



LOADED

A DISARMING HISTORY OF THE **SECOND** AMENDMENT

ROXANNE DUNBAR-ORTIZ

CITY LIGHTS BOOKS LOADED

A Disarming History
of the Second Amendment

Roxanne Dunbar-Ortiz



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City Lights Books | San Francisco

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The Open Media Series is edited by Greg Ruggiero.

Cover design by Herb Thornby

Library of Congress Cataloging-in-Publication Data

Names: Dunbar-Ortiz, Roxanne, 1939- author.

Title: Loaded : a disarming history of the Second Amendment /
Roxanne Dunbar
Ortiz.

Description: San Francisco : City Lights Books, [2017] | Includes
bibliographical references and index.

Identifiers: LCCN 2017037851 (print) | LCCN 2017045903 (ebook)
| ISBN 9780872867239 (paperback) | ISBN 9780872867246 (ebook)

Subjects: LCSH: Firearms ownership—United States—History. |
United States.

Constitution. 2nd Amendment—History. | Firearms—Law and
legislation—United States—History. | Firearms and crime—United
States—History. | United States—Militia—History.

Classification: LCC HV7436 (ebook) | LCC HV7436 .D86 2017
(print) | DDC

323.4/3—dc23

LC record available at <https://lcn.loc.gov/2017037851>

City Lights Books are published at the City Lights Bookstore
261 Columbus Avenue, San Francisco, CA 94133

www.citylights.com

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I could never again raise my voice against the violence of the oppressed in the ghettos without having first spoken clearly to the greatest purveyor of violence in the world today—my own government.

—Martin Luther King, Jr., April 4, 1967 speech at
Riverside Church, New York City

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INTRODUCTION

GUN LOVE

In the summer of 1970, while I was living and organizing in New Orleans with a women's study-action group, we discovered that our group had been infiltrated. One of the volunteers who had come to work with our project six months earlier was secretly making detailed reports of our meetings, but with distortions and outright lies, using terms like "extreme," "fanatic," "potentially violent." We were aware that she was a Social Work graduate student at Brandeis University, but had no idea we were the topic of her dissertation or that she was associated with the government-funded Lamberg Center for the Study of Violence. She had also lied to us about her background, claiming that she came from a single-parent family with a working mother in Mobile, Alabama. We had not checked out her history, but it only took one phone call to learn that she came from a wealthy, social register Mobile family. When confronted, she appeared earnestly sorry and tried to convince us that she had been required to report on us in order to continue receiving her stipend, without which she supposedly could not continue her studies at the university.

After her departure, we became caught up in a current of repression and paranoia. One or two or three pale blue New Orleans police cars parked across the street from our building every day. The cops took pictures, and a suspicious, unmarked car with Illinois plates followed us. Older local activists told us the cars' occupants were "red squad" detectives from the Chicago Police Department. We installed a heavy lock on the flimsy wooden door to our run-down building, but we did not feel safe.

After a week of heavy police surveillance, we began receiving telephone calls from a man claiming to be a member of the Ku Klux Klan. The man threatened to burn down our building, and, of course, we didn't trust the police, so we did not report it. Instead, we decided to arm ourselves. We saw it as a practical step, not a political act, something we needed for self-defense in order to continue working, not at all embracing armed struggle, which our group opposed as a strategy for making change in the United States. We knew that law enforcement authorities would think twice about attacking us if they knew we were armed. In reality, we were joining a trend occurring in movement groups across the country at that time, and once armed, our mindsets changed to match the new reality.

Two of us drove across the Lake Ponchartrain Causeway to a gun show that was held weekly in a large tin shed on the Slidell fairgrounds. The pickups and vans of traveling gun dealers, with license plates from a dozen states, were parked around the site; I had a cousin in Oklahoma who made his living selling guns that way. Inside the shed, the scene was festive, like any ordinary weekend craft fair or

flea market. There were children running and playing, older women sitting on folding chairs visiting with each other, younger women clutching infants and staying close to their men, vendors hawking wares and bargaining, Confederate battle flags waving. Everyone was white. We had no trouble finding the used 9mm automatics we sought. We chose three used Brownings for \$100 each, clips included, and a case of military surplus ammunition.

“We’re looking for a shotgun, too,” I said to the dealer.

“For protection or duck huntin’?” the vendor asked.

“Protection.”

He offered us a Mossberg 500 12-gauge police special riot gun, with a short barrel.

“Isn’t it illegal to have this weapon?” I asked.

“Ain’t a sawed-off, legal as taxes.”

