Guns on Campus: Surveying a rugged post-*Heller/ McDonald* landscape

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Abstract*: In June 2008, the U.S. Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees an individual the right to keep and bear arms. Two years later, this decision was also made applicable to state and local governments. Today, seven U.S. states have provisions allowing the carrying of concealed weapons on their public senior high school campuses.*
This article, introduced by a brief comment on the Second Amendment's legal and academic history, traces several recent developments of legal change. It discusses relevant arguments and attitudes towards guns on campus, and explores issues of future concern for public colleges and universities within the realm of firearms and campus safety.

Keywords*: Second Amendment—gun control—gun rights—guns on campus—Heller— McDonald—firearms—Supreme Court—Bill of Rights—college safety*

I Introduction—Surveying the Land

Consider this:

> There are many campus issues where you take a stand but can appreciate arguments from the other side. Should counseling centers merge with health centers? Is mandated counseling a good idea? Reasonable people can disagree. Allowing guns on campus is not one of those issues.[1]

In the United States, 86 people die from guns, eight of them kids—every single day.[2] Annually, a 100,000 are killed or injured by civilian firearms.[3] Nobody knows how many guns are out there, yet estimates vary between 250 and 280 million.[4] The renewed debate[5] of guns on campus was ignited by the Virginia Tech massacre in April 2007, where 32 students and faculty were killed.[6] The

1 Paul Grayson and Phil Meilman (eds.), "Editorial Introduction: Guns on Campus," *Journal of College Student Psychotherapy* 25, 275–276 (2011): 275.

2 Children's Defense Fund, last accessed Dec. 15, 2012, http://www.childrensdefense.org/child-research-data-publications/each-day-in-america.html. For statistics on adults, see note 3 *infra*.

3 U. S. Dept. of Health and Human Services, Center for Disease Control and Prevention (CDC), National Center for Health Statistics, *National Vital Statistics Reports—Deaths: Final Data for 2009*, Vol. 60, no. 3, Dec. 29, 2011. In 2009, a total of 31,347 persons died from firearm injuries in the U.S., accounting for 17.7% of all injury deaths. Of these deaths caused by firearms, 18,735 (59.8%) were suicides, 11,493 (36.7%) homicides, 554 unintentional, 333 by legal intervention or war, while 232 were undetermined (see Table 18, p. 81). In 2011, according to the CDC, there were 73,883 nonfatal injuries caused by firearm gunshots in the U.S., accessed Nov. 26, 2012, http://webappa.cdc.gov/cgi-bin/broker.exe.

4 GunPolicy.org, a web site hosted by the (University of) Sydney School of Public Health, which for fifteen years has surveyed the issue of gun injury, provides an estimate of 270,000,000 privately owned handguns in the U.S., accessed Nov. 26, 2012, http://www.gunpolicy.org/firearms/region/united-states.

5 To some extent, the phrase "renewed debate" (or similar variations) is a media-made observation that tends to be printed after any high-profile shooting incident. It lies beyond the scope of this article to perform any in-depth analysis of this phenomenon, but the examples below illustrate my argument. All sites accessed Nov. 27, 2012. From CNN Aug. 9, 2012: "Following the mass shootings in a Colorado movie theater and a Sikh temple in Wisconsin, the debate over gun control has been reignited," http://edition.cnn.com/2012/08/09/politics/btn-guns-in-america/index.html; from Fox News Jan. 17, 2011: "Arizona Shooting Fuels Debate About Open-Carry Gun Law in California," http://www.foxnews.com/politics/2011/01/17/tucson-shooting-fuels-open-carry-debate-california/; from Voice of America Apr. 18, 2007: "US University Shootings Renew National Gun-Control Debate," http://www.51voa.com/voa_standard_english/VOA_Standard_11215.html; from CNN Sep. 17, 1999: "Recent shootings renew gun control debate," http://edition.cnn.com/US/9909/17/nra.gun.control/; and in the wake of the Newtown tragedy, from New York Times Dec. 15, 2012: "Debate on Gun Control Is Revived, Amid a Trend Toward Fewer Restrictions," http://www.nytimes.com/2012/12/16/us/politics/connecticut-shooting-revives-gun-control-debate.html?_r=0. For a European media view on the topic, see e.g. Alex Hannaford, "The sickening circularity of America's gun control debate," *The Guardian*, August 14, 2012, accessed Nov. 27, 2012, http://www.guardian.co.uk/commentisfree/2012/aug/14/sickening-circularity-america-gun-control-debate.

6 On Apr. 16, 2007, Seung-Hui Cho, a Virginia Tech student who previously had been diagnosed with severe

following year saw the Northern Illinois University shooting[7] and the U.S. Supreme Court's gun-rights decision in *District of Columbia v. Heller*.[8] The 2011 Tucson shootings, where six people were killed and another 14 injured (among them U.S. Representative Gabrielle Giffords, who was critically wounded), made the debate intensify even further.[9] In December 2012, just a few days short of Christmas, horror struck again when twenty young children were murdered at Sandy Hook Elementary School in Newtown, Connecticut. Together with the first graders, six adults were killed.[10] The gun-debate polarization is now greater than ever, the opposing sides further apart than ever before.

Although this article discusses matters related to civilian firearms, it remains a fact that governmentally sanctioned violence, not infrequently enforced with deadly consequences, occurs all over the country. One significant observation in this respect is the increased use of paramilitary or SWAT teams by the police. While being introduced in Los Angeles in the 1960s and gradually spreading to other major cities during the 1970s, as late as the 1980s these heavily armed special forces were still used rather "sparingly, [and] only in volatile, high-risk situations such as bank robberies or hostage situations."[11] However, America's War on Drugs "has spurred a significant rise in the number of such raids."[12]

anxiety disorder, in two separate attacks a couple of hours apart, opened fire killing 32 and wounding another 23 people before committing suicide. It was the worst mass murder at a college campus since the Bath School bombing in 1927.

7 In the afternoon of Feb. 14, 2008, Steven Kamierczak shot multiple people on the Northern Illinois University campus at DeKalb, Illinois, killing five and injuring twenty-one people before committing suicide. It was the fifth deadliest university shooting in U.S. history.

8 554 U.S. 570 (2008). See Part II *infra* and e.g. Brian Doherty, *Gun Control On Trial: Inside the Supreme Court Battle over the Second Amendment* (Washington D.C.: Cato Institute, 2008).

9 The ensuing investigation showed that the gunman, 22-year-old Jared Lee Loughner, who was arrested at the scene, had a fixation on Giffords, and she was also his first victim, shot point-blank in the head with a pistol.

10 See e.g. *New York Times'* live updates, http://thelede.blogs.nytimes.com/2012/12/15/live-updates-on-school-shooting/?hp. All of a sudden, the process writing this article was no longer just writing, no longer a removed exercise of arguments, court cases and statistics. It became real. It became what we so easily and readily forget while dissecting legal arguments and cultural traits; it became the reality behind all of this apparent distant academic arithmetic. At the time of writing, nobody knows what the coming weeks and months will bring in terms of legislative initiatives, or how the public will react over time. I take it to prove, though, that this is indeed a most central issue for persistent, scholarly research.

11 Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America* (Washington D.C.: The Cato Institute, 2006): 4. This is an in-depth study of actual SWAT raids, offering numerous examples of "no-knock raids" and other violent incursions into private dwellings, many of which were later deemed unnecessary.

12 Ibid. Balko's report further states that by the early 1980s there were 3,000 annual SWAT raids, whereas the number had reached 40,000 in 2001 (ibid., 11).

Non-civilian use of firearms might indeed influence civilian use as well, not least in terms of gang-related crime. However, these issues are not discussed in this article. Other controversies regarding civilian firearms in the United States cover a wide array of areas. While not in any way being an exhaustive list,[13] among these are the extent, application and depth of background checks;[14] regulations on private sales of handguns,[15] including the gun-show market;[16] making more mental health records available for online background checks;[17] the scope and application of so-called "castle"

13 Other issues could be regulations concerning safe storage and transportation, trigger locks, required training programs, and similar matters related to gun safety. Also the list could be expanded towards ammunition and firearm characteristics, or towards further denying access to guns by e.g. domestic-violence offenders (the Lautenberg-amendment). Finally, several states have passed various preemption laws, i.e. legislation that bars local governments (e.g. cities, municipalities, and state institutions such as universities) from adopting gun control regulations that are stricter than those existing at state level. See Part V *infra* for more detail.

14 The National Instant Criminal Background Check System (NICS) was mandated by the 1993 Brady Handgun Violence Prevention Act and launched by the Federal Bureau of Investigation in 1998. This system enables all Federal Firearms Licensees (FFLs) instantly to determine whether a prospective buyer is eligible to purchase firearms or explosives. According to the FBI/NICS website, more than 100 million such checks have been performed over the past decade, with more than 700,000 denials, accessed Nov. 24, 2013, http://www.fbi.gov/about-us/cjis/nics.

15 The "private sales loophole" is an issue of significant controversy, which indeed merits continuous scholarly attention. During the congressional debate in April 2013 on President Obama's gun-control initiative following the Newtown school shooting, this topic caused heated debate in the Senate. As much as an estimated 40% of all firearms sold in the U.S. are transferred by unlicensed "private" sellers, http://smartgunlaws.org/private-sales-policy-summary/ accessed Nov. 24, 2013.

