BLACK SUFFRAGE: LOSING THE VOTE IN REESE AND CRUIKSHANK (2001) (describing the southern white assault on African American rights and the Supreme Court’s unwillingness to enforce the Fourteenth and Fifteenth Amendments to protect the civil and political rights of African Americans).

<sup>18</sup> See generally CLARENCE TAYLOR, FIGHT THE POWER: AFRICAN AMERICANS AND THE LONG HISTORY OF POLICE BRUTALITY IN NEW YORK CITY (2019) (providing a historical case study of police violence directed against African Americans from the 1930s to the present).

<sup>19</sup> Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 525–26 (1980) (describing the divergence between the interests of the white economic elite and poorer whites during the civil rights era).

<sup>20</sup> Ruy Teixeira & John Halpin, *The Obama Coalition in the 2012 Election and Beyond*, CTR. FOR AM. PROGRESS (Dec. 4, 2012), <https://www.americanprogress.org/issues/democracy/reports/2012/12/04/46664/the-obama-coalition-in-the-2012-election-and-beyond> (describing the “multiracial, multiethnic, cross-class coalition” that rallied behind Obama’s agenda of “expand[ing] economic opportunities and personal freedoms for all people”).

<sup>21</sup> See ASHLEY E. JARDINA, WHITE IDENTITY POLITICS 42 (2019) (finding that a “confluence of events, beginning with immigration, combined with demographic changes and the election of Obama, have all served as powerful threats to whites’ dominant status [and] as a result, white identity is now activated and politically relevant”); MICHAEL TESLER, POST-RACIAL OR MOST RACIAL? RACE AND POLITICS IN THE OBAMA ERA 18 (2016) (“[V]irtually all the evidence from the 2008 election shows that Barack Obama’s candidacy polarized presidential vote choice by racial attitudes in 2008 more powerfully than any other presidential election on record.”).

<sup>22</sup> See Jeremy Diamond, *Trump Says Clinton Wants to Abolish the 2nd Amendment*, CNN (May 7, 2016), <https://www.cnn.com/2016/05/07/politics/donald-trump-hillary-clinton-second-amendment> (reporting Donald Trump’s accusation that “Hillary Clinton wants to take your guns away and she wants to abolish the Second Amendment”).

<sup>23</sup> Todd C. Frankel, *A Majority of the People Arrested for Capitol Riot Had a History of Financial Trouble*, WASH. POST (Feb. 10, 2021), <https://www.washingtonpost.com/business/2021/02/10/capitol-insurrectionists-jenna-ryan-financial-problems>.