

# PREFACE: THE SECOND GENERATION OF SECOND AMENDMENT LAW & POLICY

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The cacophonous and charged public debate over gun policy reflects a nation deeply divided about the appropriate balance between gun rights and gun regulation.<sup>1</sup> The Second Amendment often dominates that debate—as both a symbol and a right enforceable in the courts. On April 8, 2016, scholars from diverse disciplinary backgrounds met at New York University School of Law to present new scholarship, a second generation of research, about this important constitutional provision.<sup>2</sup> This issue is the product of that dialogue.

Of course, a second generation implies that there was a first generation. The first generation of scholarship ended in 2008, when the Supreme Court issued the most important Second Amendment decision in the Court’s history—*District of Columbia v. Heller*.<sup>3</sup> That first generation focused on a single question: Does the Second Amendment protect an individual right to keep and bear arms for self-defense, or a collective right connected to the maintenance of a well-regulated militia?

This question garnered relatively little attention before the early twentieth century. Before then, federal gun control, as we understand it today, did not exist, and Second Amendment issues rarely arose. As Judge Thomas Cooley wrote in 1868: “How far it is in the power of the legislature to regulate [the Second Amendment] right, we shall not undertake to say, as happily there has been very little occasion to discuss that subject by the courts.”<sup>4</sup> To be sure, many states and localities regulated weapons and some of these regulations were challenged on state constitutional law grounds.<sup>5</sup> But generally these laws did not generate sustained Second Amendment analysis in light of the understanding, set forth

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1. See generally Chris Murphy, *Keynote: The Second Generation of Second Amendment Law & Policy*, 80 LAW & CONTEMP. PROBS., no. 2, 2017 at 233–34.

2. The symposium was sponsored by the Brennan Center for Justice at New York University School of Law and Law and Contemporary Problems at Duke University School of Law.

3. *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding for the first time that the Second Amendment protects an individual right to keep and bear arms).

4. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 350 (1868).

5. See generally Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 LAW & CONTEMP. PROBS., no. 2, 2017 (surveying gun laws throughout American history).

most famously in *Barron v. Baltimore*,<sup>6</sup> that the Bill of Rights limited only the federal government.<sup>7</sup>

By the early 1900s, however, urbanization, crime, and the increased lethality of concealable weapons prompted calls for reform.<sup>8</sup> State and local governments were the first to heed the calls, passing broad restrictions on the possession and carrying of handguns,<sup>9</sup> but federal regulation was on the horizon. The opportunity to address the meaning of the Second Amendment right had arrived.

Legal commentators in the first half of the twentieth century came to a fairly uniform conclusion: the Second Amendment protected a collective, not individual, right.<sup>10</sup> The right was primarily concerned with the maintenance of a “well regulated Militia.”<sup>11</sup> Thus, the Second Amendment would not prevent the federal government from passing laws targeting the possession and use of guns in crime. A 1915 essay by Maine Supreme Court Justice Lucilius A. Emery in the *Harvard Law Review* summarized the basis for this position, noting that “the right guaranteed is not so much to the individual for his private quarrels or feuds as to the people collectively for the common defense against the common enemy, foreign or domestic.”<sup>12</sup>

Later, in 1934, the very first volume of *Law and Contemporary Problems* included an article mirroring this understanding, opining that “no regulation or restriction of firearms or weapons is in conflict with [the Second] Amendment unless it substantially impedes the maintenance of a militia sufficiently well-equipped to assure the safety of the state.”<sup>13</sup> That same year, Congress enacted the first federal law that could reasonably be called national gun control, the

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6. See *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833).

7. While some scattered contrarian state court decisions disagreed about the reach of the Bill of Rights, they were the exception, not the rule. See AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 153–56 (1998) (describing *Nunn v. State*, 1 Ga. 243 (1846) and similar opinions as “contrarian” and in conflict with *Barron*).

8. See Lucilius A. Emery, *The Constitutional Right to Keep and Bear Arms*, 28 HARV. L. REV. 473, 473 (1915) (“The greater deadliness of small firearms easily carried upon the person, the alarming frequency of homicides and felonious assaults with such arms, the evolution of a distinct class of criminals known as ‘gunmen’ from their ready use of such weapons for criminal purposes, are now pressing home the question of the reason, scope, and limitation of the constitutional guaranty of a right to keep and bear arms,—of the extent of its restraint upon the legislative power and duty to prohibit acts endangering the public peace or the safety of the individual.”).