16 While the 1968 Gun Control Act defined private sellers as anyone who sold less than four firearms per year, the 1986 Firearm Owners Protection Act lifted this restriction. Hence, gun shows—i.e. temporary markets for guns and ammunition held at fairgrounds etc. in which both licensed and unlicensed sellers operate—could be considered another such loophole. As of today, two thirds of the states have not passed any legislation regulating private firearms sales at these venues. However, building on the executive actions taken in January 2013 as part of Obama's initiative against gun violence, further executive actions were presented in late August 2013 to close the gun-show loophole, among them keeping surplus military weapons off the streets, accessed Nov. 24, 2013, http://www.whitehouse.gov/the-press-office/2013/08/29/fact-sheet-new-executive-actions-reduce-gun-violence.

17 In many states, e.g. New Hampshire, a person released from involuntary admission at a state hospital may immediately go to the nearest gun store and buy a revolver the very same day, despite the fact that this is prohibited by federal law (firearms are denied to those "adjudicated mentally defective"), http://www.vnews.com/news/state/region/6924386-95/nh-looks-at-including-mental-health-records-in-gun-background-checks. The limited availability of mental health records for immediate check is of major concern to the FBI/NICS and the Justice Department, while the American Medical Association, the American Psychiatric Association and the American Psychological Association all have expressed concern to the implementing authority, the Department of Health and Human Services, accessed 24. Nov, 2013, http://www.medicaldaily.com/medical-groups-oppose-gun-law-change-share-mental-health-records-fbi-246888.

and "stand-your-ground" doctrine laws;[18] the entire debate surrounding the carrying of concealed weapons; and, of course, the intensely polarizing issue of registration of firearms, including the idea of a national firearms gun registry—the latter representing a somewhat nightmarish prospect for the NRA.[19] This article, however, constitutes no substantive analysis of either of these, or any other general Second Amendment issue for that matter.

Rather, the issue at hand is that of guns on the nation's university campuses. As I will demonstrate below, this controversy is not only given a special mentioning by the U.S. Supreme Court, it also deals with matters of personal and collective safety, of academic freedom, of a peculiar set of demographics, and much more. Therefore, this is an issue that indeed merits particular attention in the ongoing discussion regarding guns in America, not the least from an interdisciplinary American Studies point of view.

Today, seven states explicitly allow guns on their public college and university campuses.[20] In several other states there is currently statutory movement in a similar direction. The opposite twins of gun control and gun rights, whether applied to college campuses or any other place where Americans congregate, solicit an emotional involvement surpassed by few other political issues.[21]

College campuses are politically charged environments. Here, young people are preparing themselves for a professional future, for adulthood, while faculty and staff are pursuing careers in the midst of learning, of youthful curiosity, political debate, and all other facets of college life. Students get bad grades, they are reprimanded, their applications for grants and on-campus housing are declined—all the while being in the process of

18 The Trayvon Martin case in 2012/13 brought "stand-your-ground" laws to the attention of a wider audience. These laws essentially permit the use of deadly force to defend oneself without any requirement to evade or retreat from the threat. Whereas the "castle doctrine" (adopted by 46 states) limits the justification on the use of deadly force to threats in one's home, the "stand-your-ground" doctrine (adopted by 22 states) has no such requirement as to the location where the threat takes place (barred a few exceptions).

19 While I am not discussing this issue in this article, it is, nevertheless, prudent to say that to the NRA and the gun lobby a national firearms registry represents the potential for grave danger and government usurpation. Gun registration is step one, confiscation step two, or so the rhetoric goes, accessed Nov. 24, 2013, http://mediamatters.org/blog/2013/08/21/nras-lapierre-warns-of-new-gun-confiscation-sch/195519.

20 These states are Colorado, Idaho, Kansas, Mississippi, Oregon, Utah, and Wisconsin. See Part III for details.

21 Obviously, there is a wide spectrum of nuances between the seemingly absolutist terms of "gun control" and "gun rights" advocates used in this text. However, the terms serve the purpose of clarifying arguments on either side of the debate, yet still recognizing the fact that millions of Americans find themselves somewhere in between.

freely exchanging new ideas with others, of pursuing thoughts along pristine, unchartered intellectual avenues. Or so it often feels. As such, colleges and universities are by nature unique. Adding, into this mix, the ingredient of concealed, loaded handguns might, therefore, have some rather dramatic consequences. The matter of an armed college citizenry raises a number of considerations, a number of questions pertaining to history and culture, to politics and law, to ethics and to the understanding of reality, as well as an array of matters of a more practical nature. Some of these matters are discussed below.

This article is written in an attempt at tracing some of the deep sense of conflict found in the often unclear dichotomy of gun rights and gun control that today has reached American college and university campuses. Moreover, in order to identify the new and armed reality emerging at these same campuses, it pursues some of the relevant legal changes that have been taking place since the 2008 landmark gun-rights case of *District of Columbia v. Heller* and its pursuant incorporation case, *McDonald v. Chicago*.[22]

In order to appreciate the present debate of guns on campus, Part II below briefly examines the Second Amendment's historical fate as the somewhat ignored sibling of the Bill of Rights,[23] while at the same time tracing its treatment by the U.S. Supreme Court. Issues concerning level of scrutiny and choice of legal standards and tests for post-*Heller* cases are not discussed.[24] In Part III, I look at today's constitutional and statutory-law status when it comes to guns on American campuses, while Part IV, embracing the idea of academic freedom, discusses the attitudes and arguments of college faculty and students, while at the same time looking at some of the societal costs associated with guns on campus. Also, I provide this debate with a cultural, historical and political wrapping, intended to ease the appreciation of existing attitudes and arguments. With *Heller* as its starting point, in conclusion, Part V traces some of the challenges faced by university boards of regents and administrators in maintaining strict regulatory measures of guns on campus in a post-*Heller*/*McDonald* landscape. Most importantly, though, I try to shed some light on the increasingly wide gap between the college populace and their state legislatures when it comes to regulating guns.

22 *McDonald v. City of Chicago*, 561 U.S. 3025 (2010).

23 See e.g. Robert Allen Rutland, *The Birth of the Bill of Rights 1776–1791* (London: Collier Books, 1962 (1955)) for a classic discussion on the Bill of Rights, implicitly supporting this argument of neglect.

24 See note 132 *infra*.

II The Embarrassing Relative

The Second Amendment, somewhat stilted, perhaps, with a rather peculiar grammatical structure, reads: "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."[25] Two clauses, no operative word linking the two; just a comma—a comma which meaning, incidentally, it would take two hundred and seventeen years and a sharply divided Court[26] to define.[27]

For more than two centuries, the Second Amendment to the U.S. Constitution, in relative comparison to most other constitutional provisions, lay more or less dormant, undisturbed, both in the federal court system and in the legal academy.[28] As a matter of fact, "[f]rom the Constitution's ratification in 1791 until *Heller* issued, the Supreme Court had never held that a law violated the Second Amendment."[29]

Indeed, "[f]or too long," Professor Levinson wrote in the late 1980s, "most members of the legal academy have treated the Second Amendment as the equivalent of an embarrassing relative, whose mention brings a quick change of subject to other, more respectable, family members."[30] Scholarly exasperated, looking at the vast body of court rulings, Nelson Lund, twenty years ago, sighed: "Although the Supreme Court finds time to busy itself with case after case involving the most minute adjustments in the constitutional rules of criminal procedure and the doctrines affecting … restrictions on speech, the Second Amendment is simply ignored."[31]

25 U.S. Const. Amend. II.

26 In *Heller* the Court was deeply divided along ideological lines. Justice Scalia, who penned the opinion, was joined by Chief Justice Roberts and Justices Kennedy, Thomas and Alito. Justices Stevens, Souter, Ginsburg, and Breyer vehemently dissented. As regarding any uncertainty of the relationship between two clauses, writing for the Court, Justice Scalia concluded that "the Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose." 554 U.S. 570; (2008): 3.

27 Notwithstanding earlier decisions handed down by both the U.S. Supreme Court as well as inferior federal courts touching upon the issue, *District of Columbia v. Heller* (2008) was the first truly substantive case which in depth discussed the origin, meaning, and extent of the Second Amendment.

28 See Nelson Lund, "The Second Amendment, Political Liberty, and the Right to Self-Preservation," *Alabama Law Review* 39, 103–130 (1987): 103–04 for an interesting take on the Supreme Court's historical unwillingness to recognize an individual right under the Second Amendment.

29 Lewis M. Wasserman, "Gun Control on College and University Campuses in the Wake of *District of Columbia v. Heller* and *McDonald v. City of Chicago*," *Virginia Journal of Social Policy & the Law* 19, no. 1, (2011): 6.

30 Sanford Levinson, "The Embarrassing Second Amendment," *The Yale Law Journal* 99, no. 3, 637-659 (1989): 658.

31 Lund, "The Second Amendment," 104.

To appreciate the depth of the present debate of guns on America's university campuses, we need to be aware of its past and to familiarize ourselves with some of this debate's central tenets. Here, two questions are paramount: (1) to who is the Second Amendment guarantee applicable, and (2) what exactly does the guarantee mean?

