

Table 1-1 Methods of Constitutional Interpretation

Method	Example
Originalism <i>Original Intent.</i> Asks what the framers wanted to do.	<p>"The framers would have been shocked by the notion of the government taking away our handguns."</p> <p>OR</p> <p>"The framers would have been shocked by the notion of people being entitled to own guns in a society where guns cause so much death and violence."</p>
<i>Original Meaning.</i> Considers what a clause meant (or how it was understood) to those who enacted it.	<p>"‘Militia’ meant ‘armed adult male citizenry’ when the Second Amendment was enacted, so that’s how we should interpret it today."</p> <p>OR</p> <p>"‘Arms’ meant flintlocks and the like when the Second Amendment was enacted, so that’s how we should interpret it today."</p>
Textualism. Places emphasis on what the Constitution says.	<p>"The Second Amendment says ‘right of the people to keep and bear arms,’ so the people have a right to keep and bear arms."</p> <p>OR</p> <p>"The Second Amendment says ‘A well regulated militia . . .,’ so the right is limited only to the militia."</p>
Structural Analysis. Suggests that interpretation of particular clauses should be consistent with or follow from overarching structures or governing principles established in the Constitution—for example, the democratic process, federalism, and the separation of powers.	<p>"Article 1, Section 8, of the Constitution lists the powers of Congress. Included among them are the powers to provide for calling ‘forth the militia to execute the laws of the union, suppress insurrections and repel invasions’ and ‘for organizing, arming, and disciplining, the militia.’ Because these clauses suggest the federal government controls the militia, reading the Second Amendment as a grant of power to the states would be inconsistent with them."</p> <p>OR</p> <p>"The Constitution sets up a government run by constitutional democratic processes, with various democratic checks and balances, such as federalism and elections. To read the Second Amendment as facilitating violent revolution is inconsistent with this structure."</p>
Stare Decisis. Looks to what courts have written about the clause.	<p>"Courts have held that the Second Amendment protects weapons that are part of ordinary military equipment, and handguns certainly qualify."</p> <p>OR</p> <p>"Courts have held that the Second Amendment was meant to keep the militia as an effective force, and they can be nicely effective just with rifles."</p>
Pragmatism. Considers the effect of various interpretations, suggesting that courts should adopt the one that avoids bad consequences.	<p>"The Second Amendment should be interpreted as protecting the right to own handguns for self-defense because otherwise only criminals will have guns and crime will skyrocket."</p> <p>OR</p> <p>"The Second Amendment should be interpreted as not protecting the right to own handguns for self-defense because otherwise we’ll never solve our crime problems."</p>
Polling Jurisdictions. Examines practices in the United States and even abroad.	<p>"The legislatures of all fifty states are united in their rejection of bans on private handgun ownership. Every state in the Union permits private citizens to own handguns. Practices in other countries are immaterial to the task of interpreting the U.S. Constitution."</p> <p>OR</p> <p>"The largest cities in the United States have local laws banning handguns or tightly regulating their possession and use, and many industrialized countries also ban handguns or grant permits in only exceptional cases."</p>

Sources: We adopt much of the material in this table from Eugene Volokh, "Using the Second Amendment as a Teaching Tool—Modalities of Constitutional Argument," *UCLA Law*, <http://www2.law.ucla.edu/volokh/2amteach/interp.htm>. Other material comes from the briefs filed in *District of Columbia v. Heller*.