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P E R S P E C T I V E S

by ***Rinaldo S. Brutoco***

Rinaldo S. Brutoco is the Founding President and CEO of the Santa Barbara-based World Business Academy and co-founder of JUST Capital. He's a serial entrepreneur, executive, author, radio host, and futurist who's published on the role of business in relation to pressing moral, environmental, and social concerns for over 35 years.

The 2nd Amendment

Bad law is always trashed

Let's get something straight: just because the Supreme Court comes up with a clearly wrong opinion doesn't mean it is correct, or that it won't be eventually thrown out as *bad jurisprudence.*

Here's a notorious example: The Supreme Court led by Justice Roger B. Taney (who, until John Roberts, was viewed as the worst Chief Justice in US history) issued the *Dred Scott v. Sanford* decision in 1857. After Dred Scott (a free black man) was improperly captured, the court ruled that the Constitution did not include any rights of citizenship for black citizens. It was universally credited for triggering the outbreak of the Civil War just four years later.

You see, a "strict construction", of the Constitution, which Taney's court used for their decision in *Dred Scott,* could only enforce rights written in 1787, even if subsequent events proved that the document had to be viewed as a "living document" as society evolved. By the way, the recent opinion in the *Dobbs v. Jackson Women's Health Organization* case which overrode *Roe v. Wade* was similarly *not* based on a particular clause in the Constitution, but rather on the Court's personal view as to how society should read the Constitution: like it is still 1787!

Another incredibly infamous misapplication of justice by the Supreme Court occurred in *Plessy v. Ferguson* in 1896 which held that "separate but equal" was just fine for black folks. They couldn't expect to go to good white schools, live in good white neighborhoods, or otherwise object to the Jim Crow laws that separated everything into a rigid apartheid structure of separate eating establishments, separate transportation options, and even separate water fountains.

That lasted until the 1954 landmark decision, *Brown v. Board of Education,* ruled that separate was inherently unequal. Which of course is the logical conclusion anyone would have come to *even though* equal rights for all are not in the Constitution. As any rational person realizes looking back, the nature of the equality the Founding Fathers were attempting to give voice to is better served by *Brown* than it was by *Plessy.*

This leads us to a case that clearly is an incorrect interpretation of the US Constitution: *Heller v. District of Columbia.* That 2008 case was *flagrantly wrong* when the decision was used to overturn the Firearms Control Regulations Act of 1975. Like recent cases, this was the result of the political power of a particular minority in the country supported by massive political donations and campaigns by the National Rifle Association (NRA). It basically took the word "militia" out of the 2nd Amendment to give a constitutional right to bear arms as individuals.

Here are the exact words of the 2nd Amendment:

"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."

Notice the word "militia," (the *precise* word the Supreme Court decided meant nothing in their rush to provide gun manufacturers with the right to sell as many guns as they wanted) is the *key* concept in the Amendment. This judicial "sleight of hand" is even more remarkable when you realize that *only* the 2nd Amendment has a clarifying clause before the right is stated.

Every impartial reading of the Bill of Rights would quickly conclude the *only* right stated in that group that had a qualifying presumption is the 2nd. "A well regulated militia" was "*necessary* to the security of a free state" and in order to permit militias, the Amendment goes on, the people had the right to keep and bear arms.

So, what was the "militia"? The closest thing to a militia in 1776 at the birth of the United States is what we would today call the National Guard. It would be great if the Court would travel to Colonial Williamsburg, Virginia and physically see the militia. It was, and remains, a cylindrical red building just off the commons where all the civilian-owned "arms" were maintained. They were stored until a bell rang, signaling that every able-bodied man should run to the militia building to get their weapons and prepare to repel hostile forces.

Decades after the Constitution was drafted, the organization of civilians who would take up arms for common defense became known as the militia. And later, the militia was formalized into the National Guard. You see, *there is no right* anywhere in the Constitution for individuals to "keep and bear arms" for their amusement or to terrorize others. It's just ***NOT*** what the Constitution says. Amazing, isn't it?

This brings us to the insanity of the June 23rd *New York State Gun and Pistol Association Inc, v. Bruen* case, which struck down decades of gun safety laws. Not only did the court find that anyone has a right to carry these deadly assault rifles on our city streets; but they can also be concealed! Nonetheless, there simply is no right for an individual, *apart from their participation in a militia*, to bear any arm - let alone ones like an AR-15 which is more powerful than any weapon of war used by US troops in Korea and Viet Nam. It is a "right" created out of thin air by the Court. If our Republic survives, it will one day be viewed with the same disgust as *Dred Scott* and *Plessy.*

What about the Declaration of Independence's promise to protect our very lives by declaring a new nation? The weapons of war the Court has endorsed have no place on our city streets given their only purpose is to slaughter the most people in the least amount of time.

The only right to bear arms the Founding Fathers understood was the experience they had with militias like Williamsburg. When you take "militia" out, you are not interpreting the Constitution—you are re-writing it.

That's what makes the current Court so radically dangerous. They think they can create anything they want in pursuit of their minority view to impose their religion, their guns, and the control over women's bodies they so crave to impose control over the rest of us. They will not succeed if the Republic does survive, because bad law is *always* ultimately abandoned.

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