In the nineteenth century, on several occasions, but without entering into any discussion on its substantive meaning, the Supreme Court ruled that the Second Amendment applied only to the federal government.[32] In *United States v. Cruikshank* (1875) the Court indicated that neither the First nor the Second Amendment applied to state governments, a constitutional view affirmed in *Miller v. Texas* (1894), where the Court ruled that the Fourteenth Amendment does not apply the Second Amendment to the states.[33]

In short, all of these nineteenth century Second Amendment decisions were concerned with the issue of whether or not the right protected was applicable to the states. As such, all of these decisions left no one in doubt; the Second Amendment should be the concern of the federal government, without any relevance to state law. Having solved that conundrum, the other

32 *See* e.g. *Presser v. Illinois*, 116 U.S. 252, 265 (1886), the Second Amendment "is a limitation only upon the power of Congress and the National government, and not upon that of the States." These rulings were in accordance with other Bill of Rights cases at the time. In *Barron v. Baltimore* (1833) the Court held that the Bill of Rights applied only to the federal government, and despite the protections of the Fourteenth Amendment (adopted in 1868), forbidding "any State [to] deprive any person of life, liberty, or property, without due process of law," it would not be until the 1920s before these rights actually began to materialize. This incorporation of the Bill of Rights would be a gradual process, with certain enumerated rights being incorporated at the time, among which we find the basic First Amendment rights of freedom of speech (*Gitlow v. New York*, 268 U.S. 652 (1925)), freedom of the press (*Near v. Minnesota*, 283 U.S. 697 (1931)), freedom of assembly (*DeJonge v. Oregon*, 299 U.S. 353 (1937)), and free exercise of religion (*Cantwell v. Connecticut*, 310 U.S. 296 (1940)). This process continued in the 1960s onward, where several procedural rights under the Fourth, Fifth and Sixth Amendments were incorporated.

33 *United States v. Cruikshank*, 92 U.S. 542, 553 (1875), the Second Amendment "has no other effect than to restrict the powers of the national government" and *Miller v. Texas*, 153 U.S. 535 (1894). Another interesting aspect of the Court's Second Amendment jurisprudence is that of the infamous *Dred Scott v. Sandford*, 60 U.S. 393 (1857), ruling that blacks cannot be citizens because otherwise they would have constitutionally protected rights, such as to firearms. For a thorough discussion of antebellum state cases concerning the right to keep and bear arms being made applicable to *all*, see Stephen P. Halbrook, *That Every Man Be Armed* (Oakland, CA: Independent Institute, 1994): 89–106. By implication, quite interestingly, the wording of Chief Justice Taney's *Dred Scott*-decision—where he says that if "the negro race" were "citizens" it would give them "the full liberty of speech, … to hold public meetings, … and *to keep and carry arms wherever they went*" (as quoted in Halbrook, *That Every man Be Armed*, 98)—would later be used as evidence for a preexisting individual right to arms held by the white population, supporting the eventual outcome of the 2008 *Heller*-decision.

question still remained for the Court to decide: exactly what rights did the amendment cover, and who could evoke them?

The only pre-*Heller* Supreme Court decision treating the Second Amendment to any detail came in the wake of the National Firearms Act of 1934.[34] This Act, severely limiting private ownership of such gangster-related firearms as sawed-off shotguns and submachine guns, had been enacted by Congress as a statutory reaction to the St. Valentine's Day Massacre in Chicago, an incident which "horrified the nation to nearly the same degree that the Columbine High School murders did in 1999."[35]

The ensuing case, *United States v. Miller* (1939), which involved two defendants indicted for possession of a sawed-off shotgun in violation of the said Act, gave the Court an opportunity to discuss the meaning of the Second Amendment, to clarify what kind of right it actually protected.[36] Nevertheless, instead of entering into any broad discussion of the nature of the amendment, in its decision the Court focused solely on the history and role of the militia, and its character of being made up of "all males physically capable of acting in concert for the common defense."[37] Thus, *Miller* did not answer as many questions as one perhaps would have liked. On the other hand, it clearly associated the Second Amendment's right to arms to service in some kind of a militia. This view, as I will demonstrate below, was clearly in harmony with the rest of the legal academy.

With the possible exception of the First Amendment, the Second is the amendment which most people outside the nation's legal communities know by heart. Given all the emotions that this amendment evokes among the general public, it is, therefore, at first sight perplexing to note its corresponding academic indifference. Seen from the vantage point of today's vast amount of legal, cultural and political Second Amendment research, it

34 National Firearms Act, 48 Stat. 1236 (1934).

35 David Kopel, "The Great Gun Control War of the 20th Century—and its Lessons for Gun Laws Today," *Fordham Urban Law Journal* (forthcoming 2012/2013), accessed November 27, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2070925. The St. Valentine's Day Massacre of 1929 Chicago, where gangster boss Al Capone's hoodlums gunned down seven members of the rivaling Bugs Moran gang, marks the beginning of increased attention from the federal government on mob affairs in Chicago and national concern on gangster influence.

36 *United States v. Miller*, 307 U.S. 174, 176–77 (1939). The question presented to the Court was whether a sawed-off shotgun was a "militia weapon" and as such protected by the Second Amendment.

37 Ibid., 178–79.

may perhaps serve a sobering purpose to remember that for several decades there were next to no academic interest in Second Amendment scholarship. As a matter of fact, up until the late 1950s, only a handful of law review articles had been written on the topic.[38]

The idea that the amendment protected a right closely linked to some kind of militia service, an interpretation strengthened by the Supreme Court itself through its 1939 *Miller* ruling, was not challenged. None of these early law review articles recognized the existence of any individual right justified in self-defense when it comes to gun ownership.[39] An illustrative example from the distant, academic past could be Lucilius A. Emery's article from 1915, where he summarizes the issue as follows: "Lastly, I submit that the right guaranteed [by the Second Amendment] 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."[40]

In its 1965 annual essay competition, the American Bar Association[41] awarded its first prize and publication in the *ABA Journal* to an article written by Chicago lawyer Robert Sprecher. Here, Sprecher, by invoking a wide spectrum of historical and philosophical sources, argued that the original meaning of the Second Amendment had been "lost", that the founding fathers indeed had intended a right for the individual to keep and bear arms.[42] Not surprisingly, the essay spurred a flow of individual right scholarship.

Gradually, and in spite of the preceding decades of a militia/collective-right focus, this individual-right view gained ground. In the 1980s there appeared 125 law review articles on the Second Amendment, ten times that of the 1960s, an overwhelming majority of which supported the individual

38 Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* (New York: W. W. Norton & Company, 2011), 95.

39 A useful read and reference for a "collective right" or "militia" interpretation could be Carl T. Bogus, "The History and Politics of Second Amendment Scholarship: A Primer," *Chicago-Kent Law Review* 76, 3–4 (2000), in which he argues that this is also a prime example of settled constitutional law.

40 Lucilius A. Emery, "The Constitutional Right to Keep and Bear Arms," *Harvard Law Review* 28, no. 5, 473-477 (Mar. 1915): 477.

41 In 1975, however, the American Bar Association itself endorsed the "collective right" or "militia" interpretation of the Second Amendment. *See* Comment, "The Individual Right to Bear Arms: An Illusory Public Pacifier?" *Utah Law Review*, 751 (1986): 756 & n.22 (citing the ABA Policy Book).

42 Robert A. Sprecher, "The Lost Amendment," *American Bar Association Journal* 51, 665–669 (July 1965): 667. The first part of the article was published in the *ABA Journal's* June 1965 issue, 554–557.

right doctrine.[43] Soon, this interpretation came to be known as the "standard model" of interpreting the Second Amendment, much like evolution—with a few exceptions—was the standard model of the natural sciences. In other words, a theory so well proven that no credible expert would disagree.[44]

That being said, compared to the veritable mountains of research on other Bill of Rights protections, whether speech, due process, cruel and unusual punishment or other protected rights, gun rights issues were hardly visible. "To put it mildly," professor Levinson wrote in 1989, "the Second Amendment is not at the forefront of constitutional discussion, at least as registered in what the academy regards as the venues for such discussion—law review, casebooks, and other scholarly legal publications."[45] Or, as Professor LaRue observed only a year before, "the [S]econd [A]mendment is not taken seriously by most scholars."[46]

In his highly influential work, *American Constitutional Law*, the canonical treatise which has guided thousands of law school students (and some of us in American Studies), Professor Laurence Tribe hardly paid any attention to the Second Amendment until its 3rd edition, published in 2000.[47] Prof. Tribe's 1988 second edition sees a mere cursory treatment of "the right to keep and bear arms", "marginaliz[ing] the Second Amendment by relegating it to footnotes; it becomes what a deconstructionist might call a 'supplement' to the ostensibly 'real' Constitution that is privileged by discussion in the text."[48] Or, as Prof. Williams succinctly puts it, "[a]cademics have abetted the judges by pretending that the Amendment does not exist."[49] On a more personal account it is tempting to include one of the textbooks on American politics that I used for my own studies around 1990, where entire chapters were devoted to the First and Fourth Amendments, while the Second was not discussed at all.[50]

43 Winkler, *Gunfight*, 95. Quite some of this research came as a result of NRA sponsorship, cf. note 90 *infra*.

44 Ibid., 95–97.

45 Levinson, "The Embarrassing Second Amendment," 637–659. Prior to Levinson's essay, the only thorough analysis in a major law journal was Don B. Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," *Michigan Law Review* 82, 204 (1983).

