

7-2022

## Firearms and Protest: Lessons from the Black Tradition of Arms

Nicholas J. Johnson

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### Recommended Citation

Johnson, Nicholas J., "Firearms and Protest: Lessons from the Black Tradition of Arms" (2022).

*Connecticut Law Review*. 548.

[https://opencommons.uconn.edu/law\\_review/548](https://opencommons.uconn.edu/law_review/548)

# CONNECTICUT LAW REVIEW

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VOLUME 54

JULY 2022

NUMBER 4

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## Essay

### Firearms and Protest: Lessons from the Black Tradition of Arms

NICHOLAS J. JOHNSON

*Kenosha was no aberration. Our history is filled with episodes of righteous protest boiling over into violence. Where violence is imminent, our traditions and laws allow innocents to use corresponding violence in self-defense. This arrangement is imperfect and demands hard thinking about how to refine and possibly improve it. One source of lessons toward this end is the experience of Black freedom fighters who navigated turmoil that dwarfs our current troubles. The principles that guided their struggle help frame a sphere of legitimate gun use during periods of civil unrest. These principles emerge from a considered philosophy and practice of arms developed by a people who have a long history of confronting violent threats that the state has been unable or unwilling to stop.*

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# Firearms and Protest: Lessons from the Black Tradition of Arms

NICHOLAS J. JOHNSON \*

## INTRODUCTION

In the summer of 1959, Roy Wilkins, Executive Secretary of the NAACP, articulated the mature self-defense policy of the organization and the broader Freedom Movement.<sup>1</sup> The icons of the Movement and legions of unheralded heroes rejected political violence, but dedicated time, talent, and treasure to upholding the rights of Black people who had used guns to defend themselves and their families against imminent harm.<sup>2</sup>

Wilkins was in a running conflict with Monroe, North Carolina chapter president Robert Williams, who had responded to one of a string of racist affronts with rhetoric that many considered advocacy of political violence.<sup>3</sup> Wilkins warned that Williams had violated the long-weathered principles and policies of the organization.<sup>4</sup> Martin Luther King, Jr. echoed Wilkins in a widely circulated exchange of essays with Williams, where King endorsed individual self-defense as entirely consistent with the Movement but emphatically rejected the “incalculable perils” of political violence.<sup>5</sup>

The framers of this policy had firsthand experience in the space where individuals must resist violence in kind or surrender to the fickle mercy of mobs. As Movement leaders, their task might have been easier under a practice of pure nonviolence. But, even with the Freedom Movement at stake, they did not expect individuals to surrender the prerogative of armed self-defense.<sup>6</sup> Indeed, they continuously deployed scarce resources to uphold a bounded principle of armed self-defense against imminent threats.<sup>7</sup>

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<sup>1</sup> NICHOLAS JOHNSON, *NEGROES AND THE GUN: THE BLACK TRADITION OF ARMS* 29 (2014). Starting as Assistant Secretary in 1931, Wilkins spent the rest of his working life at the NAACP. ROY WILKINS & TOM MATHEWS, *STANDING FAST: THE AUTOBIOGRAPHY OF ROY WILKINS* 113 (1982).

<sup>2</sup> JOHNSON, *supra* note 1, at 24.

<sup>3</sup> *Id.* at 26.

<sup>4</sup> TIMOTHY B. TYSON, *RADIO FREE DIXIE: ROBERT F. WILLIAMS & THE ROOTS OF BLACK POWER* 163 (1999).

<sup>5</sup> JOHNSON, *supra* note 1, at 27.

<sup>6</sup> *Id.* at 24–25.

<sup>7</sup> The Freedom Movement was not monolithic, and the framing of this policy was looser than would occur in a more rigid, formal structure. But, fundamentally, there was wide agreement that individuals facing imminent threats must have the choice to resist violence in kind. *Id.* at 27–29.

This constrained philosophy of arms advanced the Freedom Movement through generations of social upheaval.<sup>8</sup> Today, as we navigate the turmoil of 2020 and beyond, the Freedom Movement offers enduring lessons about the right to arms in the midst of protest and civil unrest. The experiences and analyses that inform the Freedom Movement Defense Policy offer a body of richly detailed precedents and guideposts for navigating the spectrum of views about whether civil unrest should weaken or strengthen the case for private arms in the modern context.

The self-defense policy that emerged from the Freedom Movement compels our attention for many reasons. Its framers wrestled with and balanced the dangers of the right to arms in a social and political tinderbox.<sup>9</sup> The turmoil through which they navigated the tension between individual self-defense and collective goals was more horrific and politically vexing than anything we currently face. They confronted firsthand the policy alternatives over a period of decades. They agonized over countless episodes of defenseless victims hunted, harried, lynched, and burned, and weighed those results against the alternative of armed resistance.

Out of these circumstances, they framed a policy of bounded resistance that rests comfortably on the principles of the Reconstruction Constitution.<sup>10</sup> This approach presents a right to arms that focuses on individual self-defense and tables the troublesome, undertheorized issue of violent political resistance imbedded in the right to arms of the eighteenth century.

This Essay presents the Freedom Movement Defense Policy as a model for thinking about bearing private arms during periods of social unrest in the twenty-first century. It proceeds in three Parts. Part I demonstrates that the central framers of the policy were optimal agents with unmatched empathy for the concerns of those who are most vulnerable during periods of civil unrest. Part II shows how the policy they framed was honed through more than half a century of turmoil to yield a time-tested guide for our modern conversation. Part III presents the broad normative appeal of the policy as a modern guidepost. It proceeds in four sections. Section A demonstrates the serious and empathetic consideration of the imbedded alternatives of submission or resistance. Section B illustrates the delineation of clear boundaries surrounding forbidden political violence. Section C shows how the policy recognizes and accommodates a contestable zone of highly fact-dependent claims to legitimate self-defense. Section D shows that the policy rests on sound practical constitutional and common law themes.

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<sup>8</sup> See *infra* Part II.

<sup>9</sup> See *infra* Part II.

<sup>10</sup> See *infra* Part III.D.

## I. EMPATHETIC FRAMERS

As Roy Wilkins administered the mature self-defense policy of the Black Freedom Movement through the tumultuous 1960s, he evoked the moral authority of NAACP icons who were steeled in the crucible of the 1906 Atlanta Race Riot. Walter White (future NAACP Executive Secretary), W.E.B. Du Bois (future Editor of the NAACP flagship magazine, *The Crisis*) and Dr. Louis Wright (future NAACP Chairman) all survived the terror, each of them clutching guns.<sup>11</sup>

These trailblazers were not detached policy makers debating what was best for others. Status, education, and relative affluence did not shield them from the risks faced by their constituents, and, consequently their agency on firearms policy is unusually compelling. Their empathy for the self-defense interests of victims of imminent violence was manifest. They faced mob violence and chose the gun for protection against it. And they framed a policy that respected the prerogative of others to make the same choice.

One source of knowledge about Dr. Louis Wright's armed stand in Atlanta is Roy Wilkins's reverent account. "[H]e had been through the Atlanta race riot of 1906, and . . . watched through the darkened windows of his home, gun in hand."<sup>12</sup> Others confirm that Wright "was forced to defend himself and his family when his stepfather put a Winchester rifle in his hand, positioned him in the front of the house, and instructed [him] to shoot anyone who came through the front gate."<sup>13</sup> One of the Wright's white neighbors helped them escape the gunfire and lynching threats.<sup>14</sup>

These accounts provide a basic appreciation of Wright's experience. But one is left craving details about Wright's thoughts and fears, and how the terror impacted him. Walter White, in contrast, provided a vivid firsthand account of both the mobbing and its influence on him.<sup>15</sup> Indeed, he presents resistance against the mob as the central formative moment in his life.

Walter White looked white.<sup>16</sup> He could have passed, as many did, onto the vastly smoother path of life as a white man. In the first chapter of his autobiography, titled *I Learn What I Am*, White writes candidly about the consequences of embracing his African heritage and the plain option of avoiding it.<sup>17</sup> He describes the clear advantage of white skin,<sup>18</sup> decades before the term "white privilege" was coined, and how every year thousands

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<sup>11</sup> WILKINS & MATHEWS, *supra* note 1, at 90, 165.

<sup>12</sup> *Id.* at 165. Dr. Louis T. Wright was the first Black chairman of the NAACP's Board of Directors and a graduate of Harvard Medical School. *Id.* at 165–66.

<sup>13</sup> P. Preston Reynolds, *Dr. Louis T. Wright and the NAACP: Pioneers in Hospital Racial Integration*, 90 AM. J. PUB. HEALTH 883, 884 (2000).

<sup>14</sup> *Id.*

<sup>15</sup> WALTER WHITE, *A MAN CALLED WHITE: THE AUTOBIOGRAPHY OF WALTER WHITE* 3–12 (1948).

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* ("There is magic in a white skin; there is tragedy, loneliness, exile, in a black skin.")

of light-skinned blacks succumbed to the appeal.<sup>19</sup> White rejected the option to pass for white, and the mob attack that cemented his Black identity epitomized the policy of armed self-defense that the NAACP would press for decades.<sup>20</sup>

The violence that left Walter White and his father, George, clutching guns and preparing to fire on a looming mob boiled over from a fraught Georgia gubernatorial campaign where the opponents were trying to “out nigger” each other.<sup>21</sup> Competition between the Atlanta newspapers added fuel. The upstart *Atlanta Journal* trolled for readership with lurid, specious reporting of Black men raping white women.<sup>22</sup>

On September 22, 1906, rumors of impending violence swirled.<sup>23</sup> Walter was assisting on his father’s mail route, driving the little horse-drawn collection cart.<sup>24</sup> Walter’s mother had urged her husband to leave Walter home.<sup>25</sup> But George was dismissive.<sup>26</sup> He would soon regret it. Near the middle of the route, they heard the “roar” of a mob.<sup>27</sup> The target was a lame bootblack who struggled on one good leg as the mob descended with “clubs and fists.”<sup>28</sup> Its bloody business done, the mob moved on, and “[t]he body with the withered foot lay dead in a pool of blood on the street.”<sup>29</sup>

Light skin kept Walter and his father safe during this first brush with the mob.<sup>30</sup> After stomping the bootblack, the mob turned in pursuit of another Black target who was sprinting in the other direction.<sup>31</sup> A few blocks farther, Walter nearly collided with a horse-drawn hearse carrying three fleeing

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<sup>19</sup> *Id.* (“Every year approximately twelve thousand white-skinned Negroes disappear—people whose absence cannot be explained by death or emigration.”).

<sup>20</sup> Discussing the moment that confirmed his identity, White explained:

I know the night when, in terror and bitterness of soul, I discovered that I was set apart by the pigmentation of my skin (invisible though it was in my case) and the moment at which I decided that I would infinitely rather be what I was than, through taking advantage of the way of escape that was open to me, be one of the race which had forced the decision upon me.

*Id.* at 4–5.

<sup>21</sup> See, e.g., W. E. Burghardt Du Bois, *From the Point of View of the Negroes*, in 11 *WORLD TO-DAY* 1173, 1173–75 (1906) [hereinafter Du Bois, *The Tragedy at Atlanta*]; see generally REBECCA BURNS, *RAGE IN THE GATE CITY: THE STORY OF THE 1906 ATLANTA RACE RIOT* 18–22 (rev. ed. 2009).

<sup>22</sup> See, e.g., Du Bois, *The Tragedy at Atlanta*, *supra* note 21, at 1173.

<sup>23</sup> WHITE, *supra* note 15, at 5; Dalton Windham, “*The White Ribbon Army*”: *Politics and Race Relations of the Georgia Woman’s Christian Temperance Union from 1880 to 1907*, 24 *J.S. LEGAL HIST.* 151, 175 (2016).

