

A history of the Second Amendment in two paintings

By Ezra Klein

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"Are you at a computer?" asked Akhil Reed Amar, a professor at Yale Law School. I had called him because we had been scheduled to talk about the constitutionality of the filibuster. But just a few hours before our call, a madman had killed 26 people, mostly children, at a Connecticut elementary school. Neither of us was very interested in talking about the filibuster. So I asked Amar, one of the nation's leading authorities on the Constitution, about the Second Amendment. That's when he sent me to Google.

"Okay. Good. Go type in 'John Trumbull' -- that's T-R-U-M-B-U-L-L -- and 'death of General Warren' in Google image search," Amar continued. "Do you see the picture?"

"That's the initial vision of the Second Amendment," Amar continued. "The good guys are on the left. They're the local militia. The bad guys are on the right in the red coats. They're the Union Jack. That's arms-bearing, Founders-style. Originally, the Second Amendment is very much about local militias keeping check on a federal military establishment. It's about Lexington and Concord and Bunker Hill. It's a product of the American Revolution. The motto at the founding is when guns are outlawed only the king's men will have guns."

"Now go type in 'Freedmen's Bureau.' Do you see it?"

"The militia men have become klansmen. The uniforms have come off. In the original, very far corner of the screen, right hand of the page, is one black person. Now there are lots of black people. Now there's a uniformed officer keeping law and order. But as soon as the army goes, these blacks will be vulnerable. They'll at least need these bayonets in their homes or they'll be terrorized."

"In a nutshell, almost everything ordinary Americans think they know about the Bill of Rights, including the phrase 'Bill of Rights,' comes from the Reconstruction period. Not once did the Founders refer to these early amendments as a bill of rights. We read everything through the prism of the 14th amendment -- including the right to bear and keep arms."

"The reconstruction Republicans don't love local militias. They believe in Grant's army. So they recast it. It becomes an individual right. The NRA is founded after the Civil War by a group of ex-Union Army officers. Now the motto goes, when guns are outlawed, only klansmen will have guns. Individual black men had to have guns in their homes because they couldn't count on the local constabulary. It's in the text of the Freedman's Bureau Act of 1866 that we actually see the reinterpretation of the original Second Amendment. It becomes about original rights."

"The reconstructionists had had four bloody years trying to suppress bloody coups. So they tried to tame the Second Amendment. We moved from an insurrectionary reading of the amendment to an individual one."

I asked Amar what all that meant for the Second Amendment today. "Instead of obsessing over the wording of the amendment, which doesn't fit anymore, we need to talk about unenumerated rights in America," he replied. "Having guns in homes for self protection is a very deep part of American culture. You couldn't even get rid of those guns if you tried. It would make prohibition look like a day in the park. Today, almost everywhere in America you can have a gun in your home and that should be respected. But that doesn't mean you need guns that can mow 26 people down. We can talk about reasonable regulation."

More from Amar on the subject [here](#).