46 L. H. LaRue, "Constitutional Law and Constitutional History," *Buffalo Law Review* 36, 373, 375–78 (1988): 375.

47 Laurence H. Tribe, *American Constitutional Law*, 3rd edition (Foundation Press, 1999).

48 Levinson, 1989: 640.

49 David Williams, "Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment," *The Yale Law Journal* 101, no. 3 (1991): 556.

50 Milton C. Cummings, Jr., and David Wise, *Democracy under Pressure*, 6th ed. (New York: Harcourt Brace

In 1995, Glenn Harlan Reynolds, law professor at the University of Tennessee and the one who coined the standard model terminology, wrote that "for whatever reason, the past five years or so have undoubtedly seen more academic research concerning the Second Amendment than did the previous two hundred."[51] Today, this has only multiplied. Second Amendment scholarship is now an integral part of the legal canon.

Two centuries of doubt ended in 2008. In its landmark case, *District of Columbia v. Heller*, the U.S. Supreme Court not only struck down the bulk of Washington D.C.'s restrictive gun laws, it also recognized the existence of an individual right to keep and bear arms, unconnected to any militia service, and the right to use firearms for any traditionally lawful purposes, including self-defense, within the home.[52] While recognizing the District's need to combat gun violence and the opinion of many *amici* that gun prohibition is a solution to that end, Justice Scalia, in his 5–4 majority opinion, held that "the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home."[53]

On June 28, 2010, the Supreme Court, in yet another 5–4 decision, held that the individual right to arms for the purpose of self-defense granted by *Heller* also applied to state and local governments, including public colleges and universities.[54] In its decision, the Court examined the doctrine of incorporation, starting with the famous case of *Barron v. Baltimore* (1833),[55] before investigating the view "that the Fourteenth Amendment selectively incorporates particular rights contained in the first eight Amendments under standards which have evolved over time."[56] Consequently, by selectively incorporating the individual right to arms, the *McDonald* Court placed the

Jovanovich, 1989), 96–151 (chapter 4 "Civil Liberties and Citizenship").

51 Glenn H. Reynolds, "A Critical Guide to the Second Amendment," *Tennessee Law Review* 62, 461–511 (1995): 461.

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

53 Ibid. Justice Scalia was referring to several *amicus curiae* briefs ("friends of the Court"), which had supported the defendant's argument on the need to uphold D.C.'s strict gun regulations. On a general comment and indicating the case's controversial nature, never before had a single case before the Court produced as many amici briefs as *Heller*.

54 *McDonald v. City of Chicago*, 561 U.S. 3025 (2010).

55 *Barron v. Baltimore*, 32 U.S. 180 (1833), in which the Court held that the Bill of Rights' guarantees are not applicable to states. See footnote 22 *supra*.

56 Wasserman, "Gun Control on College," 10.

Second Amendment among such basic civil rights and liberties that are "of the very essence of the scheme of ordered liberty"—a standard formulated by Justice Cardozo in *Palko v. Connecticut*.[57]

With *Heller*, the Supreme Court firmly established the existence of an individual right to keep and bear arms for self-defense as protected by the Second Amendment. Even so, the Court said, this right was not unabridged. "Sensitive places," it said, such as "schools and government buildings,"[58] were to be exempt from this constitutionally protected right—although it remains unclear whether universities fall under the "schools" category.[59] Likewise, the right did not extend to certain groups, such as convicted felons and the mentally ill, although this list, according to the Court, is not comprehensive.[60]

Thus, the Court overruled its own nineteenth and twentieth century past, paving the way for dramatic changes in the modern American landscape of guns. This past, however, remains crucial in understanding reactions to the apparent deregulatory trend of today. Yet, in discussing the current general direction of regulations—or deregulations—concerning guns on campus, we do, by necessity, tread onto the realm of an even broader debate. While not pursuing this in great detail, we nevertheless need to see the discussion of Second Amendment rights on campus as part of legal, and perhaps political and cultural, changes regarding the concept of privacy.[61]

57 *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). By creating this "Honor Roll of Superior Rights" (by Justice Felix Frankfurter labeled "the slot machine theory … some are in and some are out"), Justice Cardozo made the doctrine of "selective incorporation" a momentous judicial principle.

58 *District of Columbia v. Heller*, 554 U.S. 570, 571 (2008). A more thorough definition of "sensitive places" is yet to be defined.

59 For a further analysis on the Heller-McDonald limitations, see e.g. Amy Hetzner, "Where Angels Tread: Gun-Free School Zone Laws and an Individual Right to Bear Arms," 95 *Marquette Law Review* 359 (2011–2012).

60 *Heller*, 554 U.S. at 626–28.

61 The PATRIOT Act signed into law by President Bush in the aftermath of the 9/11 terrorist attacks has, arguably, brought about consequences regarding individual rights and liberties, as has the National Security Agency's considerable electronic surveillance and signal intelligence. Another noteworthy aspect not further discussed in this article is the observation that the Second Amendment occupies a rather peculiar position among other Bill of Rights provisions. Whereas all the other constitutionally protected rights—from the First Amendment's guarantees of speech, the press, religion, and right peaceably to assemble, to the rights of criminal procedure of the Fourth, Fifth, Sixth, Seventh and Eighth Amendments—all have been embraced by the political left, "the right to keep and bear arms" of the Second Amendment has not.

III Guns on Campus: A Snapshot

The United States has a strong tradition of gun-free classrooms.[62] Historically, schools were considered safe havens where firearms had no place.[63] More recently, in the 1990s, President Clinton signed into law the revised Gun-Free School Zones Act,[64] while many states strengthened their own statutory framework concerning guns at school.[65] At the same time, the United States saw an increasing number of multiple-victim school shootings, both at K-12 schools and at college campuses.[66] As opposed to Britain, though, which after its Dunblane school massacre in 1996,[67] where the cry for a comprehensive gun ban was fairly unanimous, such a common cry was not at all heard in the United States. Far from it; here, quite a few chose the opposite path, calling for even more guns as a preferred means of securing the nation's schools.[68]

62 Beyond a reading of tradition, though, in terms of the existence of actual legal limitations, David Kopel claims that "[d]uring most of America's history, there were no particular restrictions on the possession of firearms on school property," David Kopel, "Pretend 'Gun-Free' School Zones: A Deadly Legal Fiction," *Connecticut Law Review* 42, no. 2 (2009): 518.

63 Despite the idea of schools as safe havens, there have been numerous school shootings in the U.S., even in the colonial era. In 1764, during Pontiac's Rebellion in the aftermath of the French and Indian War, schoolmaster Enoch Brown and nine or ten (reports vary) of his school children were killed by attacking Delaware warriors. After the Civil War every decade saw shooting tragedies in schools, although few involved multiple victims. In the late 1990s, however, the U.S. saw a number multiple victim attacks. These attacks were different from the earlier ones in that they "were committed by young students who carried out assaults at their own schools" (Langman, *Why Kids Kill*, 4). During the school year 2009–2010, according to the National Center for Education Statistics, 3% out of 32,300 schools took serious disciplinary action for the use or possession of a firearm or explosive device, accessed Nov. 28, 2012, http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/ind_19.asp.

64 The Gun-Free School Zones Act of 1990 (GFSZA), enacted as section 1702 of the Crime Control Act of 1990, was declared unconstitutional by the Supreme Court in *United States v. Lopez*, 514 U.S. 549 (1995) for violating the U.S. Constitution's "Commerce Clause" (Art. 1, Sec. 8, Clause 3). Soon thereafter Congress made some minor changes, and reenacted the law with President Clinton's signature.

65 For details on every state, see the online resources of the Law Center to Prevent Gun Violence, accessed Nov. 28, 2012, http://smartgunlaws.org/category/state-guns-in-schools/.

66 For a comprehensive discussion of school shootings seen from a psychologist's point of view, *see* Peter Langman, *Why Kids Kill: Inside the Minds of School Shooters* (New York: Palgrave-Macmillan, 2009), but I have also gained much insight from Dave Cullen, *Columbine* (New York: Twelve/Hachette Book Group, 2009) and Katherine S. Newman et al., *Rampage: The Social Roots of School Shootings* (New York: Basic Books/Perseus Books Group, 2004).

67 On Mar. 13, 1996, an armed gunman, Thomas Hamilton, entered the Dunblane Elementary School in Dunblane, Scotland, killing sixteen children and one adult before committing suicide. Shortly after, in 1997, two firearms acts were enacted by two consecutive governments (led by Conservative PM John Major and Labour PM Tony Blair, respectively), effectively making private ownership of handguns illegal in the United Kingdom.