<sup>24</sup> WHITE, *supra* note 15, at 6, 9.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Blacks.<sup>32</sup> On the next turn they saw a familiar woman, the cook from a local hotel, running for her life with the mob closing in.<sup>33</sup> George reached down and hauled the woman into the cart, and Walter lashed the horse to a gallop.<sup>34</sup>

The next morning, as Sunday church bells tolled, George yielded to his wife and brought guns into the house.<sup>35</sup> He had resisted, White reports, “reluctant even in those circumstances to violate the law, but he at last gave in at Mother’s insistence.”<sup>36</sup>

That night, Walter and his father crouched in the parlor, lights out, all senses tuned for a fight.<sup>37</sup> Around midnight they heard the mob.<sup>38</sup> Then they saw torches.<sup>39</sup> One of the ring leaders, the son of their longtime grocer, targeted the White’s home as “too nice for a nigger to live in,” and the mob surged.<sup>40</sup> Walter remembered distinctly his father’s words and icy tone: “Son, don’t shoot until the first man puts his foot on the lawn and then—don’t you miss!”<sup>41</sup>

As thirteen-year-old Walter wondered what it would feel like to kill a man a volley of shots came from farther down the road.<sup>42</sup> Some of George’s friends had set up defenses in a neighboring building.<sup>43</sup> Their first shots drew the mob away from the White’s home,<sup>44</sup> and the second volley scattered the mob into retreat.<sup>45</sup>

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 10.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* This statement about the illegality of acquiring a firearm is illuminated by Lugenia Burns Hope, wife of the first Black president of Morehouse College, John Hope. She confirmed that “Negroes [were] not able to buy fire arms for months before the Riot.” JACQUELINE ANNE ROUSE, LUGENIA BURNS HOPE: BLACK SOUTHERN REFORMER 42 (1989). But as the violence spread, the Hopes and many others defied the racist arms restrictions. *See id.* at 43 (“Sunday night John Hope patrolled the [Morehouse College] campus . . . [A] man[,] U.S. Army on furlough[,] came over and gave Mr. Hope a gun & cartridge belt. . . . Friends had sent out of town for fire arms. . . . It was said they came in the city in coffins. However, we had the fire arms and even though the city was under martial law, the Negroes succeeded in getting the fire arms to the people who needed them. Some were carried in soiled laundry.”)

Du Bois recorded another version of the effort to disarm Blacks, which suggests both official efforts and unofficial practice by retail sellers. As the prospect of violence escalated, “one hardware firm alone sold \$16,000 worth of arms to white people, while every effort was made to disarm Negroes.” Du Bois, *The Tragedy at Atlanta*, *supra* note 21, at 1173.

<sup>37</sup> WHITE, *supra* note 15, at 10–11.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5, 12.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

Decades later, Walter White described this episode as a defining moment of his life.<sup>46</sup> It cemented his identity as a Black man.<sup>47</sup> And it was an object lesson about the prerogatives of free people whom the state cannot or will not protect.<sup>48</sup>

Walter White would rise to do mighty work at the NAACP. He would be instrumental in cases defending Black people who deployed guns against racist violence—people like Walter and his family, for whom firearms proved to be vital tools for survival in hostile environments.

The Atlanta Race Riot imprinted Walter White through the filter of adolescence.<sup>49</sup> W.E.B. Du Bois, on the other hand, was thirty-eight years old in 1906.<sup>50</sup> His work building the NAACP magazine, *The Crisis*, into the voice and conscience of Black America was still ahead.<sup>51</sup> But he had already earned a Harvard Ph.D. and a professorship at Atlanta University.<sup>52</sup> His keen intellect and view of the world were well formed.<sup>53</sup>

By 1906, Du Bois already had faced the fact that his academic tools were inadequate to deal with the challenges of racism in the United States.<sup>54</sup> The pivotal lesson occurred just after he arrived in Atlanta.<sup>55</sup> In the spring of 1899, a Black sharecropper named Sam Hose was gruesomely lynched.<sup>56</sup> Du Bois responded like a scholar. He was headed to the office of the *Atlanta Constitution* to submit his critical essay when he learned that souvenirs of the lynching—Sam Hose’s knuckles—were on display in a jar at a local store.<sup>57</sup> In that moment, Du Bois concluded that the staid tools of the academic were inadequate to the task ahead. “Two considerations thereafter

<sup>46</sup> *Id.* at 4–5.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 11.

<sup>49</sup> *Id.* at 5.

<sup>50</sup> Derrick P. Alridge, *W.E.B. Du Bois in Georgia*, NEW GA. ENCYCL., <https://www.georgiaencyclopedia.org/articles/history-archaeology/w-e-b-du-bois-georgia> (July 21, 2020).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Du Bois attended Fisk University in Nashville, Tennessee and graduated in 1888 with a B.A. degree. *Id.* He enrolled at Harvard University in the fall of 1888, graduated cum laude with a second B.A. degree in 1890, and earned an M.A. from Harvard a year later. *Id.* After his time at Harvard, Du Bois studied at the University of Berlin in Germany. *Id.* When Du Bois returned to the United States in 1894, he began teaching at Wilberforce University in Ohio and earned his Ph.D. from Harvard in 1896. His dissertation was on the African slave trade. *Id.*

<sup>54</sup> W.E.B. DU BOIS, *THE AUTOBIOGRAPHY OF W.E.B. DU BOIS: A SOLILOQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY* 212 (1968) [hereinafter DU BOIS, *AUTOBIOGRAPHY*].

<sup>55</sup> Dominic J. Capeci Jr. & Jack C. Knight, *Reckoning with Violence: W.E.B. Du Bois and the 1906 Atlanta Race Riot*, 62 J.S. HIST. 727, 728, 731 (1996).

<sup>56</sup> *Id.* at 731.

<sup>57</sup> *Id.* at 732; DU BOIS, *AUTOBIOGRAPHY*, *supra* note 54, at 212. After the mob stabbed, shot, and burned Sam Hose, some waited around for the remains to cool in order to collect trophies. For an example of the general phenomenon of trophy taking, see Harvey Young, *The Black Body as Souvenir in American Lynching*, 57 THEATRE J. 639 (2005).

broke in upon my work and eventually disrupted it,” he wrote.<sup>58</sup> “[F]irst, one could not be a calm, cool, and detached scientist while Negroes were lynched, murdered and starved; and secondly, there was no such definite demand for scientific work of the sort that I was doing.”<sup>59</sup>

Du Bois was in Alabama conducting a study of rural sharecroppers for the Department of Labor when news of the rioting in Atlanta reached him.<sup>60</sup> His reaction was swift. “I bought a Winchester barreled shotgun and two dozen rounds of shells filled with buckshot. If a white mob had stepped on the campus where I lived I would without hesitation have sprayed their guts over the grass.”<sup>61</sup>

There is no evidence that Du Bois pointed his gun at mobbers. But the lessons that impacted his subsequent advocacy at the NAACP are evident in his widely disseminated essay, “The Tragedy at Atlanta: From the Point of View of the Negroes.”<sup>62</sup> Du Bois’ first substantive point criticized the local policy and practice to arm whites and disarm Blacks.<sup>63</sup> The core lesson about self-defense was plain: “In the last resort[,] democratic governments have to depend on the self-defense of law-abiding citizens against the lawless.”<sup>64</sup> Then, noting the practical and vital utility of arms, Du Bois explained, “As soon as the dazed Negroes realized the situation they naturally began to arm and fight. . . . Again and again[,] the whites started toward ‘Darktown’ one of the slums, but hesitated.”<sup>65</sup>

<sup>58</sup> DU BOIS, AUTOBIOGRAPHY, *supra* note 54, at 222

<sup>59</sup> *Id.*

<sup>60</sup> DAVID LEVERING LEWIS, W.E.B. DU BOIS: BIOGRAPHY OF A RACE 1868-1919 354 (1993).

<sup>61</sup> DU BOIS, AUTOBIOGRAPHY, *supra* note 54, at 286. Du Bois wrote:

I revered life. . . . Nearly all my schoolmates in the South carried pistols. I never owned one. I could never conceive myself killing a human being. But in 1906 I rushed back from Alabama to Atlanta where my wife and six-year old child were living. A mob had raged for days killing Negroes. I bought a Winchester double-barreled shotgun and two dozen rounds of shells filled with buckshot. If a white mob had stepped on the campus where I lived I would without hesitation have sprayed their guts over the grass. They did not come. They went to south Atlanta where the police let them steal and kill. My gun was fired but once and then by error into a row of *Congressional Records*, which lined the lower shelf of my library.

*Id.*; see also Capeci & Knight, *supra* note 55, at 732 (noting that Du Bois was instinctively “[a] pacifist who as a child had recoiled even at the thought of hunting for food”).

<sup>62</sup> Du Bois, *The Tragedy at Atlanta*, *supra* note 21, at 1174–75.

<sup>63</sup> Du Bois’ description of the cause of the riots reads like modern headlines, with complaints and supportive statistics suggesting that Atlanta police targeted Blacks as fodder for the Georgia system that profited from incarceration. *Id.* at 1174. This disarmament attempt is also confirmed by Lugenia Burns Hope. See ROUSE, *supra* note 36, at 42–43.

<sup>64</sup> Du Bois, *The Tragedy at Atlanta*, *supra* note 21, at 1174.

<sup>65</sup> *Id.* Just holding onto their guns was a challenge for Blacks in Atlanta. After the worst of the violence had subsided, the mayor, worried about Black retaliation, attempted to disarm Blacks. ROUSE, *supra* note 36, at 43. The success of this effort is contested. Some accounts stated simply that Blacks were disarmed by militiamen. See Capeci & Knight, *supra* note 55, at 741. But Lugenia Burns Hope recounted how “[t]he Mayor gave [an] order to have Negro homes searched for fire arms. The Negroes hid their arms and also

Du Bois scholars point to the Sam Hose lynching as the beginning of his turn toward a more radical strategy of agitation and protest.<sup>66</sup> But the Atlanta Race Riot was the first indication that Du Bois was willing to fight with arms. His willingness to carve out a proper space for armed resistance grew into an unyielding support for the individual prerogative of armed self-defense. The NAACP was not yet formed, but its most eloquent future spokesman was already steeled for the battles ahead.<sup>67</sup>

Roy Wilkins's experience with mob violence was less dramatic, but the theme of resistance against racism and the looming threat of mobbing ran deep in his consciousness. The first two chapters of his autobiography are set at the turn of the twentieth century, when Wilkins's parents fled Mississippi ahead of a brewing mob. Roy's father, Willie, had pummeled a white man who ran up on him in a wagon and shouted, "Nigger, get out of my way."<sup>68</sup> Word spread like wildfire. A white friend warned Wilkins's grandfather, "[Y]ou better get that boy Willie out of town. . . . He's heading for a lynching for sure."<sup>69</sup> In the cover of darkness, Grandfather Wilkins snuck Willie and his wife out of town, and eventually got them on a train north.<sup>70</sup> Wilkins summarized it this way: "The Lord may have delivered Daniel from the lion's den and Grandfather Wilkins from slavery, but it was the Illinois Central that delivered my father from Mississippi—one step ahead of a lynch rope."<sup>71</sup>

Wilkins's more direct experience with mob violence, where he "lost [his] innocence," was the 1920 Duluth, Minnesota lynching.<sup>72</sup> He was working as a dining car waiter on the Northern Pacific Railroad during the

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those of their neighbors who were not at home. When this order came thru [sic]—the Negroes telephoned the Governor, 'take our arms and we will fire the city.' That stopped the house to house inspection." ROUSE, *supra* note 36, at 43.

<sup>66</sup> See Capecci & Knight, *supra* note 55, at 728 ("Du Bois had approached the South naively . . . . Twenty-nine years old, he arrived at Atlanta University in 1897 convinced that superior intelligence, scientific investigation, and collegial effort would solve the race problem.").

<sup>67</sup> *Id.* One impulse for formation of the NAACP was another bout of rioting in 1908 in Springfield, Illinois. Berry Craig, *William English Walling: Kentucky's Unknown Civil Rights Hero*, 96 REG. KY. HIST. SOC'Y 351, 358, 361 (1998); see also William English Walling, *The Race War in the North*, INDEP., Sept. 3, 1908, at 529.

<sup>68</sup> WILKINS & MATHEWS, *supra* note 1, at 16.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 46. There were plenty of petty affronts, as well. In St. Louis, racists confronted Wilkins for offering his streetcar seat to a white woman. *Id.* at 65. Wilkins had a walking while Black episode in Kansas City, where police officers mistook his wife for white in the glare of headlights. They stopped, jumped out, and frisked him. He filed a complaint, and the police officers admitted that they thought they were rousting an interracial couple. *Id.* at 104. Wilkins recounts an incident where an elderly white woman refused the seat that he surrendered on a streetcar, noting that she would not "accept a seat from a nigger." *Id.* at 65. He describes an effort by a group of citizens to condemn Black homes to create a border between Black and white neighborhoods. *Id.* at 68.

summer while attending the University of Minnesota.<sup>73</sup> He was “just shy of nineteen.”<sup>74</sup> Toward the end of his life, Wilkins would “still feel a shock every time [he] [thought] back on what happened that summer.”<sup>75</sup>

The lynch mob started to simmer after Black carnival workers were accused of assaulting a white girl.<sup>76</sup> Following several arrests, a mob broke through a wall at the jail, dragged three of the accused from their cells and hanged them.<sup>77</sup> One of these was a gruesome double assault where the rope broke, the victim fell to the ground, was beaten, stomped, and then strung up again.<sup>78</sup>

Mobbing like the violence in Duluth gave Wilkins a strong basic empathy for the impulse toward political violence. Early on, he entertained a hot-blooded plan to retaliate against brutal lynchings by organizing a band of vigilantes. “What I had in mind was a black Robin Hood band that would pounce in punish with no warning.”<sup>79</sup> His cooler instincts ultimately prevailed and later he juxtaposed the murderous fantasy with a core tenet of the Freedom Movement doctrine:

We could not have made the fantasy work. We would have invited our own deaths instead. In this country, black people are a permanent minority[,] and we will never have the numbers or the guns to stage a successful armed revolution. This is a hard reality, and it makes revolutionary cults little better than suicide cults.<sup>80</sup>

In time, Wilkins, Du Bois, and White would pull heavy oars at the burgeoning NAACP.<sup>81</sup> They would sharpen policies that reflected the practice and philosophy of arms applied by generations.<sup>82</sup> They would direct resources to protect individuals who used guns to defend themselves against mobs, where government was unable or unwilling to protect them.<sup>83</sup> Their manifest empathy for people backed to the wall by violent threats made them powerful stewards of the Freedom Movement Defense Policy.

