The Second Amendment has limits

by Daniel Headrick

When the Parkland mass shooting occurred in February I came to believe, and still do, that our cynical national conversation regarding gun control would change. It was the sudden prophetic and articulate burst of political activism by young people that captured our collective imagination. Emma Gonzales and other students spoke truth to power.

For too long now the gun has not been questioned. Its idolatrous grip on our theological and political imagination continues to inspire not statutory reform, but deep and abiding cynicism. How do we break the cynicism? There are many ways. Prophetic preaching and attention to gun control as an urgent Christian issue are natural arenas. Another tool clergy can use is some informed understanding of the law surrounding these issues.

All I really want you to know is that the Second Amendment has limits. Congressman Steve Scalise, who survived a mass shooting, recently said that there were no limits on the Second Amendment.[1] His claim was not unique. It is one that I have heard routinely, and especially in the wake of a mass shooting. And, it is wrong.

This month marks the 10-year anniversary of *District of Columbia v. Heller*, 554 U.S. 570 (2008). In that case, the United States Supreme Court set aside all prior Second Amendment jurisprudence by holding for the first time that the Constitution protected private gun ownership outside of militia use. The decision emboldened the gun lobby and helped to generate several myths which are trotted out after every mass shooting as an alleged reason for Why We Must Do Nothing.

The most insidious myth is that we cannot enact gun control laws because the Second Amendment prohibits such attempts. But of course the Second Amendment has limits; all the amendments do. To claim that there are no limits to a constitutional right ignores every time the Supreme Court interprets and defines a Constitutional provision.

Even the most conservative jurist in recent Supreme Court history—now deceased Justice Antonin Scalia—knew that the Second Amendment had limitations. Writing for the majority in *District of Columbia v. Heller*, 554 U.S. 570 (2008) Justice Scalia said that, "Like most rights, the right secured by the Second Amendment is not unlimited." I love to point this out to people because in certain circles (not mine) it is thought that if Scalia said it, I believe it, that settles it.

Scalia wrote that nothing in the Court's decision would prohibit legislatures from banning guns from public places, or laws limiting possession by the mentally ill or felons. But rather than embrace this judicial permission to enact reasonable laws, many states have run in the other direction: allowing more guns in more places. I live in Georgia, and like several others states

[1] http://www.newsweek.com/second-amendment-las-vegas-gun-control-680384

Georgia allows concealed carry on the grounds of colleges and universities. Every year, states take legislative action to *expand*, not *contract*, the areas where guns may be carried. The logic of the National Rifle Association is that gun violence can only be met with more gun ownership—guns in churches, movie theaters, malls and parks. Pretty soon, even guns will have guns.

Scalia also wrote in *Heller* that the Second Amendment did not extend its protection to firearms which were not in "common use" or which were "most useful in military service." Reasonable people thought, *hmmm…do you mean weapons of mass murder like the AR-15?* Some courts have reached the same conclusion. Recently, the United States Court of Appeals for the Fourth Circuit upheld a Maryland law which banned AR-15s. *See Kolbe v. Hogan*, 849 F. 3d 114 (4th Cir. 2017).

In the wake of the Sandy Hook shooting, the Maryland state legislature passed the Firearm Safety Act of 2013, which banned AR-15s and similar weapons. A constitutional challenge to the ban was brought in federal court. Relying upon Scalia's language from the *Heller* case, the Court of Appeals held that because AR-15s and similar weapons were "most useful in military service" they could be banned without violating the Second Amendment. *Id*. at 46-7.

So, in fact, a state recently placed reasonable and powerful restrictions on private gun ownership, such action was upheld as constitutional by a federal court, and the United States Supreme Court declined a petition to reverse the decision. Trot that out the next time somebody says, *but the Second Amendment…*

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