68 An Apr. 27, 2007, ABC 20/20 report by John Stossel observed the strict regulations in the aftermath of

Nevertheless, compared to society in general, college campuses are still safe places for students and professors alike. Less than 2% of college students report being threatened with a gun on campus,[69] and while in 2003 there were 11,920 gun homicides in the U.S.,[70] there occurred only 10 murders or non-negligent homicides on the nation's college campuses.[71] Furthermore, for students enrolled in school during 1999, the overall rate for criminal homicide at postsecondary schools was .07 per 100,000 people, compared to 5.7 in the U.S. overall, and 14.1 per 100,000 for persons age 17 to 29.[72]

In the period 1995–2002, violent crime for college students age 18 to 24 also saw a significant decline.[73] Furthermore, college students are also less likely than non-students to become victims of crime. During this same time period crime rates declined for both students and non-students alike, and by 2002 only 41 of every 1,000 students were victims of violent crime, while 56 out of 1,000 non-students were victimized that same year.[74] Also, students living on campus are significantly safer there than off-campus, as more than 90% of all victimizations occur off-campus.[75]

One should keep in mind that most campuses are open areas with no marked boundary (such as a gated fence) to indicate where the city street ends and the campus begins. Obviously, this presents significant challenges

Dunblane, "[b]ut this didn't decrease the amount of gun-related crime in the U.K. In fact, gun-related crime has nearly doubled in the U.K. since the ban was enacted," accessed Nov. 29, 2012, http://abcnews.go.com/2020/story?id=3083618&page=1#.ULYQA4cmaS8. For illustrative purposes, it may be relevant to observe that immediately after the Newtown massacre, gun stores around the country experienced a buying frenzy of enormous proportions (*New York Times*, 11 Jan. 2013).

69 Matthew Miller et al., "Guns and Gun Threats at College," *Journal of American College Health* 51 (Sep. 2002): 63. In addition, see University of Virginia, the Curry School of Education's Youth Violence Project for relevant details, accessed Nov. 24, 2012, http://curry.virginia.edu/research/labs/youth-violence-project.

70 See note 3 *supra* for CDC's Web-based Injury Statistics Query and Reporting System, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

71 U.S. Dept. of Education, *Summary Campus Crime and Security Statistics—Criminal Offenses, Murder/Non-negligent Manslaughter* (2003), accessed Nov. 27, 2012, http://www.ed.gov/admins/lead/safety/crime/criminaloffenses/edlite-murder.html.

72 U.S. Dept. of Education, Office of Postsecondary Education, *The Incidence of Crime on the Campuses of U.S. Postsecondary Education Institutions: A Report to Congress* (Jan. 18, 2001): 5, accessed Nov. 28, 2012, http://www2.ed.gov/finaid/prof/resources/finresp/ReportToCongress.pdf.

73 Katrina Baum and Patsy Klaus, *Office of Justice Programs, U.S. Dept. of Justice, Bureau of Justice Statistics Special Report, National Crime Victimization Survey—Violent Victimization of College Students, 1995-2002* (Jan. 2005), 1, accessed Nov. 28, 2012, http://bjs.ojp.usdoj.gov/content/pub/pdf/vvcs02.pdf.

74 Ibid.

75 Ibid., 5.

for the overseeing authority, such as the college police or security force. On that note, it could be added that most of the nation's four-year universities sanction the carrying of firearms by their campus police, while opposition has been raised at many smaller colleges.[76]

Let us, then, turn to an up-to-date status regarding guns among campus civilians, i.e. students, faculty and staff. There are essentially three basic categories of campus carry laws in effect today: (1) complete bans of guns on campus, irrespective of any license; (2) laws that leave it to the universities and colleges themselves to regulate guns on their own property, and (3) legislation that explicitly requires the institutions to allow license holders to carry their firearms.[77]

In the United States, all 50 states have concealed carry weapons laws.[78] Today, there are twenty-one states that ban carrying a concealed weapon on a public college campus.[79] That being said, each of these twenty-one states' gun policies outside of campuses vary tremendously, from the very strict gun laws of Massachusetts, to the correspondingly lax legal framework of Wyoming.[80]

In twenty-two other states, this decision is left to the universities and col-

76 Marcella Bombardieri, "Campus Police Renew Call to Carry Arms," *Boston Globe*, Apr. 28, 2007, at A1.

77 Shaundra K. Lewis, "Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns," *Idaho Law Review* 48, no. 1 (2011): 5. *See* http://smartgunlaws.org/category/state-guns-in-schools/ for details and statutory authority for each state and territory.

78 For quite some time Illinois remained the only state without such a provision, but in *Moore v. Madigan* 12–1269 (7th Cir., 2012), the Seventh Circuit of the U.S. Court of Appeals ruled that Illinois' concealed carry ban was unconstitutional, thus going further than *Heller-McDonald*, saying that the Second Amendment protects a broad public right to carry a loaded and ready available gun in public for the purpose of self-defense. In July 2013 Illinois enacted the Firearms Concealed Carry Act, thereby establishing a system for the issuing of concealed carry permits.

79 California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming. Source: National Conference of State Legislatures, http://www.ncsl.org/issues-research/educ/guns-on-campus-overview.aspx.

80 Massachusetts' firearms laws are among the strictest in the country, whereas Wyoming in 2011 joined Alaska, Vermont, and Arizona in becoming an unrestricted concealed carry state, i.e. anyone not otherwise prohibited may purchase and carry a loaded, concealed handgun, without any prior background check or training (certain areas, such as courtrooms, churches and K-12 schools are exempt, though). For details on Massachusetts, *see* http://www.mass.gov/eopss/firearms-reg-and-laws/gun-laws/ and for Wyoming *see* http://civilliberty.about.com/od/guncontrol/a/Wyoming-Gun-Laws.htm (both sites accessed Dec. 3, 2012).

leges themselves.[81] Most of these category two institutions, however, have themselves made the explicit choice of being "gun-free".[82]

Due to recent state legislation and court rulings, as of today, seven states have provisions allowing the carrying of concealed weapons on their public postsecondary campuses. Utah is the only state specifically naming its public colleges and universities as public entities that do not have the authority to ban concealed carry of firearms.[83] In 2011, Wisconsin passed legislation providing that the state's public universities must allow concealed carry on campus, but gave the institutions themselves the right to prohibit firearms from campus buildings if signs of that explicit nature were posted at every entrance.[84] Also in 2011, the Mississippi state legislature created an exemption in state gun laws enabling concealed carry on campus for those who have taken a voluntary course (by a certified instructor) on safe handling and the use of firearms.[85] As late as March 2014, the Idaho legislature passed a bill, which was subsequently signed into law by Governor C. L. "Butch" Otter, permitting concealed weapons on campus, quoting the safety of student, faculty and staff of state colleges and universities" in doing so.[86]

In the last two of the seven campus carry states, change came through rulings by state courts. The Oregon Court of Appeals overturned a long-standing gun ban in the state's public university system, thereby allowing those with proper permits to carry concealed handguns on campus.[87] Deciding not to appeal, the Oregon university system nevertheless stated its authority to maintain internal policies banning guns from specific areas on campus.[88] In March 2012, the Colorado Supreme Court ruled that the

81 Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia. Source: National Conference of State Legislatures, http://www.ncsl.org/issues-research/educ/guns-on-campus-overview.aspx.

82 Derek P. Langhauser, "Gun Regulation On Campus: Understanding *Heller* and Preparing for Subsequent Litigation and Legislation," *Journal of College & University Law* 36, no. 1 (2009): 65.

83 UTAH CODE ANN. 63–98–102 (2004). Consequently, all ten post-secondary institutions of Utah allow concealed carry on their campus property. See part V for a further discussion.

84 2011 Wisconsin Act 35 (https://docs.legis.wisconsin.gov/2011/related/acts/35).

85 *See* House Bill No. 56 (http://billstatus.ls.state.ms.us/documents/2011/pdf/HB/0500-0599/HB0506SG.pdf), an Act to amend Sect. 97–37–7, Mississippi Code of 1972, for details.

86 Idaho Senate Bill No. 1254, 2014 (http://legislature.idaho.gov/legislation/2014/S1254.pdf).

87 A142974 *Oregon Firearms v. Board of Higher Education* (2011) (http://www.publications.ojd.state.or.us/docs/A142974.pdf).

88 According to the National Conference of State Legislatures, Oregon's State Board of Higher Education, in

University of Colorado's on-campus gun ban violated the state's concealed carry law, thereby disallowing the Board of Regents to regulate the possession of concealed handguns on campus.[89]

Finally, in order to appreciate the dynamism of guns on campus legality, one needs to be acutely aware of the fact that there currently are ongoing legal and judicial processes in several states. By its very nature, this is, therefore, not a study of static history of the past, dynamic only as far as our interpretations and understandings are concerned, but rather that of continuous change. The status provided above may, therefore, be subject to alterations within just a few months.[90]

IV Attitudes, arguments, and academic freedom

"Fierce debate surrounds gun control in the United States," comments Professor Rostron, "making it not only a major dividing issue in legislative arenas and political races but also a key element in a wider cultural divide."[91] Discussing attitudes held by a majority of college faculty related to guns on campus, we truly find ourselves in the very midst of this "wider cultural divide".[92]

Universities are among the American institutions inhabited by a most liberal populace, and increasingly so.[93] Rothman, Lichter, and Nevitte's 2005 study, where they polled 1,643 college professors, produced "results indicat[ing] that a sharp shift to the left has taken place among college faculty in recent years."[94] In that same study, 72% of the college professors

March 2012, unanimously approved a policy banning guns from classrooms, buildings, dormitories, and events. Accessed Dec. 5, 2012, http://www.ncsl.org/issues-research/educ/guns-on-campus-campus-action.aspx.