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<sup>73</sup> *Id.* at 45–46.

<sup>74</sup> *Id.* at 49.

<sup>75</sup> *Id.* at 46–47.

<sup>76</sup> *Id.* at 47.

<sup>77</sup> *Id.* at 48–49.

<sup>78</sup> *Id.* at 48.

<sup>79</sup> *Id.* at 77.

<sup>80</sup> *Id.* In 1923, after the KKK held a rally just north of his home in St. Paul, Wilkins ruminated on “[how] to fight back[.]” The answer would come in August of that year at the NAACP’s Midwestern Race Relations Conference, where he first encountered Walter White, James Weldon Johnson, and W.E.B. Du Bois. *Id.* at 58.

<sup>81</sup> JOHNSON, *supra* note 1, at 171.

<sup>82</sup> *Id.* at 291.

<sup>83</sup> *Id.* at 172–73.

## II. A TIME-TESTED MODEL

Roy Wilkins's position in the Robert Williams affair rested firmly on an approach honed over decades. It started with the very first litigation that the NAACP supported.<sup>84</sup> The First Annual Report of the organization is full of descriptions of "legal redress" work in support of Black armed self-defense claims.<sup>85</sup> The first case was the defense of South Carolina sharecropper Pink Franklin.<sup>86</sup> The seed of the violence was Franklin's violation of a so-called "agricultural contract."<sup>87</sup> Unlike every other contract, where the remedy for breach was a civil action for money damages, these "contracts" were administered under the South Carolina Criminal Code.<sup>88</sup> Sharecroppers who breached could be jailed.<sup>89</sup> Franklin did, in fact, breach his contract, and, in the dark of early morning, lawmen descended to arrest him.<sup>90</sup> Franklin claimed that he was startled awake by armed strangers in his bedroom.<sup>91</sup> After one of them shot him, Franklin grabbed his rifle and fired back.<sup>92</sup> The lawmen claimed the doors to the house and bedroom were open, and they were attacked after knocking and entering.<sup>93</sup> The NAACP report records that constable "H.H. Valentine . . . broke into Franklin's cabin at three o'clock in the morning, with drawn pistol, without announcing that he was an officer of the law, and Franklin shot him in defense of his home."<sup>94</sup> Governor Ansel commuted Franklin's sentence to life imprisonment, but the Association will not cease its efforts to free Franklin from prison.<sup>95</sup>

The promise of ceaseless efforts on behalf of Franklin was no hyperbole. Due substantially to the NAACP's persistence and lobbying by Booker T. Washington, Pink Franklin was ultimately pardoned and released.<sup>96</sup>

NAACP's next case was the defense of another sharecropper, Steve Greene.<sup>97</sup> Greene walked away from a peonage contract after his landlord and employer doubled his rent.<sup>98</sup> The landlord tracked Greene down at his new job and shot him but did not kill him.<sup>99</sup> Greene retrieved his rifle, killed

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<sup>84</sup> *Id.* at 171.

<sup>85</sup> NAACP, FIRST ANNUAL REPORT para. 6 (1911).

<sup>86</sup> JOHNSON, *supra* note 1, at 171.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 171-72; *see also* KENNETH W. GOINGS, "THE NAACP COMES OF AGE": THE DEFEAT OF JUDGE JOHN J. PARKER 12 (1990).

<sup>94</sup> NAACP, FIRST ANNUAL REPORT, *supra* note 85.

<sup>95</sup> *Id.*

<sup>96</sup> GOINGS, *supra* note 93, at 12; JOHNSON, *supra* note 1, at 172.

<sup>97</sup> GOINGS, *supra* note 93, at 12.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

the landlord, then fled to Chicago.<sup>100</sup> NAACP and Ida B. Wells aided Greene in contesting extradition.<sup>101</sup> With the proceedings pending, Greene fled to Canada.<sup>102</sup>

Freedom Movement Defense Policy also evolved and was reflected in the work and decision-making of the NAACP branches. For example, the 1914 Annual Report trumpets the success of the Baltimore branch in securing the exoneration of George Howe.<sup>103</sup> Howe was arrested for firing into a crowd that was stoning his residence wounding four, who were not seriously hurt.<sup>104</sup> The NAACP secured Howe's release and appealed the Police Justice's sentence.<sup>105</sup> By the time the Fifth Annual Report was published, "George Howe of Baltimore had been acquitted in the shooting of members of a mob that were attacking his home in Baltimore."<sup>106</sup>

NAACP supported many cases over the years. None were more consequential to the framing and advancement of Movement policy than the defense of Dr. Ossian Sweet and his family, who used guns against a mob that aimed to run them out of their new home in a white neighborhood in Detroit.<sup>107</sup> By the time of the Sweets' armed stand in the summer of 1925, the mobbing of Blacks who attempted to integrate white neighborhoods had drawn the ire and focus of the NAACP national office.<sup>108</sup> In the months preceding the mobbing of Ossian Sweet, several other Black families had defended their homes against mobs.<sup>109</sup> From the national office, Executive Secretary James Weldon Johnson already had penned angry editorials condemning mobs that had "driven Negroes from their homes and defending those who defended themselves in absence of adequate police protection."<sup>110</sup>

One such family was Aldeine and Fleta Mathies, newly arrived in Detroit from Georgia.<sup>111</sup> They rented a house with another couple on the border between the Black section, "Black Bottom," and an ethnic white neighborhood.<sup>112</sup>

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*; JOHNSON, *supra* note 1, at 172; NAACP, FIRST ANNUAL REPORT, *supra* note 85 ("[T]he only reason for the [landlords'] attack being that Greene had refused to renew his lease at an advance of almost 100 per cent in rent.").

<sup>103</sup> NAACP, FIFTH ANNUAL REPORT 7 (1914).

<sup>104</sup> NAACP, FOURTH ANNUAL REPORT 43 (1914).

<sup>105</sup> *Id.*

<sup>106</sup> NAACP, FIFTH ANNUAL REPORT, *supra* note 103, at 7.

<sup>107</sup> KEVIN BOYLE, ARC OF JUSTICE: A SAGA OF RACE, CIVIL RIGHTS, AND MURDER IN THE JAZZ AGE 37 (2004).

<sup>108</sup> *Id.* at 205.

<sup>109</sup> *Id.* at 205–06.

<sup>110</sup> *Id.* at 163.

<sup>111</sup> *Id.* at 151.

<sup>112</sup> *Id.* at 150–51.

Neighborhood racists sent threatening letters and then came in person to tell the Mathies they were not welcome.<sup>113</sup> When the Mathies dug in, the mob descended.<sup>114</sup> For two nights, the men of the house rebuffed the mob by making a show of standing guard with rifles.<sup>115</sup> Later in the week, while the men were away at work, the mob returned.<sup>116</sup> When they started stoning the house, Fleta Mathies fired out of one of the broken windows.<sup>117</sup> The gunfire dispersed the crowd, but the police subsequently arrested her on gun charges.<sup>118</sup> Fleta Mathies was exonerated after W.H. McKinney, the past president of the Detroit NAACP, showed that she feared for her life and fired in self-defense.<sup>119</sup> Mathies returned home, and, though causation is unclear, the mobbing stopped.

In July, mobbers beset the Stoepel Avenue home of John Fletcher after a white woman from across the street went door to door to gin up support for chasing out the Blacks.<sup>120</sup> As a crowd formed, Fletcher called the police.<sup>121</sup> But when the cops arrived, they just talked amiably with people on the sidewalk.<sup>122</sup> Around eight o'clock, the mood shifted. Fletcher's neighbor had just gotten a delivery of coal and some in the crowd started to hurl chunks of it at Fletcher's home.<sup>123</sup> The pelting accelerated and soon they broke out every window in the house.<sup>124</sup> Later, Fletcher explained to a judge how he tripped over chunks of coal as he ran to a second-floor bedroom, rifle in hand where, through a broken-out window, he fired into the mob, hitting a teenage boy.<sup>125</sup> Fletcher convinced the judge that he feared for his life and fired only after all the windows in his home were broken out and someone in the mob yelled "lynch him."<sup>126</sup>

When Ossian Sweet moved his family into the house on Garland Avenue, it was plain that mobs would not be swayed by class distinctions. Yes, Fleta Mathies was a new migrant from Georgia, and George Fletcher was a waiter. But Sweet's colleague Dr. Albert Turner also was sent running by a mob that looted and trashed his new residence on the border of a white

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<sup>113</sup> *Id.* at 151.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* The key to this result was getting Mathies's case before one of the progressive judges on the local criminal court. *Id.*

<sup>120</sup> *Id.* at 155.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*; *Negroes Shoot White Youth in New Home Row*, DETROIT FREE PRESS, July 11, 1925, at 1; John Fletcher Statement, in DARROW COLLECTION (Nov. 15, 1925); DAVID ALLAN LEVINE, INTERNAL COMBUSTION: THE RACES IN DETROIT 1915-1926 157 (1976).

<sup>126</sup> BOYLE, *supra* note 107, at 155; JOHNSON, *supra* note 1, at 200.

neighborhood. Ossian Sweet was fully aware of this when he carried two canvas sacks containing twelve guns and four hundred rounds of ammunition into his new home.<sup>127</sup>

The first night, news of the Sweets' arrival drew a crowd of a few hundred people. Three other men, Ossian's two brothers and a handy man, were in the house. Ossian took the men upstairs, showed them the guns, and worked out a schedule for standing watch. Around midnight, a hail of rocks hit the house, and then there was silence.

The first night turned out to just be a warm up. The second night, a far larger crowd appeared. The rumor mill said that this time they had a plan for driving the Sweets out. When Ossian's brother Otis arrived in a cab, the crowd stoned him and hurled racial epithets.<sup>128</sup> The men in the house ran upstairs and retrieved guns.<sup>129</sup> Mobbers pummeled the house with stones and debris.<sup>130</sup> Then there were gun shots.<sup>131</sup> One white man in the mob fell dead, another was wounded.<sup>132</sup>

The initial prosecution swept up the entire Sweet family.<sup>133</sup> NAACP hired legendary trial lawyer Clarence Darrow to defend them.<sup>134</sup> Walter White was diligently on the scene as the trial progressed.<sup>135</sup> His November 1925 letter to James Weldon Johnson demonstrates the ballooning significance of the Sweet case to the organization and the intensity of White's attention to the potential that a successful outcome represented.<sup>136</sup>

<sup>127</sup> JOHNSON, *supra* note 1, at 194.

<sup>128</sup> *Id.* at 198.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 199.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Michael Hannon, *The People v. Ossian Sweet, Gladys Sweet, et al. (1925) The People v. Henry Sweet (1926) 14 (2010)* (unpublished manuscript), [http://moses.law.umn.edu/darrow/trialpdfs/SWEET\\_TRIALS.pdf](http://moses.law.umn.edu/darrow/trialpdfs/SWEET_TRIALS.pdf).

<sup>134</sup> *Id.* at 12–15; *see* NAACP, *FOURTH ANNUAL REPORT*, *supra* note 104, at 43 (“George Howe, a colored man, was arrested for firing into a crowd of men and boys who were stoning his residence at 951 Hartford Avenue. He shot four boys, but they were not seriously hurt.”). Howe was found guilty and sentenced to two months in jail in each case. With the assistance of the NAACP, the sentence given by the Justice of Police was appealed and bail was granted. Without the NAACP, “Howe would now be serving a term of eight months for no other crime than protecting his home from a miserable mob bound on doing him injury for assuming to live in a so-called white neighborhood.” *Id.*; *see also* NAACP, *FIFTH ANNUAL REPORT*, *supra* note 103, at 7 (detailing that Howe was acquitted in the shooting of members of a mob who were attacking his home in Baltimore. Also, in Indianapolis, the NAACP “secured the acquittal of two colored boys convicted of carrying concealed weapons. The boys had been arrested as the result of a fight with white boys who had been the aggressors in trying to prevent the colored boys from using a swimming pool . . .”). Legal work previously done by Chapin Brinsmade was now done by Arthur B. Spingarn and Charles H. Studin, “donat[ing] their services.” *Id.* at 9.