9. See ADAM WINKLER, *GUN FIGHT: THE BATTLE OVER THE RIGHT TO BEAR ARMS IN AMERICA* 204–10 (2011) (describing the Sullivan Law, an early New York permitting requirement for the purchase and possession of handguns; the Revolver Act, which was adopted by multiple states shortly afterward to mandate permits for concealed weapons; and the Uniform Firearms Act, which similarly regulated handguns).

10. See Robert J. Spitzer, *Lost and Found: Researching the Second Amendment*, in *THE SECOND AMENDMENT IN LAW AND HISTORY: HISTORIANS AND CONSTITUTIONAL SCHOLARS ON THE RIGHT TO BEAR ARMS* 16, 24–25, 36–37 (Carl T. Bogus ed., 2000) (counting eleven law review articles discussing the Second Amendment between 1912 and 1959, each of which espoused the militia-related interpretation).

11. U.S. CONST. amend. II.

12. Emery, *supra* note 8, at 477.

13. John Brabner-Smith, *Firearm Regulation*, 1 LAW & CONTEMP. PROBS. 400, 412 (1934).

National Firearms Act.<sup>14</sup> More than ever before, the National Firearms Act provided the occasion for the Supreme Court to consider the scope of the Second Amendment.

In 1939, in *United States v. Miller*, a unanimous Supreme Court upheld the National Firearms Act's prohibition on interstate transport of short-barreled shotguns.<sup>15</sup> In so doing, the Court confirmed the growing consensus in legal scholarship about the meaning of the Second Amendment. "In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia," the Court explained, "we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument."<sup>16</sup>

*Miller* appeared to settle many Second Amendment questions, and for over seventy years courts used it to turn away almost every Second Amendment challenge to a gun regulation. But the scholarly investigation continued, and gained momentum and financing with the rise of the modern gun rights movement in the 1970s.<sup>17</sup> Researchers mining historical sources found support for a different understanding of the Second Amendment: one grounded in individual self-defense, not militia service. At first, this scholarship was considered an outlier. But with time, prominent legal scholars acknowledged the potential merit of the individual-right view, including leading liberal law professors such as Sanford Levinson and Laurence Tribe.<sup>18</sup>

Once the individual-right scholarship was in place, advocates began challenging the militia-centric interpretation of the Second Amendment in court. In *District of Columbia v. Heller*, seventy years after *Miller*, the Supreme Court again considered the meaning and scope of the constitutional right to keep and bear arms.<sup>19</sup> This time, a bare majority of the Court emphatically adopted the individual-right view, striking down a law banning the possession of operable handguns in the home.<sup>20</sup>

Scholarship played a key role in *Heller*. There was almost no federal case law precedent to guide the Court. The most proximate Supreme Court case, *Miller*, was over half a century old and applied a vastly different interpretation of the

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14. National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5801–5872 (2012)) (imposing a tax, registration requirement, and transfer restriction on certain machine guns and short-barreled shotguns).

15. *United States v. Miller*, 307 U.S. 174 (1939).

16. *Id.* at 178.

17. For discussions of the arc of modern Second Amendment scholarship before *Heller*, see generally MICHAEL WALDMAN, *THE SECOND AMENDMENT: A BIOGRAPHY* (2014); WINKLER, *supra* note 9; Reva B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 HARV. L. REV. 191 (2008).

18. See LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 897 n.211 (3d ed. 2000); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L. J. 637, 645–46 (1989).