89 *Regents of the University of Colorado v. Students for Concealed Carry on Campus*, 10SC344 (2012), accessed Dec. 11, 2012, http://www.courts.state.co.us/Courts/Supreme_Court/opinions/2010/10SC344.pdf.

90 For up-to-date information on legislation relevant to concealed carry on campus, consult the National Conference of State Legislatures' database for online search, http://www.ncsl.org/legislative-staff/lesn/education-bill-tracking-database.aspx.

91 Allen Rostron, "Incrementalism, Comprehensive Rationality, and the Future of Gun Control," *Maryland Law Review* 67, no. 3 (2008): 512.

92 Craig R. Whitney, *Living With Guns: A Liberal's Case for the Second Amendment* (New York: PublicAffairs-Perseus Book Group, 2010), where the former *New York Times* columnist discusses some of the divisive core issues related to this deep, cultural divide.

93 Rothman, Stanley, et. al. "Politics and Professional Advancement Among College Faculty," *The Forum* 3, no. 1 (2005): 4.

94 Ibid.

identified themselves as liberal, while 15% considered themselves to be conservative.[95] In terms of affiliation to a political party, 50% saw themselves as Democrat, 11% Republican.[96]

To a considerable degree, this political affiliation also seems to play a poignant part in one's attitude towards guns on campus. In their 2012 study, Bennett, Kraft, and Grubb analyzes findings from a 2008 survey at a state university in southeastern Georgia, where faculty were polled for attitudes towards (among other things) guns on campus. Their evidence suggests that "[t]hese opinions and attitudes are determined in part by one's political party and whether or not one is a gun owner, and not by such factors as region, age, gender, race, or major (college)."[97]

This apparent significance of political party affiliation is further supported by the Gallup Institution's surveys of the general population, which demonstrate that Republicans are more prone to oppose stricter gun control laws.[98] On a more general note, Gallup finds that "Americans have shifted to a more pro-gun view on gun laws, particularly in recent years."[99] That being said, in explaining this increasingly pro-gun popular attitude, Gallup also looks at the wider picture:

> The reasons for the shift do not appear related to reactions to the crime situation, as Gallup's Crime poll shows no major shifts in the trends in Americans' perceptions of crime, fear of crime, or reports of being victimized by crime in recent years. Nor does it appear to be tied to an increase in gun ownership, which has been around 40% since 2000, though it is a slightly higher 45% in this year's update.[100]

Nevertheless, despite the general public's increasingly pro-gun views,

95 Ibid. The data analyzed by Rothman et. al. were retrieved from Angus Reid's (a survey research firm now called Ipsos-Reid) 1999 North American Academic Study Survey (NAASS) of students, faculty and administrators at colleges and universities in the United States and Canada. Only the American sample (1,643 respondents from 183 institutions) was used.

96 Ibid.

97 Katherine Bennett et al., "University Faculty Attitudes Toward Guns on Campus," *Journal of Criminal Justice Education* 23, no. 3 (Sep. 2012): 350. As to the meaning of region: In the survey the respondents were asked in which area of the U.S. they grew up (Southeast, Northeast, Midwest, Southwest, West, Does not apply).

98 Jeffrey M. Jones, "Record-Low 26% in U.S. Favor Handgun Ban: Support for stricter gun laws in general is lowest Gallup has measured," (Princeton, N.J.: Gallup Institution, Oct. 26, 2011). Further supporting Bennett et al., the Gallup report states that "[t]hose with guns in their household are least likely to favor a handgun ban".

99 Ibid.

100 Ibid. Albeit a fascinating study, it falls beyond the scope of this article to pursue these reasons any further.

these are not mirrored by university professors. Rather to the contrary, "college faculty are generally opposed to allowing concealed handguns on campus."[101] Echoing Grayson and Meilman,[102] the findings of Bennett et al. are unequivocal: "Seventy-two percent of the sample respondents would strongly oppose amending legislation to allow the lawful carrying of concealed weapons on college campuses, with another 6% opposing such legislation."[103]

This skepticism is further shared by many of those entrusted with campus safety: "More guns does not equate to a safer campus," says Arizona State University Police Chief John Pickens.[104] Arizona is among the most liberal of the states, yet all of the university police chiefs stood united against a state bill allowing guns on campus.[105]

In spite of this considerable support of strict on-campus gun regulations, the pro-gun advocates seem more prone at organizing themselves. While much of the faculty effort to maintain gun-free campuses are channeled through already established channels, supporters of the pro-gun movement have formed new organizations, as well as joined off-campus organizations like the NRA.[106] Students, on the other hand, in well-established campus tradition, have gathered in newly formed organizations to further their views. The most important is Students for Concealed Carry, a special-purpose organization formed within hours of the Virginia Tech massacre in April 2007.[107] Membership numbers are claimed at well over 40,000, although scholars such as Shaundra Lewis have cast doubt on these figures.[108]

101 Bennett et al. 2012: 350.

102 *See* note 1 *supra*.

103 Bennett et al., "University Faculty Attitudes," 341.

104 http://www.azfamily.com/news/Police-chiefs-lobby-against-guns-on-campus-139493023.html, accessed Nov. 29, 2013.

105 Ibid.

106 The National Rifle Association, founded 1871, is the most vocal, well-funded, and powerful pro-gun organization in the United States, boasting 5 million members and a lobbying force greater than any other. Following the "1977 Cincinnati Revolt" a new leadership moved the NRA away from its pastoral past and into political lobbying and pro-gun research. For more background, see e.g. Scott Melzer, *Gun Crusaders: The NRA's Culture War* (New York: New York University Press, 2009).

107 See note 6 *supra*. Students for the Second Amendment is another such organization, while the leading organization for the opposing view is Students for Gun-Free Schools. The list of more or less active student pro-gun organizations, some of which are only active online, is ever changing and difficult to define. Some of the smaller organizations, most of which are local, live only for a brief period of time, quite possibly while the founding enthusiasts and driving forces themselves are students.

108 Lewis, "Bullets and Books," 3, n10.

The enforcement of constitutionally protected individual rights may come at social cost.[109] Of course, the definition of "social cost" may be highly subjective: personal and societal values, traditions, ideologies, beliefs—the list of deciding factors is essentially limitless. An obvious example, perhaps, "[t]he right to speak freely is balanced with the possible harm that can result from people preaching hate, violence, intolerance, and even fomenting revolution."[110] A college campus, to no less degree than other arenas for public life, is clearly dependent upon a vibrant existence of the abovementioned qualities. Losing them may sever the institution's core purpose. Echoing Levinson, Cornell law-professor David Williams claims that "[t] he republican tradition that lies behind the Second Amendment is not just embarrassing—it is terrifying."[111]

Accordingly, permitting concealed carry of guns at campuses may have severe effects on the learning environment. The very idea that people around you—students and teachers alike, in auditoriums and reading rooms, in libraries and on the common lawn—might carry a loaded handgun could easily influence the very sense of academic freedom, that prerequisite of university life. To the profession itself, in the 1930s, this concern of academic freedom was subject to a series of conferences, resulting in the well-established 1940 Statement of Principles of Academic Freedom and Tenure.[112] On the other hand, regarding relevance, is it, as Second-Amendment activists have suggested, reasonable to feel threatened by an object one is unaware of?[113]

109 For a thorough analysis of the "social cost" concept itself, see Nobel Prize laureate Ronald. H. Coase and his canonical article "The Problem of Social Cost," *Journal of Law & Economics* 1 (1960).

110 Josh Blackman, "The Constitutionality of Social Cost," *Harvard Journal of Law & Public Policy* 34, no. 3 (2011): 953.

111 Williams, "Civic Republicanism and the Citizen Militia," 553. For Levinson, *see* note 30 *supra*.

112 This was a joint agreement by representatives from the American Association of University Professors and of the Association of American Colleges (now the Association of American Colleges and Universities). Regarding academic freedom, the statement focuses on three crucial elements: full freedom in research and in the publication of the results, freedom in the classroom in discussing their subject, and when they speak or write as citizens, they should be free from institutional censorship or discipline, accessed Nov. 28, 2012, http://www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm. For a refreshing take on academic freedom, see Rebecca Gose Lynch, "Pawns of the State or Priests of Democracy? Analyzing Professors' Academic Freedom Rights Within the State's Managerial Realm," *California Law Review* 91, no. 4 (2003).

113 B. Gil Horman, "8 Arguments for Concealed Carry on Campus," *Guns & Ammo*, Mar. 29, 2012, http://www.gunsandammo.com/2012/03/29/8-reasons-for-concealed-carry-on-campus/#ixzz2DSNdJNB0 accessed Nov. 28, 2012. This monthly magazine has a readership of 5.8 million per issue. Up until 2007, former NRA president Charlton Heston authored a regular gun-rights column.