<sup>135</sup> Hannon, *supra* note 133, at 27, 34–35.

<sup>136</sup> Letter from Walter White to James Weldon Johnson (Nov. 13, 1925), [www.loc.gov/exhibits/naacp/the-new-negro-movement.html#obj20](http://www.loc.gov/exhibits/naacp/the-new-negro-movement.html#obj20). White's November letter to Johnson reflects the kind of personal toll that would lead to White's death at age sixty-one. He noted that he worked until 4:00 a.m. and was up at 7:00 a.m., back to the courtroom, then to Chicago for a fundraiser. *Id.* White notes that Dr.

Ultimately, the exoneration of the Sweets fueled fundraising so successful that it left a surplus sufficient to implement James Weldon Johnson's dream of a standing fund that could support important litigation on a consistent basis.<sup>137</sup> We know this today as the NAACP Legal Defense Fund.<sup>138</sup>

Litigation was only one way of pressing the Movement's self-defense policy.<sup>139</sup> Equally important were the powerful articulations of policy in the flagship magazine, *The Crisis*. By one account, the name of the magazine was a direct reaction to the 1908 racist mobbing and lynching in Springfield, Illinois.<sup>140</sup>

As editor, W.E.B. Du Bois guided *The Crisis* to become the voice and conscience of Black America. In the process, he articulated the vital role of armed self-defense in the context of some of the worst civil unrest in American history. His editorial following the 1919 Chicago Race Riot is a prime example of the philosophy and practice that the NAACP would advance for decades to come:

Today we raise the terrible weapon of Self-Defense. When the murderer comes, he shall no longer strike us in the back . . . . When the armed lynchers gather, we too must gather armed. When the mob moves, we propose to meet it with bricks and clubs and guns. But we must tread here with solemn caution. We must never let justifiable self-defense against individuals become blind and lawless offense against all white folk. We must not seek reform by violence. We must not seek Vengeance. . . . We must defend ourselves, our homes, our wives and children against the lawless without stint or hesitation; but we must carefully and scrupulously avoid on our own part bitter and unjustifiable aggression against anybody.<sup>141</sup>

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Albert Turner, who was run out of his home by white neighbors, had organized a contribution of five hundred dollars to the national office, in addition to the contribution of several hundred dollars that White was forwarding. *Id.*

<sup>137</sup> See Hannon, *supra* note 133, at 14 (noting that Walter White and Clarence Darrow became close, and White gave his son the middle name Darrow); see also JOHNSON, *supra* note 1, at 204.

<sup>138</sup> WILKINS & MATHEWS, *supra* note 1, at 186–89 (describing the rioting in Mink Slide and the threat to Thurgood Marshall, who came to defend the Blacks defending themselves and Mink Slide).

<sup>139</sup> *Id.* at 142–47 (summarizing the NAACP strategy as carefully selecting cases to litigate and political issues to focus on, suggesting a thoughtful consideration of support of the self-defense cases).

<sup>140</sup> William English Walling records that the name of the magazine was a response to race riots, such as the one in Springfield, in order to highlight the grave danger that the conditions of the South were gradually spreading through the country. William English Walling, *The Founding of the N.A.A.C.P.*, CRISIS, July 1929. See generally Walling, *supra* note 67. Walling was a vital participant among the core group that established the organization. Du Bois called him “the real founder” of the NAACP. Craig, *supra* note 67, at 351.

<sup>141</sup> W.E.B. Du Bois, *Let Us Reason Together*, 18 CRISIS 231, 231 (1919).

Here, Du Bois frames a policy of action that flatly rejects lawless violence and adopts the boundaries embedded in ancient principles of self-defense against imminent threats to life and limb.<sup>142</sup> He layers this with the caution against treading into the forbidden territory of political violence—i.e., aggressive violence as a way of seeking political reform.<sup>143</sup> Over time, Du Bois advanced the message of righteous self-defense, carefully constrained to avoid political violence in multiple contexts. Indeed, as discussed in Part III, in some cases he went further, characterizing self-defense as a moral imperative.<sup>144</sup>

There is a temptation to consider the framing of the Freedom Movement Defense Policy as an exclusively male phenomenon. But, policy leaders like Daisy Bates, President of Arkansas Conference of NAACP Branches, demonstrate the opposite. Bates famously guided the Little Rock Nine through the minefield of integrating Little Rock High School.<sup>145</sup> She was, in the words of Roy Wilkins, the target of “a real terror campaign.”<sup>146</sup> She had first hand confrontations with mobs, and fired guns in self-defense against racist terrorists.<sup>147</sup> Bates was ultimately aligned with Roy Wilkins in the Robert Williams Affair.<sup>148</sup> But, even then, the editorial stance of her newspaper, *The Arkansas State Press*, emphatically supported the individual prerogative of armed self-defense.<sup>149</sup>

Daisy Bates was no anomaly. Many other Black women advanced the Movement defense policy and personally wielded guns to defend themselves and their families. Legendary voting rights activist Fannie Lou Hamer demonstrates this in her commentary about the essential tools of survival in an environment where every night might bring terror. Hamer navigated the risks of activism through the storms of the 1960s, pressing the struggle as a leader in the Mississippi Freedom Democratic Party and founding the

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<sup>142</sup> MODEL PENAL CODE §§ 3.04, 3.05 (AM. L. INST., Official Draft and Explanatory Notes 1962); see generally David B. Kopel, *The Self-Defense Cases: How the United States Supreme Court Confronted a Hanging Judge in the Nineteenth Century and Taught Some Lessons for Jurisprudence in the Twenty-First*, 27 AM. J. CRIM. L. 293 (2000).

<sup>143</sup> See generally Christopher Barry Strain, *Civil Rights and Self-Defense: The Fiction of Nonviolence, 1955–1968* (2000) (Ph.D. dissertation, University of California, Berkeley), <https://www.freedomarchives.org/Documents/Finder/Black%20Liberation%20Disk/Black%20Power!/SugahData/Dissertations/Strain.S.Civil.pdf>.

<sup>144</sup> See *infra* notes 205–207 and accompanying text.

<sup>145</sup> Juan Williams, *Daisy Bates and the Little Rock Nine*, NPR (Sept. 21, 2007, 12:01 AM), <https://www.npr.org/templates/story/story.php?storyId=14563865>.

<sup>146</sup> WILKINS & MATHEWS, *supra* note 1, at 260.

<sup>147</sup> Adam Bernstein, *Daisy Bates Dies*, WASH. POST (Nov. 5, 1999), <https://www.washingtonpost.com/archive/local/1999/11/05/daisy-bates-dies/cd270530-707a-4785-88c2-9f13fce43204/>.

<sup>148</sup> JOHNSON, *supra* note 1, at 230.

<sup>149</sup> *Id.* On the policy front, she also communicated informally with Thurgood Marshall about her personal self-defense preparations. *Id.* at 227 & n.45.

National Women's Political Caucus.<sup>150</sup> Hamer's tactical stance was rooted partly in scripture. Speaking about the racists who terrorized her, Hamer was forgiving.<sup>151</sup> But long experience left her unwilling to leave the other cheek exposed. Asked how she endured the multiple hazards of the time, Hamer responded, "I'll tell you why. *I keep a shotgun in every corner of my bedroom* and the first cracker even look like he wants to throw some dynamite on my porch won't write his mama again."<sup>152</sup> Fannie Lou Hamer and Daisy Bates became civil rights legends, but most of the women whose experience fueled the Freedom Movement Defense Policy are consigned to footnotes in the broader narrative.

Annie Colton Reeves of Pike County, Mississippi, described how her family saved and sacrificed to buy a heavy-caliber Winchester rifle to supplement the family's four other guns. Annie's father advised, "[It's] better to have ammunition than to have food."<sup>153</sup> The deterrent value was evident when Annie raised a gun to repel a group of menacing young men, warning them, "Whenever you get ready to go to hell you come back."<sup>154</sup>

In 1962, Rebecca Wilson of Dallas, Georgia, returned fire when hooded Klansmen blasted her door with a shotgun.<sup>155</sup> "It was the idea of the masks," Wilson explained.<sup>156</sup> "I was scared. I didn't know what I was shooting at. I just had my hand out the door."<sup>157</sup> Wilson killed one man, wounded another,<sup>158</sup> and the others fled.<sup>159</sup> The shooting was ultimately classified as lawful self-defense.<sup>160</sup> Several of the Klansmen were charged with violating the state's anti-masking law.<sup>161</sup> Wilson was placed in protective custody and moved out of state.<sup>162</sup>

In Carroll County, Mississippi, activist Leola Blackmon deployed her sixteen-shot semiautomatic rifle to repel Klansmen who burned a cross in

<sup>150</sup> Debra Michals, *Fannie Lou Hamer (1917-1977)*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/fannie-lou-hamer> (last visited Feb. 23, 2022).

<sup>151</sup> CHANA KAI LEE, *FOR FREEDOM'S SAKE: THE LIFE OF FANNIE LOU HAMER* (1999).

<sup>152</sup> SIMON WENDT, *THE SPIRIT AND THE SHOTGUN: ARMED RESISTANCE AND THE STRUGGLE FOR CIVIL RIGHTS* 121–22 (2007) (emphasis added).

<sup>153</sup> Akinyele K. Umoja, *Eye for an Eye: The Role of Armed Resistance in the Mississippi Freedom Movement* 69 (1996) (Ph.D. dissertation, Emory University), <http://www.freedomarchives.org/Documents/Finder/Black%20Liberation%20Disk/Black%20Power!/SugahData/Dissertations/Umoja.S.pdf>.

<sup>154</sup> *Id.*

<sup>155</sup> Strain, *supra* note 143, at 75–76.

<sup>156</sup> *Id.* at 76.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 77.

<sup>161</sup> *Id.*

<sup>162</sup> *See id.*; JOHNSON, *supra* note 1, at 243; George P. Stewart II, *The Recorder Offers to Pay Travel Expense of Woman Coming to Ind.*, INDIANAPOLIS RECORDER, Sept. 15, 1962, at 1.

her yard.<sup>163</sup> “I thought to cut ’em down,” she recalled later, “but I didn’t. I just let some bullets through behind ’em. I had a rifle. It would shoot sixteen times, and I just lit out up there and started shooting.”<sup>164</sup> Leola Blackmon was unschooled, but fully captured the principles of the Freedom Movement Defense Policy. “Well, we said nonviolent when we was protesting the school buses; nobody not s’posed to fight. But that fight was brought on because we were looking for them to hit *us*.”<sup>165</sup>

In Jonesboro, Louisiana, Klansmen stood in the open, admiring their work after lighting a cross in the yard of Reverend Y. D. Jackson.<sup>166</sup> Soon they were ducking and running under gunfire from Reverend Jackson’s wife, who emptied her rifle at them and was quickly reloading.<sup>167</sup> During the Freedom Summer Project, a student volunteer was shocked to find that her host, “Mrs. Fairley, was armed to the teeth.”<sup>168</sup> In a letter home, the student wrote, “I met Mrs. Fairley coming down the hall from the front porch carrying a rifle in one hand [and] a pistol in the other.”<sup>169</sup>

Naturally, women in the Movement did not always act in isolation. Various accounts show Black couples doing what was necessary to fend off violent threats, unencumbered by any notion that it was man’s work.<sup>170</sup> Northern activist Margaret Rose provides a snapshot of this. After a series of midnight attacks in neighboring counties, Rose recorded that the family she stayed with in Holmes County, Mississippi “were up all . . . night, Mr. on the road patrolling with his new rifle and Mrs. walking from room to room in the house with a shot gun.”<sup>171</sup>

In Meridian, Mississippi, a defense group drawn from church members guarded the home of NAACP leader Claude Bryant.<sup>172</sup> In April 1964, after an explosion rocked his house, Bryant laid down rifle fire on a car full of firebombers.<sup>173</sup> Three months later, bombers attacked the home of his brother, Charlie.<sup>174</sup> With the front windows blown from the house, Charlie’s

<sup>163</sup> YOUTH OF THE RURAL ORG. & CULTURAL CTR., *MINDS STAYED ON FREEDOM: THE CIVIL RIGHTS STRUGGLE IN THE RURAL SOUTH, AN ORAL HISTORY* 175 (1991).