19. See *District of Columbia v. Heller*, 554 U.S. 570 (2008).

20. *Id.*

right.<sup>21</sup> The Court in *Heller* could not rely solely, or even predominantly, on common law reasoning from incremental changes typical to the development of other constitutional rights. There was no slow buildup of favorable precedent, in the way that desegregation cases ultimately led to *Brown v. Board of Education*. The litigants and the Court had to draw on other sources from a relatively modern generation of research by litigants, activists, and academics. The various opinions in *Heller* cited close to twenty law review articles and at least a dozen other scholarly publications.<sup>22</sup>

Two years after *Heller*, in *McDonald v. City of Chicago*, the Supreme Court invoked its incorporation doctrine and applied the Second Amendment as a restraint on state and local governments.<sup>23</sup> In so doing, the Court struck down a handgun ban in Chicago that was similar to the law struck down in the District of Columbia.<sup>24</sup> With *McDonald*, the Second Amendment became an issue not only for Congress and the federal government, but also for every state legislature, county commissioner, and township trustee.

*Heller* and *McDonald* represent a significant shift in the constitutional landscape for the right to keep and bear arms, but in one of the most cited passages in both opinions the Court also emphasized that the right is not unlimited, and that governments maintain broad regulatory authority.<sup>25</sup> The right announced in *Heller* and *McDonald*, the Court instructed, “[should not be taken to] cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’”<sup>26</sup> The Court also noted historical consensus about the constitutionality of bans on carrying concealed weapons.<sup>27</sup> In a nod to other lawful regulations, the Court cautioned that this short list of “presumptively lawful regulatory measures” is not “exhaustive.”<sup>28</sup>

*Heller* and *McDonald* opened the floodgates to hundreds of lawsuits raising a host of novel questions about the Second Amendment.<sup>29</sup> A ban on handguns in

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21. See *supra* notes 15–17 and accompanying text. There was more recent state court precedent that analyzed state constitutional provisions analogous to the Second Amendment. But the Court did not use those modern cases as a resource. It certainly did not use this precedent to craft a reasonable regulation model of the right. See Adam Winkler, *The Reasonable Right to Bear Arms*, 17 STAN. L. & POL’Y REV. 593, 594 (2006) (discussing state court decisions on state constitutional rights to keep and bear arms).

22. See *Heller*, 554 U.S. 570 (2008).

23. See *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

24. *Id.* at 749–50.

25. *Id.* at 786; *Heller*, 554 U.S. at 626–27.

26. *McDonald*, 561 U.S. at 786 (quoting *Heller*, 554 U.S. at 626–27).

27. *Heller*, 554 U.S. at 626.

28. *Id.* at 627 n.26.

29. See LAW CTR. TO PREVENT GUN VIOLENCE, POST-*HELLER* LITIGATION SUMMARY 1–2 (Mar. 31, 2015), <http://smartgunlaws.org/wp-content/uploads/2014/11/Post-Heller-Litigation-Summary-March-2015-Final-Version.pdf> [https://perma.cc/WW5T-AD2D] (noting that after *Heller* courts have been “inundated” with Second Amendment challenges, leading to over 900 decisions).

the home may be unconstitutional, but what about bans on other types of weapons? For restrictions less severe than handgun bans, what standard of review should courts apply? What historical firearm measures not already identified by the Supreme Court should be considered presumptively lawful? The list of unanswered questions goes on and on.

We characterize the scholarship addressing this new wave of questions as the second generation of Second Amendment scholarship. With this symposium and this publication we seek to avoid rehashing old debates; instead, we aim to push forward in new directions that can deepen our understanding of the Second Amendment in the post-*Heller* world. The authors featured in the coming pages are not of one discipline or mind. Analyzing gun rights and regulation through myriad lenses—history, political science, philosophy, sociology, public health, and law—further our understanding and broadens our perspective.

While this compilation is interdisciplinary by design, historical considerations permeate the articles. The historical component in almost all of the contributions reflects, in large part, the profound influence of Justice Antonin Scalia's jurisprudential legacy. *Heller*, by some accounts, was Scalia's crowning doctrinal achievement, "the finest example of what is now called 'original public meaning' jurisprudence ever adopted by the Supreme Court."<sup>30</sup> The opinion looked to history not only to support the Court's interpretation of the meaning of the Second Amendment's words, but also to support the validity of exceptions to Second Amendment coverage. Restrictions that are sufficiently "longstanding," *Heller* instructs, are "presumptively lawful."<sup>31</sup>