We bought it, along with some buckshot shells, all for cash. No paperwork required. The man who sold us the guns also had for sale a number of swastikas in various forms—pins, arm patches, photographs.

We went to the Tulane Law Library to research Louisiana gun laws and found that there were no gun laws in Louisiana. The only restriction was against building an arsenal—defined as more than twenty automatic or semiautomatic weapons—for illegal purposes. Carrying concealed and loaded weapons within the state with no registration was entirely legal. Federal laws prohibited transporting firearms across state lines for sale or to commit a crime, possession of stolen weapons, removal of serial numbers, and various foreign weapons, such as the AK-47.

We kept the loaded shotgun at the door, and we joined

an indoor shooting gallery at Lafayette Square. We practiced with the Brownings every day. Shotguns weren't allowed at the shooting club, but a shotgun took no skill to fire, only nerve and a steady shoulder. Soon after, we acquired rifles and joined a rifle club in the West Bank area. We loaded the bed of our station wagon with four M-1s, a Winchester .22, a .30-30 with a scope, and the riot shotgun, all purchased at the gun shows in Slidell. We paid for membership in the National Rifle Association and affixed their red and black emblem to the back window of the car. Cops were known to not stop vehicles with the stickers, although that probably didn't work for African Americans.

We acquired more small arms and went daily to the Lafayette Square pistol shooting gallery to practice. In addition to the Brownings, we now owned a snub-nosed Smith & Wesson .357, an S&W long-barrel .38, a Walther PPK 9mm, a Colt .45, and a Beretta .32 automatic. We'd purchased all the weapons legally and anonymously at gun shows. We soon had a closet full of guns, plus our new shotgun reloading equipment and a 100-pound bag of gunpowder.

We spent hours every day breaking down, cleaning, oiling, and polishing our weapons. We took turns loading shotgun shells. We had fallen under the spell of guns. Our relationship to them had become a kind of passion that was inappropriate to our political objectives, and it ended up distorting and determining them.

Knowing that the FBI intercepted our mail, and wanting to inform authorities that we were fully armed, I wrote to my father about my new hobbies—guns and gunsmithing.

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Ironically, it seemed the first thing I'd done in my life that he really understood and supported.

“When you can shoot a squirrel in the eye with a .22 at forty yards on the first shot, you'll be a shooter,” he wrote.

He must have been pleasantly surprised, because he knew that as a child I was terrified of his Remington .22 rifle and shotgun; I got it from my mother, who hated guns. I never asked her why, but she put the fear and hate in my sister and me. Notwithstanding her objections, my two older brothers followed our father. At adolescence, each one started hunting and brought home game, which was our major meat item. We were poor, and ammunition was expensive, so they all had to be good shots, practicing on bottles and cans with BB guns for years before they handled real firearms. It was all for hunting, practical, but there was that other element I could detect but not explain, until I fell in love with guns.

Gun-love can be akin to non-chemical addictions like gambling or hoarding, either of which can have devastating effects, mainly economic, but murder, suicide, accidental death, and mass shootings result only from guns. Guns are made for killing, and while nearly anything, including human hands, may be used to kill, only the gun is created for the specific purpose of killing a living creature. The sheer numbers of guns in circulation, and the loosening of regulations on handguns especially, facilitate deadly spur-of-the-moment reflex acts. *The Trace*, a nonprofit news organization focused on gun violence found that cases of road rage involving a firearm have more than doubled in two years, from 247 in 2014 to 620 in 2016. Research from

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Gunwatch suggests that “more guns in more cars may simply equate to more road rage incidents in which a gun was brandished, or fired.”¹

At the time of my gun-love, which lasted about two years in the early 1970s, approximately half of all homes in the United States contained a weapon—112 million in total—but nearly a half century later, only a third of households contained firearms, which sounds like progress.² Yet the number of guns privately owned in the United States had reached more than 300 million, a number equal to the total population. The reality is that in the early twenty-first century, each gun owner possessed an average of eight guns.

It seems that our group, and others, during the years that the Vietnam War was playing out live on our televisions, were in the vanguard of a trend of owning multiple weapons. Army and Navy surplus clothing accompanied the trend, which was soon replaced by sweatshop-produced camouflage garb to meet consumer demand. Something else was also at work, which will be probed in the following chapters.