A strict firearms policy is necessary to achieve the institution's educational mission, the University of Utah argued when being challenged, otherwise undesirable results such as enhanced risks to safety, a burden on the free exchange of ideas, and potential disruption to work and school discipline may follow.[114] "The learning environment could be severely compromised if students and faculty were potentially carrying a firearm," Kathy Wyer claims, quite simply "because some individuals may feel threatened or intimidated, which could very well inhibit their ability to learn."[115] But also the Supreme Court has had its say, commenting on institutional autonomy, declaring that "the essentiality of freedom in the community of American universities is almost self-evident. … To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."[116]

Obviously, conflicting concerns are vying for attention. In this situation, "[i]t is, [therefore], imperative to note the ethical dilemma faced when a constitutional right can endanger others," warns Termika Smith, before asking the obviously prudent question: "at what point does a person's right to bear arms infringe on the rights of others to feel secure?"[117]

Clearly, several conflicting concerns are at play. *Heller* explicitly stated that all citizens have a right to possess a firearm for self-defense in their own home, while *McDonald* made that guarantee applicable to the several states. [118] To millions of Americans, the ability of defending your home lies at the core of our very existence.[119] An emasculation of this right, therefore,

114 *University of Utah v. Shurtleff*, 144 P.3d 1109, 1121 (Utah 2006).

115 Kathy L. Wyer, "A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University of Utah," *Utah Law Review* 983 (2003), as quoted in Joan H. Miller, "The Second Amendment Goes to College," *Seattle University Law Review* 35 (2011): 236.

116 *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). For a different, but highly intriguing perspective related to perception influenced by your own armed/unarmed position, *see* Jessica K. Witt and James R. Brockmole, "Action Alters Object Identification: Wielding a Gun Increases the Bias to See Guns," *Journal of Experimental Psychology: Human Perception and Performance* 38, no. 5 (2012): 1159–1167.

117 Termika N. Smith, "To Conceal and Carry or Not to Conceal and Carry on Higher Education Campuses, That is the Question," *Journal of Academic Ethics* 10, no. 3 (2012): 240.

118 See notes 52 and 54 *supra*, respectively.

119 The so-called "castle doctrine", currently adopted by 46 states (albeit not uniformly applied), may sanction the use of deadly force if a person is threatened and reasonably fears imminent peril of death or serious bodily harm in his/her own home. For a thorough and principled analysis, see Catherine L. Carpenter, "Of the Enemy Within, The Castle Doctrine, and Self-Defense," *Marquette Law Review* 86, no. 4, 653–700 (2003).

would threaten rights even predating the Bill of Rights itself.[120] Seen in conjunction to current legal initiatives restricting universities from prohibiting guns on their own property (so-called pre-emption laws), a recent Idaho case could prove useful in understanding this dilemma. A law student at the University of Idaho challenged a provision in his housing contract that prohibited him from possessing a gun at his dorm. He sued the university regents and the State Board of Education, arguing that this prohibition violated his rights both under the Idaho and United States constitutions. In spite of the Heller *dictum*, the student lost.

The Idaho judge ruled that the "Regents' important interest in ensuring the University campus remains a safe learning environment" outweighed the student's interest in having a gun.[121] Echoing the *Heller* Court's individual gun-rights exceptions for regulations based on scientifically-based research "especially when they implement presumptively lawful restrictions,"[122] the Idaho judge, "in order to promote the University as an institution of learning", focused on a demonstrated need to ensure "that University students, faculty, staff, and visitors are safe and free from the threat of violence while on University property."[123]

Professor Lindsey Craven, though, argues that "by prohibiting guns on campus, colleges have effectively removed any opportunity for students to own guns in their homes."[124] Furthermore, by banning guns in dorms, she says, they have also "create[d] a conflict between enforcement of gun laws

120 In *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), ruling on the use of contraception, Justice Douglas stated that "[w]e deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system." It might be added, though, that this is, in essence, a kind of pre-constitutional penumbral reasoning, and as such is unenforceable against the government. Nevertheless, in *Griswold*, the Court ruled that the "statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of *specific guarantees of the Bill of Rights*," [my emphasis] and thus hooked it to provisions that indeed were enforceable against the government. For a privacy discussion on abortion, see *Roe v. Wade*, 410 U.S. 113 (1973).

121 *Tribble v. State Board of Education*, Case No. CV–2011–0069 (2012): 28, accessed Nov. 26, 2012, http://smartgunlaws.org/wp-content/uploads/2012/06/TribbleDecision.pdf.

122 Wasserman, "Gun Control on College," 55.

123 *Tribble v. State Board of Education,* 27. A similar argument, stating that because students are an at-risk group and the peculiar circumstances of on-campus living combined with the general understanding that safety is a compelling interest, reaches the conclusion that limiting firearms in dorms would pass legal muster (Lindsey Craven, "Where Do We Go from Here? Handgun Regulation in a Post-Heller World," *William & Mary Bill of Rights Journal* 18, no. 3 (2010): 853).

124 Craven, "Where Do We Go From Here?" 854.

and the right to self-defense."[125] It will be a future Court's task, therefore, to establish which law takes priority, campus gun-ban policies or the right to armed self-defense.

One of the utilitarian arguments for an armed college citizenry is that of resistance to an immediate threat. "On January 16, 2002," when a dissatisfied law-school student unleashed his anger in a shooting spree, says Professor Riley Massey, "the icy fingers of one of modern America's least-understood and most-feared phenomena touched the halls of legal academia."[126] In addition to all the tragedy in its wake, the Appalachian School of Law shooting is known for the decisive intervention of two other students, who, after having become aware of the ensuing drama, ran to their cars and retrieved their personal firearms. Shortly thereafter the gunman was subdued.

This incident amply illustrates one of the most vocal arguments for allowing guns on campus: no matter the circumstances, it will take time for law enforcement or security personnel to respond to the threat. The same line of reasoning has been evoked regarding Norway's national disaster on July 22, 2011, when after detonating a bomb killing eight people and devastating several government buildings in central Oslo, among them the Prime Minister's Office, the terrorist drove by car to Utøya, an island resort where the youth division of the Norwegian Labour Party held their traditional summer camp. After arriving on the island the terrorist, Anders Behring Breivik, dressed as a police officer, over a period of an hour and fifteen minutes cold-bloodedly murdered 69 people, most of them teenagers, while injuring another 110.[127] The police investigation showed that 564 people were on the island, and at the time the terrorist, according to the police, still had "a considerable amount of ammunition left."[128] What if some of those 564 people on the island had been armed? Could more guns on the island have worsened the situation even more? Arguably not, as the terrorist already wrecked maximum havoc among the teenagers, indiscriminately continuing his killing spree until a special unit from the police arrested him, the

125 Ibid.

126 Riley C. Massey, "Bulls-Eye: How the 81st Texas Legislature Nearly Got It Right On Campus Carry and the 82nd Should Still Hit the X-Ring," *Texas Wesleyan Law Review* 17 (2011): 200. Former student Peter Odighizuwa took a gun into the Appalachian School of Law in Grundy, Virginia, and began shooting. He killed a dean, a professor and another student, as well as seriously injuring three other students.

127 Forensic reports showed that 57 of the Utøya victims were killed by one or more shot through the head.

128 As quoted by the Norwegian national daily Dagbladet, accessed Nov. 29, 2012, http://www.dagbladet.no/2011/07/24/nyheter/innenriks/oslo/oslo-terror/anders_behring_breivik/17442711/.

terrorist surrendering without resistance. Be it at Utøya or Virginia Tech, the dilemma for the victims' parents is terrifying, the "what if" devastating: would more guns have saved my son's or my daughter's life?

Two of the counter-arguments, frequently stressed by law-enforcement personnel, are those of chaos and lack of extensive training. For the police to arrive at a scene where a school shooting is underway, the last thing they need is a number of civilians engaged in shooting at the perpetrator. How to separate friend from foe; the sense of chaos may be complete. Also, civilians lack the kind of training law-enforcement personnel do on a regular basis. Reflex reactions and drilled competence; internalization of all those mental exercises that enable police officers to do their job in a highly stressful environment. Armed students and college professors will only worsen the situation, the argument says. This leads us to the next logical step, gun-free schools.

During the 1990s, Congress passed legislation creating gun-free zones around the nation's K-12 schools.[129] David Kopel contends that "absolute bans have proven to be extremely dangerous, because they turn schools into uniquely attractive targets for mass murderers."[130] He further claims that "[g]un prohibition on campuses is a deadly policy, … [that] the case against licensed carry on campus is based on conjecture and far-fetched hypotheticals, … [while] the case in favor of licensed carry is based on the empirical experience."[131] Unarmed, schools are left unable to defend themselves, with the result that students and teachers die. Guns in the hand of students and/or faculty, however, would serve a deterrent effect. The obvious counter argument is that gun-free zones prevent accidents, and that the very absence of firearms in itself makes schools safer.

In conclusion, and applying this restriction beyond K-12 institutions, it is indeed relevant to acknowledge the opinions of higher-education admin-

129 The Gun-Free School Zones Act of 1990 was passed as part of (section 1702) the Crime Control Act of 1990. This Act was subsequently held unconstitutional by the U.S. Supreme Court (*United States v. Lopez*, 514 U.S. 549 (1995), one of the rare occasions in which the Court applied the "Commerce Clause" to limit Congressional authority), but then re-enacted in a revised version in 1996 (section 657 of the Omnibus Consolidated Appropriations Act of 1997).

130 David Kopel, "Pretend 'Gun-Free' School Zones: A Deadly Legal Fiction," *Connecticut Law Review* 42, no. 2 (2009): 517.

