New American

Written by **Selwyn Duke** on February 11, 2023

The Atlantic Attacks the Constitution: Says It's "Going to Get Women Killed"

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Should the Constitution just be destroyed, with even the original document burned so that it may never, ever rear its head again? Nobody of note has yet suggested this, literally, but the people tearing down our statues, renaming buildings, and now occasionally even saying Mount Rushmore should be destroyed may as well do so. It would be more honest than the continual attacks on the Constitution's meaning under the pretense of constitutional rectitude.

One of the latest examples of the latter is a Thursday *Atlantic* article asserting, "Originalism Is Going to Get Women Killed," which is essentially no different than stating our Constitution is going to get women killed (in-depth explanation later).

For sure, writer Madiba Dennie, despite being a lawyer (with the Brennan Center), has a real problem with the supreme law of the land. She evidences this with lines such as:

- "By its very nature, originalism threatens women and other minority groups who were disempowered at the time of the Constitution's adoption."
- "Originalist ideology glorifies an era of blatant oppression along racial, gender, and class lines, transforming that era's lowest shortcomings into our highest standards."
- "Originalism limits who gets to be a part of 'our' and who is entitled to the Constitution's rights and protections."

Ironically, though, the current bee in Dennie's bonnet is that certain people's constitutional rights and protections are *not* being limited. That is, she complains about the Fifth Circuit Court of Appeals' reliance on originalism in last week's *United States v. Rahimi* case, which concerned a law restricting domestic-violence offenders' gun rights. "The central legal issue in *Rahimi* was not whether protecting women and children from gun violence is good; the court conceded that it is," Dennie writes. "Rather, the question before the court was whether protecting women and children from gun violence is constitutional. And the court concluded that it is not."

Of course, the court concluded no such thing. "Protecting women and children from gun violence" (read: violence committed with guns) is, *in principle*, constitutional. An example of doing so are laws against murder and assault, which "protect" women and children (and even men!) from violence. But the end doesn't justify the means, and *how* something is accomplished matters.

For example, technology's march would eventually enable us to implant computer chips in people's heads that could be used to control their behavior and eliminate violence against women and children (and even men!). Would a court's ruling against such be tantamount to saying that protecting women

and children is unconstitutional?

Elaborating on her problems with the *Rahimi* opinion, Dennie continues, "A three-judge panel unanimously ruled that the Second Amendment was violated by a federal statute that made possessing a gun unlawful for a person who is subject to a restraining order in protection of an intimate partner or child. Its explanation for this dangerous ruling was a straightforward application of originalism. The Founders mentioned a right to keep and bear arms in the Constitution. They did not, however, mention women, who are disproportionately victimized by domestic violence."

The Founders also didn't mention pedophilia, identity theft, false rape charges, and not saying please and thank you. The Constitution doesn't exist to micromanage our lives via a laundry list of positive rights and identity-oriented privileges and "protections." It exists to *restrain the beast of government* — which, if allowed to grow unfettered, may consume everyone's rights.

As for violence, Dennie does exactly that to our Constitution. For what's called "originalism" isn't just a theory — it's an obligation.

In reality, there aren't actually "originalists," "pragmatists," "textualists," and whatever other judicial classifications have been or will be conjured up. There are only two kinds of judges: Good judges and bad judges.

Good judges do their job, which involves ruling based on the Constitution, and this requires actually acknowledging what the document means.

Bad judges don't.

To illustrate the point, let's expand on the guide that a judge's role is only to call "balls and strikes." Judges are in fact like baseball umpires, whereas the players are akin to the people, the sport's ruling body is a sort of legislature, and the rule book is essentially its constitution.

Now, it goes without saying that if an umpire "ruled" contrary to the rule book — let's say, refusing to call a player out after three strikes because he believed they were too few — we wouldn't flatter his falsity and legitimize his legerdemain by calling him a "pragmatist" with a "living document" philosophy. We'd recognize him as a bad umpire derelict in his duty. It's no different with judges.

Yet the bad-judge enablers have a problem with rule-orientation, one Dennie expresses with boldness. She writes, "Instead of counseling, 'If it ain't broke, don't fix it,' originalism instructs, 'If it's still broken, you still can't fix it'—a prescription for permanent crises in America.…"

This is a quintessential straw-man argument. Our Constitution actually can be altered, via the amendment process, a fact conveniently (and dishonestly) overlooked by the anti-constitutionalists. Instead of counseling, "If it's broke, convince the people to support amendment," anti-constitutionalism instructs, "If the people won't 'fix' it, do an end run around them by having usurpative judges put a spin on the Constitution and call it 'pragmatism.'"

This reduces what should be a government of, by, and for the people to one of, by, and for imperious judges and their enablers; it exchanges republicanism for judicial oligarchy and calls it "democracy" — even though only nine Americans' votes on the Supreme Court can trump all.

In reality, the world's Dennies shouldn't even use the term "unconstitutional" because they've rendered it irrelevant. "Constitutional" and "unconstitutional" are only comprehensible if we understand what the Constitution means, and we can't do that unless *it* means *something*, unless it has meaning unto itself — apart from judges' interpretations. This is why the Constitution must be (and is) defined by the

Framers' intent, and why an attack on one is an attack on the other.