<sup>164</sup> Jeff Goodwin & Steven Pfaff, *Emotion Work in High-Risk Social Movements: Managing Fear in the U.S. and East German Civil Rights Movements*, in *PASSIONATE POLITICS: EMOTIONS AND SOCIAL MOVEMENTS* 282, 299 (Jeff Goodwin, James M. Jasper & Francesca Polletta eds., 2001).

<sup>165</sup> *Id.*

<sup>166</sup> LANCE HILL, *THE DEACONS FOR DEFENSE: ARMED RESISTANCE AND THE CIVIL RIGHTS MOVEMENT* 40 (2004).

<sup>167</sup> *Id.*

<sup>168</sup> DOUG MCADAM, *FREEDOM SUMMER* 90 (1988).

<sup>169</sup> *Id.*

<sup>170</sup> JOHN DITTMER, *LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI* 254 (1995).

<sup>171</sup> *Id.*

<sup>172</sup> Umoja, *supra* note 153, at 156, 158.

<sup>173</sup> WENDT, *supra* note 152, at 119; Umoja, *supra* note 153, at 156, 158; DITTMER, *supra* note 170, at 266–68, 304.

<sup>174</sup> Umoja, *supra* note 153, at 159.

wife, Ora, emerged out of the smoke with a shotgun and fired on the fleeing terrorists.<sup>175</sup> The Bryants were not the only family on guard that night. One neighbor described the scene:

That car was fired on so many times coming out of there . . . by people straight up the street all through there . . . [a]nd he was shot at when he turned the curb, coming back towards town . . . [a]nd you could hear people hollering “here he come.”<sup>176</sup>

Afterward, the rumor spread that the wounded terrorists were taken out of state for treatment in order to suppress the story of Black triumph.<sup>177</sup>

The Bryants and their neighbors understood that the fight was not over and followed up by organizing regular armed watches.<sup>178</sup> Annie Reeves, whose husband also helped guard Claude Bryant, recounted sitting in her living room with the lights out, a rifle clutched in her lap.<sup>179</sup> Mr. and Mrs. Matthew Nobles, active members in Claude Bryant’s NAACP branch, made their own preparations and guarded their neighbors.<sup>180</sup> During the worst of it, chapter member Matthew Nobles camped on the roof of his house with a rifle while his wife slept fitfully, listening for trouble through an open window, her own rifle at the ready.<sup>181</sup>

In Forrest County, Mississippi, NAACP leader Vernon Dahmer had pressed the NAACP agenda since the early 1950s when he sued the county sheriff for interfering with Black voting efforts.<sup>182</sup> When northern students came to help with voter registration, some of them stayed with Dahmer and wrote home about the “guns, pistols and rifles . . . placed throughout his house.”<sup>183</sup> When tensions escalated through the early 1960s, Dahmer and his bride, Ellie, alternated sleeping and sitting up with guns.<sup>184</sup> They continued this practice through 1965.<sup>185</sup>

In Jonesboro, Louisiana, Bob and Jackie Hicks were an effective team in thwarting a series of threats against them and northern activists they hosted.<sup>186</sup> When a group of student volunteers from the University of Kansas was attacked and fled back to the Hick’s house, the attackers retreated when Jackie Hicks stepped out onto the porch with a pistol in her hand.<sup>187</sup> Later

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*; JOHNSON, *supra* note 1, at 201.

<sup>178</sup> Umoja, *supra* note 153, at 159.

<sup>179</sup> *Id.* at 160.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 102–03.

<sup>183</sup> *Id.* at 103.

<sup>184</sup> *Id.* at 104.

<sup>185</sup> *Id.*

<sup>186</sup> See HILL, *supra* note 166, at 118–19.

<sup>187</sup> HILL, *supra* note 166, at 118.

that night, a car rolled up and a white man jumped out and hurled something through the windshield of a vehicle owned by one of the students.<sup>188</sup> Bob Hicks ran outside with his gun to investigate.<sup>189</sup> The terrorists fired a shot from their car.<sup>190</sup> Hicks fired back.<sup>191</sup> Then, from cover around Hicks's house, members of the Deacons for Defense opened fire and the terrorists sped out of sight.<sup>192</sup> Everyone in and around the Hicks' home came through the shootout unscathed.<sup>193</sup> But Black hospital workers reported that two Klansmen were shot, and the story was suppressed in order to conceal police complicity in the attack.<sup>194</sup>

Decades of practical application show that Freedom Movement Defense Policy is a durable model that warrants consideration as a guidepost for our modern discussion of arms-bearing during periods of civil unrest. Toward the end of his life, Roy Wilkins distilled the decades of practice and messaging to its essence:

Like [Robert] Williams, I believe in self-defense. While I admire Reverend King's theories of overwhelming enemies with love, I don't think I could have put those theories into practice myself. But there is a difference between self-defense and murder, and I had no intention of getting the N.A.A.C.P. into the lynching business. *So I made our principle stick.*<sup>195</sup>

### III. THE APPEAL OF THE FREEDOM MOVEMENT DEFENSE POLICY AS A GUIDEPOST FOR THE MODERN CONVERSATION ABOUT THE ROLE OF PRIVATE ARMS DURING CIVIL UNREST

This Part presents the Freedom Movement Defense Policy as a model for thinking about the role of private arms during modern civil unrest in four sections. Section A demonstrates the framers' serious and empathetic consideration of the imbedded alternatives of submission or resistance. Section B illustrates the delineation of boundaries surrounding forbidden political violence. Section C shows the pragmatic recognition of a contestable zone of highly fact-dependent claims to legitimate use of force. Section D presents the policy as a pragmatic balance of individual and community interests that rests on familiar constitutional and common law themes.

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> WILKINS & MATHEWS, *supra* note 1, at 265 (emphasis added).

### A. *Submission or Resistance*

A compelling aspect of the Freedom Movement Defense Policy as a guidepost for our twenty-first century conversation is that it incorporates serious and empathetic assessment of the imbedded alternatives of resistance or submission. The alternative to resistance appears graphically in endless, gory accounts of hapless victims set upon by mobs. Walter White's book, *Rope and Faggot: A Biography of Judge Lynch*, epitomizes the theme.<sup>196</sup> It is a systematic study of "mob murders." The work includes detailed descriptions of mobbing that White reported after going to lynching venues and passing for white.<sup>197</sup>

*Rope and Faggot* offers a representative catalogue of the worst-case consequences of submission to mobs.<sup>198</sup> Many of the instances are too gruesome to bear repeating. It is enough to say that mobs deployed every imaginable torture. Perhaps aware that a vivid presentation of the gore at the start might cause readers to drop the book and flee, White's first lines capture the terror subtly and perhaps more powerfully than all of the gruesome details that follow. The setting is a town in Florida where:

[S]ome years ago several lynchings . . . followed the attempt of a Negro pharmacist to vote in a national election. One morning shortly afterwards I walked along the road which led from the beautiful little town to the spot where five Negroes had been burned. Three shining-eyed, healthy, cleanly children, headed for school, approached me. As I neared them, the eldest . . . asked if I was going to the place where "the niggers" had been killed. I told her I might stop and see the spot. Animatedly, almost as joyously as though the memory were of Christmas morning or the circus, she told me, her slightly younger companions interjecting a word here and there . . . of "the fun we had burning the niggers."<sup>199</sup>

The NAACP would record and resist decades of this sort of terror. With every new attack, the New York office displayed a well-worn flag from the window of its location overlooking Fifth Avenue with the message: "Negro Lynched Today."<sup>200</sup> The organization's magazine *The Crisis*, contained a

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<sup>196</sup> See generally WHITE, *supra* note 15, at 40–43.

<sup>197</sup> See, e.g., *id.*

<sup>198</sup> See generally WALTER WHITE, *ROPE & FAGGOT: A BIOGRAPHY OF JUDGE LYNCH* 1 (1929).

<sup>199</sup> *Id.*

<sup>200</sup> *Flag, Announcing Lynching, Flown from the Window of the NAACP Headquarters on 69 Fifth Ave., New York City*, LIBR. OF CONG.: PRINTS & PHOTOGRAPHS ONLINE CATALOG (PPOC), <https://www.loc.gov/pictures/resource/ppmsca.09705> (last visited May 4, 2022) (exhibiting a photograph, taken in 1936, of a flag announcing that a man had been lynched); see also Jenni Avins, *The NAACP's "A Man Was Lynched Yesterday" Flag Has Been Reprised and Hangs in New York City*,

regular section devoted to “Lynching,” along with other recurring topics like “Legislation” and “Education.”<sup>201</sup> The considered policy of NAACP and the broader Freedom Movement endorsed the prerogative of individuals facing mobs to resist—and to resist with arms—even while acknowledging that this resistance might fail.<sup>202</sup>

Mobbers competed on a scale of gore, but the power dynamic was consistent. Defenseless victims were entirely at the mercy of the mob, and the crowds reveled in the spectacle and slaughter. Compared to the alternative of helpless submission, the hazards and uncertainty of resistance have multilayered appeal. The first and most obvious is expressed in Martin Luther King, Jr.’s intervention in the Robert Williams affair. Drawing a contrast to forbidden political violence, King explained:

Violence exercised merely in self-defense, all societies, from the most primitive to the most cultured and civilized, accept as moral and legal. The principle of self-defense, even involving weapons and bloodshed, has never been condemned, even by Gandhi. . . . When the Negro uses force in self-defense, he does not forfeit support—he may even win it, by the courage and self-respect it reflects.<sup>203</sup>

King’s distillation, particularly his reference to the courage and self-respect that self-defense reflects, captures the normative philosophical appeal of resistance versus submission. Other critiques demonstrate more utilitarian reasons to prefer resistance over submission.

Several framers pressed the view that resistance was not just an important moral and legal prerogative, but also a practical deterrent against mob terror. Following the 1919 race riot in Washington, D.C., NAACP Executive Secretary, James Weldon Johnson, conducted an in-depth, on the scene investigation and provided a pointed critique of how peace was restored. He concluded that, “The Negroes saved themselves and saved Washington by their determination not to run but to fight, fight in defense their lives and their homes. If the white mob had gone unchecked—and it was only the determined effort of black men that checked it—Washington would have been another and worse East St. Louis.”<sup>204</sup>

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QUARTZ (July 9, 2016), <https://qz.com/727602/the-naacps-a-man-was-lynched-yesterday-flag-has-been-reprised-and-hangs-in-new-york-city>.

<sup>201</sup> See generally *Annual Report, National Association for the Advancement of Colored People*, 19 CRISIS 240, 247 (1920). See also NAACP, REPORT OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE FOR THE YEARS 1917 AND 1918 25–43 (1919) [hereinafter NAACP 1917–1918 REPORT] (combining the Eighth Annual Report of 1917 and the Ninth Annual Report of 1918). The Ninth Annual Report of 1918 includes several parts, including Part II on “The Fight Against Lynching” and Part III on “Welfare and Defense of Colored Soldier.” *Id.*

<sup>202</sup> NAACP 1917–1918 REPORT, *supra* note 201, at 26.

<sup>203</sup> JOHNSON, *supra* note 1, at 27.

<sup>204</sup> JOHNSON, *supra* note 1, at 175.

W.E.B. Du Bois presented resistance as a practical deterrent and also pressed it as a moral imperative. Du Bois publicly excoriated Blacks who failed to resist mobs. One of his most biting critiques was leveled at the Black community in Gainesville, Florida, who passively observed the attack known today as the Newberry Lynching.<sup>205</sup> Du Bois' searing criticism appeared under the heading "Cowardice" in the editorial section at the beginning of the magazine.<sup>206</sup>

No colored man can read an account of the recent lynching at Gainesville, Fla., without being ashamed of his people. The action was characteristic. White officers, knowing themselves in the wrong and afraid of the resistance of colored men, sneaked in at midnight to serve a warrant on a person who they hoped would be helpless and ignorant of their intentions. Two of them seized the man in his house and after the melee one of the white men was dead and the other seriously wounded. Of the right and wrong of this no one will ever really be sure. There is no proof that the black man was guilty; there is no proof that he knowingly resisted arrest. There is proof on the other hand, that after this extraordinary attack his colored fellows acted like a set of cowardly sheep. Without resistance they let a white mob whom they outnumbered two to one, torture, harry and murder their women, shoot down innocent men entirely unconnected with the alleged crime, and finally to cap the climax, they caught and surrendered the wretched man whose attempted arrest caused the difficulty. . . .

