

Missing the Point – Who do the strict constructionists think they're fooling?

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If only the solution were that simple. (Shutterstock)

As you know, there was yet another school shooting on Monday. An obviously mentally disturbed individual shot her way through a locked door into a school in Nashville, armed with an AR-15 rifle, an AR-15 style pistol and what passes for an ordinary handgun nowadays. She managed to kill three nine-year-old kids and three adults before being taken down by police. In addition to the six people murdered and the horrific impact on their families, other children and adults, although physically unharmed, have been traumatized for life.

“Okay,” America says to itself, *“been there, done that.”* There will be the usual media coverage, regrets, commitments to doing something about it, then nothing until the next shooting. And so on.

Elected officials – mostly Republicans in Congress and various state legislatures – will continue to make their “strict constructionist” arguments. They will tell us that they are sad, but believe that the Constitution should be taken literally – including, in particular, the Second Amendment. This argument they are making is ludicrous on the face of it. It’s idiotic and intellectually dishonest. It’s a poor excuse for what’s really behind their behavior, proffered with reckless disregard for the human costs of their selfishness.

The Constitution isn’t sacrosanct. It’s not a religious artifact, a list of commandments handed down by an infallible deity. No disrespect meant, not in the least, but it’s

nothing more or less profound than a set of administrative rules and guidelines that define the context in which a free people will choose to govern themselves. It's a remarkable and wonderful document, ratified in 1788, 234 years ago, by a surprisingly thoughtful and intelligent handful of people. All things considered, our Constitution has served us very well. But it's only words on paper, written ages ago, socially and technologically speaking, by human authors with understandably limited future vision.

[Public opinion](#) is split with a small majority in favor of restricting the sale of assault weapons. But then I suspect that a great many people who are uncertain about where they stand might favor restrictions were they not constantly being told that doing so would be unconstitutional.

To be clear, the question on the table is, *"Do we have the constitutional right to restrict the sale of assault weapons for personal use?"* Officials claiming to be strict constructionists answer, "Unequivocally, no." More specifically, they are deferring to the [Second Amendment](#) which reads, *in its entirety...*

"A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Read it again, more carefully this time. The quotation is unabridged. The capitalization and punctuation are in the original. That's the entire amendment.

First of all, the language of the Second Amendment clearly indicates that the entire purpose of protecting the right to bear arms was to assure that we have a "well-regulated Militia." That statement I just made is not interpretive. It's just plain English. That's what the words mean, both now and, in this case, way back when the Constitution was written.

A "militia" is a body of citizens upon which a country can call, if necessary, to be or supplement its military forces.

Flash forward 234 years and we actually have, and have had for a very long time, a well-regulated and fully-armed professional military that protects us, worldwide, on land, at sea and in the air – and, more recently, in outer space. **The need for civilians to "bear arms" to assure the existence of our modern day "militia" no longer exists.** In effect, the entire Second Amendment is an anachronism and no longer relevant.

To assume that the Second Amendment has some other meaning, perhaps that we have the constitutionally guaranteed right to bear arms for personal self-defense or in case we need to overthrow our democratically elected government is not – by any literal reading – what the Second Amendment says. To conclude otherwise, that the Second Amendment is somehow about our right to own any gun, let alone an assault

weapon, for personal use, is an inherently interpretive point and completely contradictory to the strict constructionist philosophy.

Second point... What exactly do you suppose the authors of the Constitution meant by “Arms”? The Second Amendment doesn’t mention “guns” or “weapons.” It talks about “arms,” a more general term. That said, do you seriously think, for a second, that the founding fathers of our country were insisting that individuals have a right to bear conventional explosives, not to mention nuclear and other weapons of mass destruction that a future army – one with capabilities our founders couldn’t possibly imagine – might use? If you agree, well then, you’ve already admitted that the Second Amendment’s right to bear arms does not, in fact, grant a blanket guarantee for the ownership of all manner of weapons.

Admittedly, the example I just made is extreme. Of course, the Constitution doesn’t guarantee civilians the right to own bombs, shoulder-fired and ground-to-air missiles, cannisters of deadly gas, whatever. Of course not. So yes, I’m offering an extreme example, but it makes the point nonetheless. We’ve already limited the application of the word “arms” in the Second Amendment. All we’re quibbling over now is where to draw the line. And while we’re quibbling, people are dying. Families are being destroyed.

Some strict constructionists may argue that the lack of specificity in the Second Amendment somehow conveys blanket, unfettered rights to own weapons of whatever definition for personal use. That the lack of detail is, in and of itself, meaningful. ...No, it’s not. You can’t argue that, if the founding fathers wanted to limit the application of the Second Amendment, they would have said so. And how would they have done that? By listing specific arms that were approved and those that were not, including weapons that wouldn’t be invented for 200 years?

Read the text of the amendment again and consider the historical context. Coming only twelve years after the Declaration of Independence, it’s about the right of individuals to own relatively primitive, single shot rifles and pistols that they might need to participate in the defense of their country. [To quote Emerson](#), *“By the rude bridge that arched the flood, Their flag to April's breeze unfurled, Here once the embattled farmers stood, And fired the shot heard round the world.”*

The rifles and pistols of their time had to be primed and loaded one shot at a time. [An AR-15 assault rifle](#) can fire approximately 60 high velocity, wildly destructive rounds (bullets) per minute, just by pulling and holding the trigger. Going back in time, a single shooter armed with an AR-15, could have wiped out all 55 attendees at the Constitutional Convention in a matter of just a couple of minutes. Do you seriously think that our founders – particularly if they had a “well-regulated Militia” the likes of what we have today – would have amended the Constitution to guarantee everyone the right to own an AR-15 if it was a thing back in 1788? If you believe they would have,

then *you're the one* interpreting the language of the Second Amendment to suit *your* purposes.

By the way, the modern bullet, carrying its own explosive load, wouldn't even be invented until the 1800s, decades after the Constitution was ratified.

Every day that goes by, our time has less and less to do with the founding fathers' reality which was the context in which they conceived and wrote our Constitution.

In fact, they obviously appreciated this natural phenomenon of aging, outdated principles by incorporating a procedure for amending the Constitution in the document itself. The original text was never meant to be verbatim, flawlessly relevant forever.

While I didn't know any of our founding fathers personally, I'm certain that the vast majority, if not all of them – were there some means of bringing them up to date with respect to specific weapons and technological developments over the past 234 years – would agree with the point I'm making. They would not be the ones who are missing the point, nor would they appreciate being used to provide cover behind which officials elected by the gun lobbies and other special interests can hide.

They would tell you that you do, in fact, have the right to bear arms, but not any arms, not any weapon whatever its destructive power – to be used, *with the proper authority*, in defense of your country.

If necessary, if the courts aren't willing or able to save us from ourselves, well then, we need to amend the Constitution to reduce gun-related violence in our country. Amending the Constitution is a legitimate Constitutional process and calling. It is, after all, the Second **Amendment** that we're talking about.

According to [one estimate](#) made by the National Shooting Sports Foundation, there are 20 million assault rifles in civilian hands in our country. With those numbers, do any of you feel that you, your spouse, your children or grandchildren are safe?

Pro-gun advocates talk as if the Constitution was written last week. That it's somehow forever relevant. In fact, it was written in the earliest beginnings of The Industrial Revolution. More than 200 years before the advent of technologies we have come to take for granted, but which we are clearly still struggling to understand. The authors of the Constitution in 1788 had no idea what life would be like in 2023. To agree with those who oppose restricting the sale and ownership of assault weapons is missing the point – and paying for it with the lives of children who, as their parents and grandparents, we are sworn by nature to protect.

-Les Cohen

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