Thus, under *Heller*, a long regulatory lineage creates a strong presumption that a given weapon regulation is constitutional. In *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, historian Saul Cornell explores the lineage of one common category of regulation: public carry restrictions.<sup>32</sup> Examining an oft-overlooked resource, Justice of the Peace manuals, Cornell describes a historically broad ability to regulate public carry when and where it could disturb the peace. His provocative (and ironic) conclusion is that the historical treatment of public carry rights and regulations bears a close resemblance to the balancing view conveyed in Justice Stephen Breyer's *Heller* dissent, which itself is not inconsistent with the originalist view in Justice Scalia's majority opinion. Cornell finds that "[s]omething analogous to a balancing exercise was fundamental to the way Anglo-American law dealt with arms . . . . The liberty interest associated with the right to arms was always balanced against the concept of the peace."<sup>33</sup>

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30. Randy E. Barnett, *News Flash: The Constitution Means What it Says*, WALL ST. J. (June 27, 2008, 12:01 AM), <http://www.wsj.com/articles/SB121452412614009067> [<https://perma.cc/Y8SP-L62S>].

31. *Heller*, 554 U.S. at 626–27, 627 n.26.

32. See generally Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 LAW & CONTEMP. PROBS., no. 2, 2017.

33. *Id.* at 14.

Whereas Cornell's contribution is a deep historical dive into one restriction, public carry laws, in *Gun Law History in the United States and Second Amendment Rights*, political scientist Robert Spitzer provides a broad empirical exposition of various gun regulations throughout American history. Spitzer shows how gun laws were "ubiquitous" in American history and have "spanned every conceivable category of regulation, from gun acquisition, sale, possession, transport, and use, including deprivation of use through outright confiscation, to hunting and recreational regulations, to registration and express gun bans."<sup>34</sup> Spitzer's description demonstrates how regulation has tracked changes in technology and public safety needs. One of the most interesting examples is precedent dating to the 1920s for bans on weapons now known as assault rifles. Such regulatory precedent begs a jurisprudential question that warrants further attention: If the "arms" protected by the Second Amendment can evolve (as *Heller* says they can<sup>35</sup>), then should the benchmark for what regulations are "longstanding" and "presumptively lawful" also evolve? More generally, Spitzer shows that gun rights and regulations need not be all or nothing. Indeed, "for the first 300 years of America's existence, gun laws and gun rights went hand-in-hand."<sup>36</sup>

History can buttress or undercut claims of permissible regulation under the *Heller* paradigm, but it can also elucidate other contours of the right. In *Self-Defense, Defense of Others, and the State*,<sup>37</sup> Darrell A. H. Miller describes the historical interplay between the state and lawful self-defense, which *Heller* instructs is "central to the Second Amendment right."<sup>38</sup> Miller shows that self-defense always has "been heavily conditioned and constructed by the state."<sup>39</sup> Indeed, for much of English legal history, self-defense was not thought of as a right at all, but rather an argument in favor of a pardon from the sovereign.<sup>40</sup> The fact that self-defense did not historically operate as a purely natural law right, unconnected to public power, has legal and policy implications. Significantly, "[i]t suggests that the state has a power, and perhaps an obligation, to ensure that private capacity to render lethal force conforms to minimum standards of safety, training, and discipline."<sup>41</sup>

In *Gendering the Second Amendment*, sociologist Jennifer Carlson and political scientist Kristin Goss analyze historical conceptions of the state and how they are linked to gun rights. To assist in that endeavor, they consider the state and gun rights through the lens of gender—an underdeveloped theoretical framework in the Second Amendment debate. "[T]he exercise of gun rights and

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34. Spitzer, *supra* note 5, at 56.

35. *Heller*, 554 U.S. at 582.

36. Spitzer, *supra* note 5, at 56.

37. Darrell A. H. Miller, *Self-Defense, Defense of Others, and the State*, 80 LAW & CONTEMP. PROBS., no. 2, 2017.

38. *Heller*, 554 U.S. at 628.

39. Miller, *supra* note 37, at 86.

40. *Id.* at 89.