No people who behave with the absolute cowardice shown by these colored people can hope to have the sympathy or help of the civilized folk. The men and women who had nothing to do with the alleged crime should have fought in self-defense to the last ditch if they had killed every white man in the county and themselves been killed. The man who surrendered to a lynching mob the victim of the sheriff ought himself to have been locked up. *In the last analysis lynching of Negroes is going to stop in the South when the cowardly mob is faced by effective guns in the hands of people determined to sell their souls dearly.*<sup>207</sup>

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<sup>205</sup> See, e.g., Brianda Villegas, *City of Newberry Opens Up About the "Newberry Six,"* WCJB (Sept. 21, 2018, 12:09 AM), <https://www.wcjb.com/content/news/City-of-Newberry6-493918581.html>; Rebecca Santana, *'This Is What We Know': Newberry Begins Reckoning Over Lynching History,* WUFT (Sept. 21, 2018), <https://www.wuft.org/news/2018/09/21/this-is-what-we-know-newberry-begins-reckoning-over-lynching-history/>.

<sup>206</sup> *Cowardice*, 12 CRISIS 270, 270–71 (1916).

<sup>207</sup> *Id.* (emphasis added). Du Bois struck the same chord in 1919 following the Chicago Race Riot, urging Blacks to pick up guns against the mob, though simultaneously cautioning against political

Careful observers in the white press also took note of the deterrence theme, and *The Crisis* reported it. Following the 1921 Tulsa Race Riot, *The Crisis* roared, “Out of the welter of fire and blood, in which Tulsa lies submerged, one fact arises stark and challenging. Regardless of the odds and heavily outnumbered, the Negroes united to save one of their own. An armed mob met armed resistance.”<sup>208</sup> Then, quoting a recent article in the *New Republic*, *The Crisis* editorial shows that the white press had noticed: “[T]he emergence of a spirit of forcible resistance on the part of the Negroes. ‘Get a gun’ is the advice of scores of Negro leaders. ‘Hit back; make them respect you.’”<sup>209</sup>

T. Thomas Fortune, fiery editor of the *New York Age* (one of the leading Black newspapers of its time),<sup>210</sup> pressed the theme of self-defense as a deterrent with equal fervor. Describing the agenda of the nascent Afro-American League, Fortune explained:

[W]e propose to accomplish our purposes by the peaceful methods and agitation through the ballot and the courts. But if others use the weapons of violence to combat our peaceful arguments, it is not for us to run away from violence. Attucks, the black patriot – he was no coward. . . . “And if there comes violence, let those who oppose our just cause throw the first stone”. . . . [T]o be murdered by mobs is not to be endured without protest. . . .<sup>211</sup>

Commenting on a conflict in Virginia, Fortune wrote, “If white men are determined upon shooting whenever they have a difference with a colored man, let the colored man be prepared to shoot also.”<sup>212</sup> While his rhetoric was sometimes inflammatory, Fortune was careful to caution, “We do not counsel violence; we counsel manly retaliation . . . in the absence of law . . . we maintain that the individual has every right in law and equity to use every means in his power to protect himself.”<sup>213</sup> Responding to criticism of his editorial stance from the white press, Fortune published a pointed response that elaborates the theme of resistance as a deterrent:

We have no disposition to fan the coals of race discord. But when colored men are assailed . . . they have a perfect right to “stand their ground[.]” . . . If they run away like cowards they

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violence. Du Bois, *Let Us Reason Together*, *supra* note 141, at 231; Alison Martin, *This Week in History: Violence Escalates in 1919 Chicago Race Riots*, CHI. SUN-TIMES (July 29, 2021, 11:30 AM), <https://chicago.suntimes.com/2021/7/29/22596538/1919-chicago-race-riots-south-side-red-summer>.

<sup>208</sup> *Is Tulsa a Symbol?*, 22 CRISIS 168, 168 (1921).

<sup>209</sup> *Id.*

<sup>210</sup> T. Thomas Fortune, T. THOMAS FORTUNE CULTURAL CTR., <https://www.tthomasfortuneculturalcenter.org/the-house> (last visited Feb. 22, 2022).

<sup>211</sup> JOHNSON, *supra* note 1, at 119.

<sup>212</sup> EMMA LOU THORNBROUGH, T. THOMAS FORTUNE: MILITANT JOURNALIST 49 (1972).

<sup>213</sup> *Id.* at 48.

will be regarded as “inferior” and worthy to be shot; but if they “stand their ground” manfully, and do their honest share of the shooting they will be respected, and by so doing they will lessen the propensity of white roughs to incite riot.<sup>214</sup>

Mirroring Fortune, many statements of Freedom Movement Defense Policy are steeped in the gendered rhetoric of Black manhood. In a 1912 editorial, Du Bois, manifestly furious about recent lynchings of Black men who had resisted sexual assaults by whites on wives, daughters, and sweethearts, thundered, “Let black men especially kill lecherous white invaders of their homes and then take their lynching gladly like men. It’s worth it!”<sup>215</sup> But, as detailed in Part II, armed resistance by Black women disproves the stereotype.<sup>216</sup>

Ida B. Wells famously advanced the deterrence theme in her advice that the Winchester Rifle deserves a place of honor in every Black home. Wells was specifically referencing two recent episodes where armed Blacks successfully averted lynchings.<sup>217</sup> Those episodes epitomize the gold standard of resistance, where righteous defensive violence saves the lives of mob victims. Those sorts of cases present a powerful reason to prefer resistance over submission.<sup>218</sup> Measured against the option of succumbing immediately to violent attack, the case remains compelling even where the aftermath demands working through the public security bureaucracy. The Sweets, Pink Franklin, Steve Green, and countless others were manifestly better off resisting.<sup>219</sup>

Another layer of this theme surrounds cases of failed resistance where the responsive commentary still advances a cultural norm of resistance toward the goal of deterrence. Several examples demonstrate the theme. The NAACP’s years-long defense of U.S. Army Sergeant Edgar Caldwell is a textured example of the effort to establish resistance as a cultural norm.<sup>220</sup>

Following a dispute about seating, two trolley workers threw Caldwell off into the street, and then proceeded to stomp him.<sup>221</sup> Caldwell shot both of them, killing one.<sup>222</sup> “Newspaper accounts . . . so aroused the race prejudice

<sup>214</sup> *Id.* at 49; JOHNSON, *supra* note 1, at 120, 122 (“[N]onresistance invited contempt and massacre of the race”).

<sup>215</sup> *Divine Right*, 3 CRISIS 197, 197 (1912).

<sup>216</sup> *See supra* Part II.

<sup>217</sup> JOHNSON, *supra* note 1, at 111–12.

<sup>218</sup> *See, e.g., id.* at 131 (recounting armed Black men rescuing Edwin McCabe in Oklahoma); *id.* at 160 (rescuing George Dinning of Kentucky); *id.* at 185 (rescuing Anthony Williams); *id.* at 245 (rescuing Hartman Turnbow); *id.* at 246 (rescuing Robert Cooper); *id.* at 249 (rescuing Winson Hudson); *id.* at 277 (rescuing Robert Hicks).

<sup>219</sup> *National Association for the Advancement of Colored People*, 19 CRISIS 129, 131 (1920).

<sup>220</sup> *Id.* at 130–31.

<sup>221</sup> *Id.* at 131.

<sup>222</sup> *Id.*

of the white people of the county that they were talking of lynching him.”<sup>223</sup> The NAACP pressed Caldwell’s defense through the state courts to the United States Supreme Court and appealed to the governor for clemency.<sup>224</sup>

In March 1920, W.E.B. Du Bois made a special plea for support of the Caldwell case: “We want 500 Negroes who believe in Negro manhood, to send *immediately* one dollar each to . . . Treasurer of the N. A. A. C. P.”<sup>225</sup> With all measures exhausted, and Caldwell finally executed, Du Bois stressed the community obligations imposed by Caldwell’s sacrifice:

No person who is conversant with . . . his case feels that he was guilty of a crime when he fought to save his own life. No red-blooded person would have done otherwise. Caldwell has been sacrificed on the altar of prejudice. . . . *His end means but one more reason for a more unbending and relentless fight on the part of every Negro . . .*<sup>226</sup>

Another perspective on the value of failed resistance emphasizes a more nebulous community benefit. John Hope Franklin, the preeminent Black historian of the twentieth century, describes his personal experience with this theme in his assessment of the 1921 Tulsa riot. Franklin moved to Tulsa with his family in 1925 at the age of ten and lived there until 1931.<sup>227</sup> The Franklins were on the cusp of moving to Tulsa when the riot interrupted their plans.

Modern presentations of the Tulsa riot are stories of “obliterat[ion]” where one of America’s most prosperous Black communities was “reduced to smoldering rubble.”<sup>228</sup> Growing up in the community, Franklin recounts a very different sense of the violence. Franklin’s account is one of heroic, courageous Black resistance to racist terror. According to Franklin, many in the Black community said that estimates of the casualties were manipulated: that “many more whites were killed during the riot than any whites were willing to admit.”<sup>229</sup> Franklin speculated about the evidence of this undercounting while shadowing his father’s law practice. The estate cases of “some white person who died on or about June 1, 1921” were of special

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> W.E.B. Du Bois, *Opinion of W.E.B. Du Bois*, 19 *CRISIS* 233, 233 (1920). In June 1920, *The Crisis* reported the receipt of \$359.15 in response to the editorial. William Pickens, *National Association for the Advancement of Colored People*, 20 *CRISIS* 87, 90 (1920).

<sup>226</sup> *National Association for the Advancement of Colored People*, 20 *CRISIS* 278, 282 (1920) (emphasis added).

<sup>227</sup> JOHNSON, *supra* note 1, at 189. See generally TIM MADIGAN, *THE BURNING: MASSACRE, DESTRUCTION, AND THE TULSA RACE RIOT OF 1921* (2001); SCOTT ELLSWORTH, *DEATH IN A PROMISED LAND: THE TULSA RACE RIOT OF 1921* (1982).

<sup>228</sup> See MADIGAN, *supra* note 227, at back cover note.

<sup>229</sup> John Hope Franklin, *Foreword* to SCOTT ELLSWORTH, *DEATH IN A PROMISED LAND: THE TULSA RACE RIOT OF 1921*, at xvi (1982).

interest.<sup>230</sup> “One was always tempted to conclude that the deceased lost his life in the riot.”<sup>231</sup>

Franklin acknowledged the possibility that the lore in the Black community about the casualty counts may have been embellished. But that lore had its “desired effect” in establishing that the Blacks of Tulsa were heroes who fought bravely against long odds.<sup>232</sup> The impact, said Franklin, was dramatic, and intensely personal.

Everyone who experienced the race riot in Tulsa or was touched by it in some way, as I was, had his own view of what happened, what was the aftermath, and what were the long-range consequences. When I arrived in Tulsa, . . . the collective wisdom in the black community had made certain conclusions about the riot[,] . . . [including] that many more whites were killed . . . than any whites were willing to admit. . . .

These conclusions seemed necessary for the continued self-esteem of Tulsa’s black community. Whether or not the conclusions were valid, they had the desired effect. The self-confidence of Tulsa’s Negroes soared, their businesses prospered, their institutions flourished, and they simply had no fear of whites. . . . Such an attitude had a great deal to do with eradicating the fear that a Negro boy growing up in Tulsa might have felt in the years following the riot.<sup>233</sup>

Roy Wilkins expresses the same theme in his 1936 editorial, “Two Against 5,000”<sup>234</sup>—the story of the lynching of William Wales and his sister, Cora. Yes, the Waleses were ultimately burned by the mob.<sup>235</sup> But Wilkins renders their resistance as heroic and as a source of Black pride.<sup>236</sup> “Two Against 5,000” was Wilkins’s first published work as the official editor of *The Crisis*.<sup>237</sup> The title of the essay was the first item on the front page of the June 1936 issue.<sup>238</sup> It was Wilkins’s inaugural statement and a powerful endorsement of armed self-defense.

<sup>230</sup> *Id.*

<sup>231</sup> JOHNSON, *supra* note 1, at 189.

<sup>232</sup> Franklin, *supra* note 229, at xvi–xvii.

<sup>233</sup> *Id.* at xvi–xvii.

<sup>234</sup> See generally Roy Wilkins, *Two Against 5,000*, 43 *CRISIS* 169 (1936).

<sup>235</sup> *Id.* at 169.

<sup>236</sup> *Id.*

<sup>237</sup> Wilkins had been appointed to *The Crisis* Board by Walter White. ELLIOTT M. RUDWICK, W.E.B. DU BOIS: A STUDY IN MINORITY GROUP LEADERSHIP 274–75 (1960). He started running the magazine in July 1934 after Du Bois resigned and was formally elected Editor in April 1936. *Branch News*, 43 *CRISIS* 184, 186 (1936).