In 1970, at the time of my own gun phase, the then-celebrated U.S. historian Richard Hofstadter coined the term *gun culture*. “Many otherwise intelligent Americans cling with pathetic stubbornness to the notion that the people’s right to bear arms is the greatest protection of their individual rights and a firm safeguard of democracy—without being in the slightest perturbed by the fact that no other democracy in the world observes any such ‘right’ and that in some democracies in which citizens’ rights are rather better

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protected than in ours, such as England and the Scandinavian countries, our arms control policies would be considered laughable.”³

Hofstadter narrates the historical roots that might explain the violence wrought by civilian gun use, but argues that other European countries were surely as violent. In one brief paragraph, he dismisses the Second Amendment as having any validity in constitutional law: “By its inclusion in the Bill of Rights, the right to bear arms thus gained permanent sanction in the nation, but it came to be regarded as an item on the basic list of guarantees of individual liberties. Plainly it was not meant as such. The right to bear arms was a collective, not an individual, right, closely linked to the civic need for ‘a well regulated Militia.’ It was, in effect, a promise that Congress would not be able to bar the states from doing whatever was necessary to maintain well-regulated militias.”⁴

Did Hofstadter believe that these astute “founding fathers” mistakenly threw in the Second Amendment to a Bill of Rights that was about individual rights? Hofstadter does note, without discussion, that the first draft of the Virginia Constitution of 1776—Thomas Jefferson’s work, which preceded the writing of the U.S. Constitution by nine years—included the individual right to bear arms, stating: “No freeman shall ever be debarred the use of arms.” Did Jefferson make a mistake in Virginia, and then contribute to another mistake, making the right to bear arms an individual right in the U.S. Constitution? Hofstadter attributes these “flaws” in Jefferson and the other founders to “reverting to one of the genial fictions . . . the ancient Saxon militia.”

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Killing, looting, burning, raping, and terrorizing Indians were traditions in each of the colonies long before the Constitutional Convention. “Militias,” as in government-controlled units, were institutionalized by Article I, Section 8, Clause 15 of the U.S. Constitution, and were used to officially invade and occupy Native land. But the Second Amendment (like the other ten amendments) enshrined an individual right. The Second Amendment’s language specifically gave individuals and families the right to form volunteer militias to attack Indians and take their land.

Asserting this scattershot guess about the origin of the Second Amendment, Hofstadter offers no tie-in between this genealogy and the astronomical number of guns possessed in this country. So he settles on the National Rifle Association: “American legislators have been inordinately responsive to the tremendous lobby maintained by the National Rifle Association, in tandem with gunmakers and importers, military sympathizers, and far-right organizations. A nation that could not devise a system of gun control after its experiences of the 1960s [referring to the assassinations of President John F. Kennedy, Martin Luther King Jr., and Robert Kennedy], and at a moment of profound popular revulsion against guns, is not likely to get such a system in the calculable future. One must wonder how grave a domestic gun catastrophe would have to be in order to persuade us. How far must things go?”

Hofstadter’s argument is important, not just because he was an influential liberal historian of the United States who penned the classic 1964 essay “The Paranoid Style in American Politics,” but because his arguments about guns in 1970 have been used and repeated, like a mantra, ever

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since. Then, as now, gun-rights advocates and gun-control advocates have little basis for communicating. The great divide reflects, rather remarkably, the persistence of pro-gun narratives that have morphed as times changed over two centuries, from westward expansion, industrialization, and urbanization, to the advent of movies, television, and the Internet. Gun ownership appears irrational if not insane to gun-control advocates, while gun lovers rely on the Second Amendment, because they have no other argument and don't wish to admit, perhaps even to themselves, what the Second Amendment signifies. Neither party seems to have any idea what the Second Amendment was originally about, although many who "cling to their guns"⁵ intuit why.

This blind spot, as well as the racism and erasure of history, can be seen in the following example. After retiring, the late Warren E. Burger, who served as the fifteenth chief justice of the United States from 1969 to 1986, wrote a long and impassioned plea for gun control, arguing that the Second Amendment was dated and no longer valid. Significantly, he published his commentary in *Parade* magazine, not a law journal. "Let's look at the history," Burger wrote. "First, many of the 3.5 million people living in the 13 original Colonies depended on wild game for food, and a good many of them required firearms for their defense from marauding Indians."⁶

There is no doubt that the United States is exceptional among wealthy nations—and even many poorer nations—in legal permissiveness about gun ownership, as well as in gun deaths per capita. By 2016, nearly all the states allowed open carry for firearms with various limitations regarding

licensing, loaded or unloaded, weapons training or not, gun types, and so on. The holdouts not allowing open carry were California, Illinois, Florida, and the District of Columbia. Massachusetts, Minnesota, and New Jersey allow open carry for handguns but prohibit open carry of long guns, while New York and South Carolina allow open carry for long guns but prohibit open carry for handguns.⁷