41. *Id.* at 87.

responsibilities,” they note, “is and always has been gendered” just as the “the state is and always has been gendered.”<sup>42</sup> By tracing broad trends in American governance vis-à-vis gender, and relating those trends back to gun policy and practices, they offer an important perspective on the evolution of American gun policy and culture. *Gendering the Second Amendment* is a positive development in the scholarship dealing with the Second Amendment, especially because the intersection of the Second Amendment and gender has been woefully underexplored. Hopefully Carlson and Goss’s article will inspire additional research on this topic.

Theoretical concepts like self-defense and gun rights have evolved over time and, of course, technology has too. In *3D-Printed Firearms, Do-It-Yourself Guns, & the Second Amendment*, James Jacobs and Alex Haberman highlight regulatory challenges presented by modern gunsmithing technology. *Heller* suggested rules for what arms are protected by the Second Amendment—for example, those “‘in common use at the time’ for lawful purposes like self-defense”<sup>43</sup>—but it failed to establish clear guidance for dealing with new weapons and weapon-making technology. In the years since *Heller*, 3D printers have made increasingly sophisticated firearms, prompting widespread enforcement concerns. If anyone can manufacture a gun at home, what good are mandatory background checks? If guns can be constructed completely from plastic, might they evade metal detectors? Jacobs and Haberman address these novel issues, which will only become more relevant as technology advances. Though the authors conclude that restricting the publication of weapon-making software does not violate the Second Amendment, they also argue that 3D-printed guns are “a modest technological development rather than a game changer” in light of “how common gunsmithing has been, and is.”<sup>44</sup> That said, with gun-making technology rapidly evolving, it is “none too soon to bring 3D gunsmithing into the debate about gun control.”<sup>45</sup>

As the articles in this issue reflect, history has played a significant role in Second Amendment jurisprudence and scholarship since *Heller*. Nonetheless, most lower courts have not applied a purely originalist methodology in deciding Second Amendment challenges, and have relied instead on a mix of historical analysis and tiered scrutiny.<sup>46</sup> Many challenged laws are pronounced neither categorically constitutional nor unconstitutional on historical grounds, but rather are scrutinized under means–end scrutiny common in other doctrinal settings. It is therefore often necessary to evaluate whether a governmental interest is sufficiently important to justify an impingement, and also whether an

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42. Jennifer Carlson & Kristin A. Goss, *Gendering the Second Amendment*, 80 LAW & CONTEMP. PROBS., no. 2, 2017 at 103.

43. *Heller*, 554 U.S. at 624.

44. James B. Jacobs & Alex Haberman, *3D-Printed Firearms, Do-It-Yourself Guns & the Second Amendment*, 80 LAW & CONTEMP. PROBS., no. 2, 2017 at 139–40.

45. *Id.* at 141.

46. See Allen Rostron, *Justice Breyer’s Triumph in the Third Battle Over the Second Amendment*, 80 GEO. WASH. L. REV. 703 (2012).

impingement is sufficiently necessary to achieve that interest. Several articles in this issue address questions within this emerging paradigm.

In *Justifying Perceptions in First and Second Amendment Doctrine*, Eric M. Ruben considers when the government's interest in preserving the perception of safety can justify a firearm restriction.<sup>47</sup> That rationale was invoked to uphold a ban on assault weapons in a recent Seventh Circuit case,<sup>48</sup> sparking controversy and raising a difficult doctrinal question: How can this justification be accepted for a gun restriction if it would be unacceptable for a speech restriction? Ruben concludes that the issue should be treated differently in the distinct context of the right to keep and bear arms, though courts should only accept public safety perceptions as a legitimate justification after they solve some doctrinal difficulties, such as ensuring that public perceptions do not belie illicit animus.

Beyond historical and constitutional questions, critical policy issues remain concerning the right to keep and bear arms, especially where different groups of people have different capacities and authority to use deadly weapons and pose different risks to themselves and others. In *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does It Prevent Suicides?*, Jeffrey W. Swanson and his co-authors provide empirical evidence that could both motivate the adoption and justify the constitutionality of a particular gun policy: risk-based gun removals.<sup>49</sup> Risk-based gun removal procedures, which authorize police to seize firearms in limited circumstances, have the potential to prevent gun violence (to self or others) without creating a criminal record. Do they work? According to Swanson et al., this mechanism, which has been adopted in Connecticut, Indiana, and California, has proven effective for preventing the most common type of gun death in America—suicide. Indeed, based on the results of an ambitious mixed-methods empirical study, the authors estimate that for every ten to twenty gun seizures, one suicide was prevented.<sup>50</sup>