<sup>238</sup> Though Wilkins’s essay took top billing on the front page, it was the third piece in the issue. Wilkins, *supra* note 234, at 165.

The root of the violence was white designs on property occupied by William and Cora Wales.<sup>239</sup> The Waleses resisted, and, finally, the “time-worn device of dragging some white woman into the quarrel and charging [William] Wales with threatening her” was deployed.<sup>240</sup> This led to a confrontation between the sheriff and William Wales that ended with the sheriff shot dead.<sup>241</sup>

The shooting framed the core policy question, “Does *The Crisis* mean to imply by this article that its policy is to defend colored people who kill sheriffs?” Through smoothly honed consideration of self-defense policy in the face of state failure and public unrest, Wilkins answered, “Yes, *The Crisis* defends William and Cora Wales.”<sup>242</sup>

Doubting that “lynching” fully captured the scene, Wilkins sarcastically described the violence as “sport on a grand scale. Hunting ’possum compared to this is tiddlewinks. . . . Here were a man and a woman cooped up in a frame house and all one had to do was shoot.”<sup>243</sup> Then, Wilkins pressed home the virtue of resistance against the mob.

“There was a slight flaw in the setup however. The man and woman had arms and they were not afraid to shoot. . . . Not so good. Not half as good as one lone Negro with nothing but his bare hands easily dangled at the end of a rope . . . . A hanging, manacled Negro cannot shoot back. No, this was a different proposition.”<sup>244</sup>

Wilkins’s contrast of heroic resistance against the grim alternative makes the case that even failed resistance is superior to submission; that its value extends beyond just the broader set of chances it bestows on mob targets. It generates an important cultural asset, inexorably nebulous but vitally important.

## B. *The Forbidden Zone*

Another appeal of the Freedom Movement Defense Policy as a guidepost for our twenty-first century conversation is its emphatic rejection of political violence and plain delineation of a space where armed violence is forbidden. This is a space where the prerogative of individual self-defense is subordinated to group goals. The prime example of this space is the organized public protest, pressing group goals.

Martin Luther King distilled the multiple iterations of the boundaries. While Movement policy endorsed self-defense, it rejected political violence

<sup>239</sup> *Id.* at 169.

<sup>240</sup> An editor’s note says that, subsequently, the woman “vigorously denied that he threatened her—after Wales was dead.” *Id.* (emphasis omitted).

<sup>241</sup> *Id.* at 170.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 169.

<sup>244</sup> *Id.*

violence “as a tool of advancement, *organized* as in warfare, *deliberately* and consciously.”<sup>245</sup> Political goals must be achieved by “socially organized masses on the march.”<sup>246</sup> Wilkins embellished King’s rendition of the forbidden zone, emphatically rejecting “*aggressive, [premediated]*” violence.<sup>247</sup>

This model naturally condemned criminal violence in the deployment of the core movement tool—the protest march.<sup>248</sup> Roy Wilkins’s account of the unrest of 1964 underscores the point. Barry Goldwater was seeking the presidency on the Republican ticket.<sup>249</sup> Wilkins met with King, Whitney Young, A. Philip Randolph, James Farmer, and John Lewis to discuss strategy.<sup>250</sup> Wilkins articulated the worry that that violence in the streets would create a backlash and play into the hands of Goldwater and George Wallace.<sup>251</sup> At the end of July, the group

called for a moratorium on mass marches, picketing and demonstrations until Election Day. This was a major sacrifice. Our goal was to secure justice and equality as well law and order. *We made it plain that we did not approve of looting, vandalism, or any other type of criminal action, and drew a sharp line between those kinds of violence and the legitimate protest of citizens denied their rights.* What appalled us most was the idea that white racists might succeed in equating the summer riots with the demonstrations that had been so vital to civil rights progress in the South.<sup>252</sup>

Among the legion of problems with political violence was that it thwarted a coherent political message. Wilkins illustrated this through a

<sup>245</sup> Martin Luther King, Jr., *The Social Organization of Non-Violence*, in *THE EYES ON THE PRIZE: CIVIL RIGHTS READER* 112–13 (Clayborne Carson et al. eds., 1991) (emphasis added).

<sup>246</sup> *Id.* at 112–14.

<sup>247</sup> NAACP, *THE SINGLE ISSUE IN THE ROBERT WILLIAMS CASE* (1959) (emphasis added).

<sup>248</sup> WILKINS & MATHEWS, *supra* note 1, at 303.

<sup>249</sup> *Id.* at 302.

<sup>250</sup> *Id.* at 303.

<sup>251</sup> *Id.* at 304 (“In my view, the tragic violence in Harlem, the Wallace campaign, and the Goldwater nomination were all linked. The danger was that if we didn’t play our cards coolly and intelligently, the promise of the Civil Rights Act might be diminished or nullified and a new decade of violence ushered in. I believed that with the backlash at work, there could be no real safety in assuming, as many did, that Goldwater had no chance of winning the election. If we made the wrong moves, I thought he had a good chance to win.”).

<sup>252</sup> *Id.* at 304 (emphasis added). Wilkins did, however, understand the impulse for the rioting:

The passion of Watts, the rage, the fires, the crackle of gunfire, the looting all took whites by surprise. I was not surprised in the slightest. We had early warnings the year before in Harlem and elsewhere. . . . The chief of police in Los Angeles was the sort of fellow who could call Negroes “Monkeys in a zoo.” Mayor Sam Yorty was a law-and-order man—law for the white folks and plenty of orders for everyone else. Given this background, the riot was no surprise, but I was not prepared for the sheer scale of the violence.”

*Id.* at 312.

critique of a *Newsweek* reporter's attempt to explain the 1964 violence in Watts.<sup>253</sup> The reporter's chosen representative, a seemingly random teenager, explained things this way: "You jes' take an' run, an' you burn when they ain't nothin' to take. You burn whitey, man. You burn his tail up so he know what it's all about."<sup>254</sup> Wilkins's reaction was a mixture of "grief . . . or [] anger. . . . There was no real philosophy, no law, not even any easily comprehensible sociology behind the riot."<sup>255</sup> Wilkins worried that the violence was an opening for repression, and he feared that "whites would fail to distinguish rioters from real civil rights demonstrators."<sup>256</sup>

Du Bois expressed this same concern early on with admonition against political violence after the 1919 Chicago Race Riot.<sup>257</sup> Rejection of political violence also was imbedded in the NAACP's litigation strategy.<sup>258</sup> The defense of Pink Franklin, Edgar Caldwell, Fleta Mathies, and Ossian Sweet all rested on the same principle of righteous self-defense by individuals forced into violence as a last resort.<sup>259</sup>

Sometimes, though, things are more complicated. The next section shows how the Freedom Movement Defense Policy recognizes and accommodates a contestable zone of circumstances where claims of legitimate gun use are highly contingent.

### C. *The Danger Zone of Contestable Circumstances*

For the most part, Freedom Movement Defense Policy presents fairly stark choices—resistance versus submission, self-defense versus political violence. But there is a zone of contestable scenarios where the decision-making is fraught with difficult judgments. That space is epitomized by the tactical disagreements surrounding continuation of James Meredith's 1966 Mississippi March Against Fear.<sup>260</sup>

Meredith's march started in early June, as a nearly solitary effort.<sup>261</sup> After Meredith was shot from ambush on the second day, Movement leaders

<sup>253</sup> *Id.* at 312–13.

<sup>254</sup> *Id.* at 313.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> Du Bois, *Let Us Reason Together*, *supra* note 141, at 231.

<sup>258</sup> *National Association for the Advancement of Colored People (NAACP)*, STANFORD UNIV.: MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/national-association-advancement-colored-people-naacp> (last visited Mar. 10, 2022).

<sup>259</sup> Jae Jones, *First Legal Case of NAACP: Pink Franklin Trial*, BLACK THEN (Nov. 14, 2018), <https://blackthen.com/first-legal-case-of-naacp-pink-franklin-trial>; EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: TARGETING BLACK VETERANS 19 (2017); Susan Bragg, *Ossian Sweet (1895-1960)*, BLACK PAST (July 18, 2007), <https://www.blackpast.org/african-american-history/sweet-ossian-1895-1960>; BOYLE, *supra* note 107, at 151–55.

<sup>260</sup> JOHNSON, *supra* note 1, at 264.

<sup>261</sup> *June 1966: Meredith March*, SNCC DIGIT., <https://snccdigital.org/events/meredith-march> (last visited Mar. 10, 2022).

rushed to the scene and committed to continuing the march.<sup>262</sup> The initial spirit of cooperation quickly dissolved into conflict.

The role of the Deacons for Defense, a grassroots armed defense group that was gaining membership across the South, was a primary point of contention and ultimately a deal-breaker for Roy Wilkins and Whitney Young (President of the National Urban League).<sup>263</sup> The worry was evident when Deacons piled out of cars in Memphis carrying guns.<sup>264</sup> Deacons marching with guns was beyond the core case of self-defense and risked altercations that opponents could characterize as dreaded political violence.<sup>265</sup> The NAACP and Urban League refused to participate.<sup>266</sup>

Ultimately, the Deacons would not march, but remained in the background, guarding campsites and the march route.<sup>267</sup> There would be no public images of marchers carrying guns. But the risk was still too grave for Wilkins and Young. Martin Luther King, Jr. and SCLC sided with Stokely Carmichael and others to proceed with the march, guarded by the Deacons.<sup>268</sup>

In terms of pragmatic policy implementation, Wilkins's approach was the most rigidly conservative. King, on the other hand, struck a balance that adds a layer of texture to the policy. Continuing the march after Meredith had just been shot was risky. There were good reasons to distrust local or state governments to protect the marchers. King's many statements and general practice shows that he was strongly committed to nonviolent protest. But, as a practical matter, his options were limited. He had no power to bar the Deacons from the scene. The alternative would be the Wilkins approach of exiting the event.<sup>269</sup>

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<sup>262</sup> *Id.*

<sup>263</sup> Christopher B. Strain, "We Walked Like Men": *The Deacons for Defense and Justice*, 38 LA. HIST. ASS'N 43, 55 (1997).

<sup>264</sup> *Id.* at 54–55.

<sup>265</sup> *Id.* at 55–56.

<sup>266</sup> *Id.* at 56.

<sup>267</sup> *Id.* at 58.

<sup>268</sup> *Id.* at 56–58.

<sup>269</sup> Compare this to Wilkins's complaint about state failure on the problem of lynching as FDR's national crime conference, which eventually generated the NFA, was about to convene in 1934. WILKINS & MATHEWS, *supra* note 1, at 132. Walter White sent a letter urging the addition of lynching to the agenda and was brushed off. *Id.* Wilkins notes that, "[a]t the time, lynchings were running at a rate of two to three a month." *Id.* Wilkins accounts the subsequent brutal lynching of Claude Neal in Greenwood, Florida. *Id.* at 132–33. The description was laid out in detail in *The New York Times*. *Id.* at 133. Wilkins demonstrates this as a supreme failure of the federal government, condemning President Franklin D. Roosevelt and his Justice Department for refusing to even talk about the crime of lynching during the national crime conference. *Id.* Wilkins even "suggested to Walter [White] that the N.A.A.C.P. picket the crime conference . . . [to] humiliate Cummings and the weak-kneed Justice Department." *Id.* Wilkins notes that Walter White at least convinced Eleanor Roosevelt to urge FDR to mention the crime of lynching in his opening remarks to the conference. *Id.* at 134. Wilkins, White, and others were later arrested at Constitution Hall for picketing without a parade permit. *Id.* at 135.

King's willingness to continue the march with the Deacons in the background illuminates a contestable space within the Freedom Movement Defense Policy. The protest march was a core movement tool. This was the forbidden zone where violence was taboo.<sup>270</sup> On the other hand, the March Against Fear was unusual in the sense that it was a continuation of an event where the leader had been shot on the street and the prospect of government protection was dubious. Wilkins's refusal to participate was a risk averse, conservative application of the Freedom Movement policy. King's approach reflected the fact that this was an unusual circumstance, in a contestable space at the margins, where stark choices give way to contingent decision-making that is highly circumstantial.