Total gun deaths in the United States average around 37,000 a year, with two-thirds of those deaths being suicides, leaving approximately 12,000 homicides, a thousand of those at the hands of the police.⁸ Mass shootings—ones that leave four or more people wounded or dead—now occur in the United States, on average, at the pace of one or more *per day*.⁹ Disturbing as that fact is, mass shootings currently account for only 2 percent of gun killings annually.¹⁰ The number of gun deaths—37,000—is roughly equal to death-by-vehicle incidents in the United States per year. To lawfully drive a vehicle, a person must acquire and maintain a driver's license and drive a car that is registered and insured. A car owner may be fined for driving with a visible safety flaw on the vehicle, such as a taillight out, and a driver may be stopped at any time by authorities and can easily lose the right to drive, among other restrictions. The high rate of traffic fatalities begs the question of how effective gun restrictions would be. Heavy drinking while driving causes nearly three times as many deaths as guns each year in the United States, despite restrictions on the buying, selling, and public use of alcohol. It is necessary to look elsewhere for what causes firearms proliferation and gun deaths; it is necessary to seek out the historical roots.

With the election of Bill Clinton in 1992, the Democratic Party platform for the first time included gun control, while the Republican Party platform opposed gun control, proclaiming: “We note that those who seek to disarm citizens in their homes are the same liberals who tried to disarm our Nation during the Cold War and are today seeking to cut our national defense below safe levels.”¹¹ In the previous three presidential elections, neither the Republican Party nor Democratic Party platforms had mentioned guns at all.

With the Democrats in control of the White House and Congress in 1993, there was no trouble passing a gun-control bill requiring background checks, commonly called the “Brady Bill” after Jim Brady, who was wounded and permanently disabled during the shooting of President Ronald Reagan in 1981. Brady’s wife, Sarah, had campaigned tirelessly for background checks, which did result in a bill that was introduced in Congress in 1987, but the measure lingered without action until it was signed into law in 1993. The following year, Congress passed a ban on assault weapons—but in 2004, when the statute was up for renewal, it was allowed to lapse, as it had proved largely ineffectual and unenforceable. Georgetown University law professor David Cole writes: “It is remarkably difficult to define an ‘assault weapon.’ They are semiautomatic, which means they fire a new bullet with each trigger pull, while automatically reloading. But most guns made today are semiautomatic, so the ban on assault weapons focused on the cosmetic military appearance of certain guns, and was easily evaded by alterations in design. Moreover, while gun-rights proponents are hard-pressed to offer a legitimate reason for civilians to own

assault weapons, they are used in a very small proportion of gun crimes. Most crimes involve ordinary handguns.”¹²

Professor Cole finds a common thread of arguments condemning the National Rifle Association and does not question the organization’s powerful role, which relies on a strong electoral base throughout the country, but issues this caution:

Gun control advocates will not make progress until they recognize that the NRA’s power lies in the appeal of its ideas, its political engagement and acumen, and the intense commitments of its members. Until gun control advocates can match these features, they are unlikely to make much progress. That the gun industry may have helped construct modern gun culture does not negate the very real power that culture holds today.¹³

Indeed, the N.R.A. has around 5 million dues-paying members, and many millions more who support N.R.A. calls for legislative action. The N.R.A. annual budget is \$300 million, only 10 percent of which goes to direct lobbying. The N.R.A. does little lobbying, but rather follows and grades every political candidate on gun rights and calls for supporting or campaigning against the candidate accordingly; it focuses on state legislators, who make most gun laws; gun-rights activists tend to focus on Congress. The N.R.A. has active affiliates in many communities in every state, with an average membership of 100,000 per state.

While Cole recommends that we look for the reasons

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why guns have such strong appeal in the United States in comparison with other societies, he does not explore those reasons. That is the purpose of this book. However, instead of dismissing the Second Amendment as antiquated and irrelevant, or as not actually meaning what it says, I argue that understanding the *purpose* of the Second Amendment is key to understanding the gun culture of the United States, and possibly the key to a new consciousness about the lingering effects of settler-colonialism and white nationalism.

The Second Amendment of the United States Constitution is a simple statement: *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 National Rifle Association and its constituency argue that the Second Amendment guarantees the right for every individual to bear arms, while gun-control advocates maintain, as did Hofstadter, that the Second Amendment is about states continuing to have their own militias—emphasizing the language of “well regulated”—and that this is manifest in the existing National Guard.¹⁴

However, the respective state militias were already authorized by the U.S. Constitution when the amendment was added. The Constitution recognized the existing colonial, now state, militias that formed before and during the War for Independence, and mandated to them vital roles to play: “to execute the Laws of the Union, suppress Insurrections and repel Invasion” (Article I, Section 8, Clause 15). The President of the United States is the commander-in-chief of the state militias “when called into the actual Service of the United States” (Article II, Section 2).¹⁵

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Given that what are now the states' National Guards are descended from state militias, which themselves were repurposed from colonial militias, why was the Second Amendment added as one of the enumerated rights of man in the Bill of Rights? Unequivocally, the Second Amendment, along with the other nine amendments, constituted individual rights, and the militias referenced are voluntary, not state militias.