In *Lawful Gun Carriers (Police and Armed Citizens): License, Escalation, and Race*, Nicholas J. Johnson compares the formal and informal licenses and behavior of two groups of lawful gun carriers: police and lawful private gun carriers. According to one recent analysis, police in Florida are sanctioned for firearms crimes at a higher rate than lawful private gun carriers, and other studies show that such lawful private gun carriers commit far fewer crimes than do members of the general public.<sup>51</sup> Thus, criminal behavior cannot be explained by the mere carrying of a gun. Rather, Johnson argues, it is best explained by the

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47. Eric M. Ruben, *Justifying Perceptions in First and Second Amendment Doctrine*, 80 LAW & CONTEMP. PROBS., no. 2, 2017.

48. *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015), cert. denied, 136 S. Ct. 447 (2015).

49. Jeffrey W. Swanson et al., *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does It Prevent Suicides?*, 80 LAW & CONTEMP. PROBS., no. 2, 2017.

50. See *id.*

51. Nicholas J. Johnson, *Lawful Gun Carriers (Police and Armed Citizens): License, Escalation, and Race*, 80 LAW & CONTEMP. PROBS., no. 2, 2017 at 220 n.52 (citing CRIME PREVENTION RES. CTR., CONCEALED CARRY PERMIT HOLDERS ACROSS THE UNITED STATES 7–8 (2014)).

scope of the two groups' respective firearm licenses: narrow for civilians and broad for police. Among other things, this conclusion about the role of a license "cuts against the argument that private gun carriers are a hazard because they are not trained like police."<sup>52</sup> More provocatively, this conclusion frames a normative question raised at the end of Johnson's article: "why should [lawful private gun carriers] be less welcome in the community than police?"<sup>53</sup>

Finally, the last two pieces in the issue provide commentary by two featured speakers at the April 8, 2016 symposium: Senator Chris Murphy (D-Conn.) and Sanford Levinson. Murphy's keynote assesses the dysfunctional politics of gun rights and regulation. Murphy describes how the political left and right occupy "different planets" when it comes to firearm policies: the left is primarily concerned with "concrete details of gun laws" and the right is primarily concerned with "abstract concepts of liberty and freedom and revolution."<sup>54</sup> To reach "a common road to common ground," Murphy suggests some ways leaders can "fix the bugs in the system that cause us to talk past each other."<sup>55</sup>

Sanford Levinson has been a leading thinker about the Second Amendment since he published *The Embarrassing Second Amendment* over twenty-five years ago.<sup>56</sup> In his postscript to this issue, Levinson provides insightful observations about how notions of sovereignty have informed understandings of gun rights, regulation, and self-defense.<sup>57</sup> Building on the contributions of Saul Cornell and Darrell A. H. Miller, Levinson offers an erudite and fascinating postscript to close the symposium. His final line highlights the urgency of continuing to grapple with what counts as legitimate violence in America: "[E]ven those of us who are onlookers, so to speak, neither directly inflicting the violence nor bearing its brunt, have reason to be concerned about the circumstances of its occurrence given both the moral questions surrounding them and the sheer political and social consequences for the societies we live in."<sup>58</sup>

The second generation of Second Amendment scholarship is still in its early years, and the articles presented in this issue raise as many questions as they answer. This publication will hopefully be an incubator, leading to other efforts to build on and respond to the arguments contained in this symposium. Forward-thinking scholarship, after all, will continue to play a uniquely significant role in Second Amendment law and policy for years to come. Our hope is that this symposium, if nothing else, will motivate further research to advance the understanding of this polarizing and fascinating Amendment.

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52. *Id.* at 210.

53. *Id.* at 230.

54. Murphy, *supra* note 1, at 233–34.

55. *Id.* at 238.

56. See Levinson, *supra* note 18.

57. Sanford Levinson, *Postscript: Some Observations About Guns and Sovereignty*, 80 LAW & CONTEMP. PROBS., no. 2, 2017.

58. *Id.* at 251.