The contingency of decision-making within this space and the potential for fair disagreement about these scenarios is underscored by the other things we know about Wilkins and King. King's nonviolent stance is legendary. But, his openness on the subject early in the movement is illustrated by a variety of accounts, including the report from 1956 that the parsonage in Montgomery was "an arsenal."<sup>271</sup>

Wilkins's subsequent reflections about the March Against Fear add texture. With the polish of hindsight, Wilkins explained his decision to exit this way:

I still believe that the way SNCC and CORE took over the Meredith march was a tragedy for the civil rights movement. Scores of organizations might otherwise have been encouraged to rally around the Civil Rights Bill. Instead, Stokely set off down the road . . . for Jackson, with Dr. King in tow, to draw crowds and reporters. In Greenwood, Mississippi, Stokely got up and yelled, "The only way we gonna stop them white men from whuppin' us is to take over. . . . We been sayin' freedom for six years and we got nothin'. What we gonna start saying now is 'Black Power.'" Those two words . . . Black power was just a slogan, loaded words, not a real program, but it crystallized resentments that had been building for years . . . . The phrase couldn't have been more destructive if Senator Eastland had contrived it. I imagine he sat there saying to himself, "Now why didn't I think of that?"<sup>272</sup>

King's response after the stop in Greenwood further illuminates the contingency of decision-making in the contestable zone. Troubled by the escalating rhetoric of "Black Power," King declared wearily that he was

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<sup>270</sup> Zeke J. Miller, *Why Martin Luther King Jr.'s Lessons About Peaceful Protests Are Still Relevant*, TIME (Jan. 12, 2018, 4:15 PM), <https://time.com/5101740/martin-luther-king-peaceful-protests-lessons>.

<sup>271</sup> JOHNSON, *supra* note 1, at 262–63.

<sup>272</sup> WILKINS & MATHEWS, *supra* note 1, at 316.

“sick and tired of violence” and pleaded with SNCC and CORE to send the Deacons home and abandon the inflammatory rhetoric of Black Power.<sup>273</sup>

The next turn in the story underscores the difficulties within this space. If FBI surveillance reports are to be believed, several weeks after the Greenwood rally, King assented to as many as forty Deacons providing security for a July 29 speech in Chicago on the condition that they not be identified as members of the group.<sup>274</sup>

Notwithstanding their disagreement surrounding the March Against Fear, King and Wilkins ultimately seemed in clear agreement about how the Freedom Movement Defense Policy intersected with the burgeoning Black Power movement.<sup>275</sup> In August 1966, Movement leaders and emerging Black radicals appeared on the Sunday weekly news show, *Meet the Press*, to discuss the newly minted slogan, “Black Power.”<sup>276</sup> King, Wilkins, Whitney M. Young, Jr., Floyd B. McKissick, Stokely Carmichael, and James H. Meredith represented the longstanding position of the Movement.<sup>277</sup> The detailed presentation defined the space of legitimate self-defense that Movement policy always had endorsed.<sup>278</sup> But King was adamant that the Movement could not tolerate violence in the forbidden zone, and he worried about phrasing that blurred the line between legitimate self-defense and self-defeating political violence:

On the question of defensive violence, I have made it clear that I don't think we need programmatic action around defensive violence. People are going to defend themselves anyway. . . . I think the minute you have programmatic action around defensive violence . . . the line of demarcation between defensive violence and aggressive violence becomes very thin.<sup>279</sup>

Wilkins also fervently rejected political violence endorsed by Carmichael and Meredith: “[N]o one believes that the Negro minority in this country is going to take up arms to try to rectify every wrong that has been done [to] the Negro.”<sup>280</sup> Later, at the NAACP annual convention, Wilkins pressed the policy home.<sup>281</sup> Declarations about self-defense urged by CORE and other groups were “not new as far as the NAACP is concerned. Historically, our Association has defended in court those persons who have defended

<sup>273</sup> JOHNSON, *supra* note 1, at 268.

<sup>274</sup> *Id.* at 282.

<sup>275</sup> *Id.* at 291–93.

<sup>276</sup> Transcript: *Meet the Press* (NBC television broadcast Aug. 21, 1966) (on file with Civil Rights Movement Archive).

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> JOHNSON, *supra* note 1, at 289.

<sup>280</sup> *Id.* at 290.

<sup>281</sup> Roy Wilkins, *Whither “Black Power”?*, 73 *CRISIS* 353, 353 (1966) (publishing excerpts from the keynote address that Wilkins delivered at the NAACP 57th Annual Convention on July 5, 1966).

themselves and their homes with firearms.”<sup>282</sup> But the worrisome implications of the Black Power chant implied a Black equivalent of white terrorism, “a reverse Ku Klux Klan. We of the NAACP will have none of this.”<sup>283</sup>

Looking back, Wilkins ultimately would describe himself as a more aggressive proponent of self-defense than King.<sup>284</sup> Considering what we can observe about Wilkins and King over time, if we could repeat the experiment, it is unclear whether either of them would make the same decisions surrounding the March Against Fear. This demonstrates the importance of the general acknowledgment of a contestable danger zone where entering with arms is both understandable and risky, a space where claims of legitimacy will be highly fact dependent.

D. *The Normative Case for Using Freedom Movement Defense Policy as a Model for Thinking About Private Arms During Civil Unrest*

The normative case for using Freedom Movement Defense Policy as a guidepost for thinking about private arms in the context of modern civil unrest is multifaceted. To start, the policy offers a compelling context for evaluating the continuing question: whether civil unrest is an excuse for curtailing private arms. One natural instinct is that the right to arms during civil unrest is more problematic than isolated episodes of individual self-defense. From the state’s perspective this may be true. Keeping and restoring order seems more problematic when private antagonists are armed. Movement Defense Policy privileges the perspective of the victim and her class, for whom armed defense against mobs is arguably more compelling than defense against random attacks by individuals. The mob can be an instrument of terror when it targets people because of their group identity. It assaults and instills fear in the whole group just by injuring a few of the members. Resistance cuts the other way. It combats terror directly by confronting the immediate aggressors and indirectly by sending a general message that mobbing is risky.

Separately, Freedom Movement Defense Policy has a solid political pedigree. It stands on English common law and the idea of castle.<sup>285</sup> Roy Wilkins explicitly invoked this tradition in assessment of the *Sweet* case, which, even decades later, he still considered the most important housing case of the 1920s.<sup>286</sup> The policy also fits comfortably within the transformation wrought by the Fourteenth Amendment. By 1868, the focus

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<sup>282</sup> *Id.*

<sup>283</sup> JOHNSON, *supra* note 1, at 291–92. The conservative approach prevailed, and the radicals passed from the scene. *See id.* at 285–96.

<sup>284</sup> *See* WILKINS & MATHEWS, *supra* note 1, at 277.

<sup>285</sup> *See, e.g.,* Nicholas J. Johnson, *Self-Defense?*, 2 J.L. ECON. & POL’Y 187, 199–200 (2006).

<sup>286</sup> WILKINS & MATHEWS, *supra* note 1, at 69 (“Dr. Sweet had simply stood his ground on the ‘man’s home is his castle’ principle hallowed in English common law.”).

of the constitutional right to arms was individual self-defense.<sup>287</sup> The nettlesome militia theme, with its undercurrent of identifying and overthrowing tyranny through armed political violence, had receded.<sup>288</sup> This grounding is particularly apt for purposes of the modern debate because the Fourteenth Amendment is the conduit for application of the national right to arms to the states, and state and local governments conduct much of the government response to civil unrest.<sup>289</sup>

Finally, decision-making in the midst of civil unrest is often clouded by the clamor of the moment. Analysis grounded on Freedom Movement Defense Policy can diminish that impediment through reference to well-seasoned precedents that still address the interests and claims of modern stake holders.

The core elements are straightforward. First, Movement Defense Policy validates a bounded sphere of legitimate defense against mobs by people who are literally or figuratively backed to the wall, people like the defenders at Atlanta—Du Bois, White, and Wright—who took their stand against the mob in a space where retreat cannot be demanded.

<sup>287</sup> See Michael P. O’Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of “Bearing Arms” for Self-Defense*, 61 AM. U. L. REV. 585, 623 (2012).

<sup>288</sup> See AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 50–51, 264–66 (1998). The Reconstruction Era articulated new understandings of the Bill of Rights. Amar argues that the right to arms had shifted from the militia-centric conception of the 1791 Second Amendment to a core focus on personal self-defense—i.e., the self-defense of freedmen against racist terror. *Id.* at 264–66.

The unrest of 2020 sharpens the problem of identifying tyranny and the difficulty of constructing a compelling justification for political violence. The weakness is especially apparent through comparison of the Black Freedom Movement to claims of legitimacy advanced by various modern groups. Perhaps the best example of tyranny in our history is the sweeping, systematic abuse heaped on the Black tenth of the population by federal, state, and local governments. The leading lights of the Black Freedom Movement rejected political violence as a viable response for an array of reasons, from efficacy to messaging. See Dara T. Mathis, *King’s Message of Nonviolence Has Been Distorted*, ATLANTIC (Apr. 3, 2018), <https://www.theatlantic.com/politics/archive/2018/04/kings-message-of-nonviolence-has-been-distorted/557021>.

The justification for political violence invoking the militia theme of the Second Amendment should be something more substantial than what Du Bois, White, and Wilkins confronted. That case has yet to be made. And would legitimate political violence require exhaustion of political remedies and validation through manifestations of support for opposition, or would it be any random resistance to state violation of sacred principles.

<sup>289</sup> For elaboration of the procedural basic difference between the Second Amendment’s right to arms and the Fourteenth Amendment’s limitations on the federal government, see Nicholas J. Johnson, *The Power Side of the Second Amendment Question: Limited, Enumerated Powers and the Continuing Battle Over the Legitimacy of the Individual Right to Arms*, 70 HASTINGS L.J. 717, 769–70 n.233 (2019). The eighteenth century right to arms, codified in the Second Amendment, is an aspect of limited federal power under the original Constitution. *Id.* The Fourteenth Amendment was positivist law-making with a core focus on private self-defense. *Id.* States, unlike the federal government, have *legitimate traditional police powers*. *Id.* at 745. *But see* Daniel C. Richman & Sarah Seo, *Driving Toward Autonomy?: The FBI in the Federal System, 1908-1960* 1 (Univ. of Iowa, Coll. of L., Legal Studies Research Paper, No. 2019-22, 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3415103](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3415103) (discussing the practical, but constitutionally suspect, growth of federal police powers).

Second, the policy allows easy condemnation of armed political violence in the forbidden zone. This is the “aggressive,” “premeditated,” “organized, deliberate violence deployed as a political tool” condemned by King and Wilkins.<sup>290</sup> As Wilkins emphasized, looting and vandalism in connection with the core movement tool—the protest march—is plain subset of this prohibited activity.<sup>291</sup>

Third, by framing the circumstances about which we can fairly disagree—activity within the danger zone of contestable arms bearing and use—the policy sounds a clear alarm of warning.<sup>292</sup> Individuals or groups who enter the public space armed, under politically heated circumstances—where fighting words and physical confrontation are easily foreseeable—take tremendous risks.<sup>293</sup> Citizens who venture out of their homes into protest environments with the goal of “ensuring order” take even greater risks.<sup>294</sup> The possibility that the state might fail in its role of providing security in that space may be real and claims that arms use was defensive and legitimate ultimately might prevail.<sup>295</sup> But, self-defense claims in this context will virtually never present the clean, easy, model case. Those who venture armed into this danger zone, even with the best of intentions, should expect criticism, heavy scrutiny, and possibly prosecution and conviction.<sup>296</sup>

## CONCLUSION

The core interests of individuals facing imminent threats transcends time and race. There are no important distinctions between the terror that fueled the Freedom Movement Defense Policy and the turmoil of the twenty-first century. It helps order our conversations about the legitimacy and scope of arms bearing during periods of civil unrest in a principled way, and in a manner that credits the core interests of modern stakeholders, and simultaneously extracts us from the mire of immediate circumstances.

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<sup>290</sup> See King, *supra* note 245, at 113 WILKINS & MATHEWS, *supra* note 1, at 317, 326.

<sup>291</sup> WILKINS & MATHEWS, *supra* note 1, at 303–04.

<sup>292</sup> Citizens who take on the role of police, without the benefit of the broader (that is, official, practical, and often problematic) license to use violence under which police operate, take extreme risks. See Nicholas J. Johnson, *Lawful Gun Carriers (Police and Armed Citizens): License, Escalation, and Race*, 80 LAW & CONTEMP. PROBS. 209, 223–24 (2017).

<sup>293</sup> Here, where the venue is prearranged and controlled, state claims to a monopoly on violence are compelling, given that state security can be mere seconds away.

<sup>294</sup> Armed activity within this contested space is a clear risk, which is demonstrated in the decisions surrounding the march against fear. See *supra* Part III.C (contrasting the protection of homes and businesses).

<sup>295</sup> See *supra* Part III.C.

<sup>296</sup> Johnson, *supra* note 292, at 224.