One argument that runs through historical accounts of the thinking behind the Second Amendment is the one Hofstadter settled on, that Thomas Jefferson romanticized old English-Saxon rural militias, idealizing his "yeoman" farmers as fiercely independent and rightly fearing Big Brother government, insisting on settlers' right to overthrow oppressive regimes. But, what colonists considered oppressive was any restriction that British authorities put on them in regard to obtaining land. In the instances of Bacon's Rebellion in 1676,¹⁶ the War of Independence itself, and many cases in between, the settlers' complaint was the refusal of the British colonial authorities to allow them to seize Native land peripheral to the colonies, which could lead to unnecessary and expensive war. Historian Charles Sellers wrote: "Cheap land, held absolutely under the seaboard market's capitalist conception of property, swelled patriarchal honor to heroic dimensions in rural America. The father's authority rested on his legal title to the family land. Where European peasant landholdings were usually encumbered with obligations to some elite, the American farmer held in fee simple. Supreme in his domain, he was beyond interference by any earthly power.

Except for a modest tax and an occasional half-day of neighborhood roadwork or carousing militia drill, he owed no obligations of labor, money, service, or (finally) religious fealty to any person or entity. Fee-simple land, the augmenting theater of the patriarchal persona, sustained his honor and untrammelled will. This extraordinary independence inflated American farmers' conception of their class far above peasantry.¹⁷

In the pages ahead I explore various ways in which a dangerous gun culture has emerged in the United States, one that has entitled white nationalism, racialized dominance, and social control through violence. This book is a history of the Second Amendment's connection to that culture, and a reflection on how the violence it has spawned has deeply influenced the character of the United States.

Chapter One provides the historical context for understanding the Second Amendment's role in allowing settlers to control Black populations—enslaved and free—and the total war that settlers were waging against Indigenous Peoples to dispossess them of their land.

Chapter Two examines the fact that the Second Amendment granted rights to individual settlers to combat Native communities, and how doing so was part of a “savage war” that aided the territorial expansion of the United States throughout the continent and into the Caribbean and Pacific.

Chapter Three discusses the provisions of the Second Amendment that mandated every citizen, slaver or not, to capture and return people caught escaping from slavery; and

how the amendment gave slavers the power to organize voluntary militias to help enforce slavery.

Chapter Four explores the role of Missouri pro-slavery guerrillas, most notably William Quantrill's "raiders," among whom were Jesse James and his brother Frank, and the Younger brothers, ruthless mass murderers who became iconic national celebrities and who were often portrayed as Robin Hood outlaws. Their use of pistols while riding became the hallmark of subsequent Wild West narratives that commercialized gun violence through pulp fiction, Hollywood films, television programming, and toys that led generations of children to play "cowboys and Indians" with imitation six-shooters.

Chapter Five explores the manner in which mythology surrounding "the hunter" has served to mask the historical purpose of the Second Amendment, and how narratives about settlers on unceded Indian land, like those about Daniel Boone, romanticized notions about gun use at a time when the United States was committing genocide against Native Americans.

Chapter Six explores the implications of the way that many in the United States see the Constitution as a sacred text from which flows the equally sacred and inviolable right to bear arms.

Chapter Seven traces the increase of mass shootings in the United States and the parallel rise of organized gun-rights advocacy as a reaction to national movements for civil rights and Black Power.

Chapter Eight tracks the revival and rise of white nationalist groups and militias.

Chapter Nine explores resistance to understanding the historical connections between the Second Amendment and white nationalism. The linkage is strongly resisted by anti-gun activists, including public officials, and simply denied by most pro-gun advocates.

As a whole, this book attempts to confront fundamental aspects of U.S. history that continue to be too often overlooked or denied, and which can be traced back to the original meaning and intention of the Second Amendment. It aims to confront the violence implicit in U.S. society from the moment of its conception, and the various narratives and forces that have taken shape to deny the consequences of that violence by popularizing and commercializing it. The book also aims to acknowledge the families, traditions, memories, and resistance of Indigenous People and African Americans whose lands and lives the Second Amendment was forged to take.

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