131 Ibid., 584. As an example of international arming of students, in addition to Israel and Thailand, and of special interest to Scandinavian readers, Kopel writes: "In upper Norway's Svalbard archipelago, a ban on polar bear hunting has led to surge in the polar bear population—and some people have been killed by polar bear attacks. Accordingly, students are required to carry shotguns when traveling to and from school, and to take shooting classes at school" (at 536).

istrators. In a policy brief presented in the aftermath of the Virginia Tech shootings, the American Association of State Colleges and Universities, while citing security issues as well as criminal deterrence, "maintain[ed] support for existing state laws that ban concealed weapons from public college campuses."[132]

V The way ahead: Issues of concern

Who are responsible for what on a college campus? What responsibilities fall under the purview of the Board of Trustees or the college President, the state legislature or the Governor—or for that matter, the students themselves? More than thirty years ago, the Third Circuit of the Federal Courts of Appeal, located in Philadelphia, more than suggested that the traditional responsibility for student safety at the "modern American college" exercised by college administrators had been diluted. "Trustees, administrators, and faculties," the Court wrote, "have been required to yield to the expanding rights and privileges of their students."[133] As a result, "rights formerly possessed by college administrations have been transferred to students. College students today are no longer minors; they are now regarded as adults in almost every phase of community life."[134]

That being said, college campuses are places of peculiar characteristics, and as such they need special attention. Some, such as academic freedom, are discussed above. Medical concerns would be another bulk of issues. Perhaps foremost among these, at least while discussing guns, would be suicides.[135] Not entering into a thorough analysis of all the medical literature on the issue, suicide researchers share concerns when it comes to the possible outcome of increased gun availability: "One reason the rate of sui-

132 Thomas L. Harnisch, "Concealed Weapons on State College Campuses: In Pursuit of Individual Liberty and Collective Security," Policy Brief, American Association of State Colleges and Universities (Nov. 2008). For relevant enrollment statistics showing campus demographics etc., see the U.S. Dept. of Education's National Center for Education Statistics, http://nces.ed.gov/fastfacts/display.asp?id=98, accessed Nov. 29, 2013.

133 *Bradshaw v. Rawlings*, 612 F.2d 135, 138–39 (3d Cir. 1979).

134 Ibid.

135 Four out of every six deaths caused by firearms are suicides, and as such this issue would warrant considerable attention. See note 3 *supra* for numbers. For a highly relevant analysis studying links between perpetrators' intent and ideas of suicide, see Antonio Preti, "School Shooting as a Culturally Enforced Way of Expressing Suicidal Hostile Intentions," *Journal of the American Academy of Psychiatry and the Law* 36, no. 4 (2008).

cide among college students is only half the rate of same-age peers who are not in college may be that firearms are not allowed on the vast majority of campuses."[136]

Another troublesome consequence of armed students is that of staff and faculty who, as part of their job, is in a position where they have to say "no." Professors giving low grades, financial aid officials, coaches or others who are presenting bad news that one way or another infuriate students; all of these groups could end up as potential targets. Then again, "could be" is a rather loose legal standard for any court of law to apply.

On the utilitarian side, the most important argument for guns on campus is that of deterrence. Guns in the hands of law-abiding students, faculty and staff will in itself have a deterrent effect, causing potential perpetrators to think twice before committing any wrongdoing. Further, following this argument, if the perpetrator, despite this deterrent effect, still decides to fire, an armed college citizenry will be able to fire back and thereby preventing or minimizing the degree of injury or fatality.[137] Making successful citizens arrests, alas/however, with confidence reacting calmly while bullets fly all around you, many commentators have observed, is the work of fiction.

With the individual-right decision in *Heller*, and its state incorporation two years later, it seems clear that a broadly based ban would meet with well-founded constitutional challenges. As demonstrated above, though, regulations are nevertheless still possible. They just need to demonstrate, depending on the level of scrutiny applied, a compelling or important government interest in regulating the presence of gun on campus. The nature of future campus firearms regulations, therefore, is to a significant extent dependent upon court behavior, on how the judicial branch draws the legal map. More precisely, the finer details of this map will be drawn by cases involving the degree of Second Amendment protection and state constitutional and statutory concerns. University administrators, therefore, need to tailor their regulatory policies to the development of these concerns.

136 Laurie Davidson and Joanna H. Locke, "Using a Public Health Approach to Address Student Mental Health," in Jerald Kay and Victor Schwartz, eds., *Mental health care in the college community* (Hoboken, N.J.: Wiley-Blackwell, 2010), 283. Then again, the lower suicide rate might also be due to an assumption that college students, in a society highly valuing a college degree, on the average feel that they are mastering life, that they are on a path towards a well-defined future, having found a purpose to a higher degree than those same-age peers not in college.

137 See e.g. note 114 *supra*.

In *Heller*, the Supreme Court indicated a standard to which such regulations need to comply, that a mere rational basis review was not enough.[138] Further, in *McDonald*, it observed that Bill of Rights protections must "all … be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment."[139] Consequently, as far as a reading of the Second Amendment is concerned, the future road atlas for campus firearms regulation offers few signposts, yet a whole lot of open space. That being said, some observations are still possible.

Most importantly, perhaps, since the *Heller*-Court expressly referred to schools and government buildings as "sensitive places" where gun regulations are presumptively enforceable, it follows that campus regulations, even strict regulations, might withstand Second Amendment scrutiny.[140] Also, based on the same *Heller* recognition of schools being "sensitive places", colleges and universities would probably need to show a clear and proven factual basis for their regulatory efforts, showing concern for health issues, safety etc., thus demonstrating an important governmental interest behind their campus rules. Further, given the federal age limit of 21 for purchase of guns and a corresponding requirement for acquiring a license, this should in itself limit undergraduates from legally being armed.[141]

The task of looking into the state constitutional and statutory considerations as regarding campus gun control by colleges and universities is one

138 Established by the Supreme Court, *rational basis* review is the least rigorous of the three standards (the other two being *intermediate* and *strict scrutiny*) applied by a court when examining whether a legislature had a reasonable as opposed to an arbitrary basis for enacting a particular statute. This test of rational basis review was introduced as separate and distinct from strict scrutiny in *United States v. Carolene Products Co*., 304 U.S. 144 (1938). Working on background for this article, I have had considerable use of Adam Winkler, "Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts," *Vanderbilt Law Review* 59, no. 3 (2006), where he offers an analysis of every strict scrutiny decision published by the district, circuit, and Supreme courts between 1990 and 2003.

139 *McDonald v. City of Chicago*, 561 U.S. 3025, 3028 (2010).

140 *District of Columbia v. Heller*, 554 U.S. 570, 571 (2008). While facing the possible claim that for Second Amendment purposes colleges and universities are not schools in the usual sense, Professor Wasserman suggests that "officials enacting gun control rules may wish to develop legislative facts which recite the various uses of campuses, including pre-school and day care activities and K-12 on-campus education [and] field trips," thereby enabling an interpretation where the institution's campus will be included in the *Heller*-exception (Wasserman, "Gun Control on Campuses," 36, n90).

141 18 U.S.C. § 922. For a more thorough discussion of emerging Second Amendment concerns on campus regulatory efforts, *see* Wasserman, "Gun Control on College and University Campus," 34–38.

of immense legal magnitude.[142] "[It] entails a detailed study of the pertinent provisions," Professor Wasserman explains, "including the enactments of territorial legislatures, prior to statehood, which were incorporated into state constitutions. It also involves study of the enabling acts that created the particular institution(s)."[143] This is a path that gradually will be cleared by state and federal courts, playing out over several years. Likewise, a number of local concerns, informed by the fact that no campuses are identical, will become important regarding future gun control efforts. These might be related to security issues, to reactions regarding violations of existing regulations, as well as to local risk analysis.

Another concern is the deepening political conflict between state legislators and campus authorities on the issue of firearm regulations. If one addresses the observation that "the most important consideration for public colleges and universities is preemption of campus decision making by state legislatures," it becomes painstakingly clear that these parties do not necessarily see eye to eye.[144] *University of Utah v. Shurtleff*, in which the University sued the state attorney general in order to obtain a declaration stating that its firearms policies did not violate the state's firearms legislation, would serve an illustrative example of this emerging conflict.[145] Immediately after a trial-court victory for the university, but before hearing appeal, the Utah state legislature enacted a preemption act specifically tailored at limiting the independence of university authority:

> Unless specifically authorized by the Legislature … a local authority or state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on either public or private property.[146]

The Utah Supreme Court, upon appeal, held against the university. "We simply cannot agree with the proposition," it said, "that the Utah Constitution restricts the legislature's ability to enact firearms laws pertaining to the University."[147]

142 For an excellent overview as well as a more substantive treatment of all states, see Eugene Volokh, "State Constitutional Rights to Keep and Bear Arms," *Texas Review of Law & Politics* 11, no. 1, 2006.

143 Wasserman, "Gun Control on College and University Campus," 39.

144 Ibid., 20–21.

145 *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

146 UTAH CODE ANN. 63–98–102 (2004).

147 *Shurtleff*, 144 P.3d at 1121.

This disharmony between the political agendas and considerations of state legislators, on the one hand, and the concerns of academic freedom, educational mission and safe environments held by college and university administrators, on the other, is of an ever present nature in higher education politics. "The American campus-state relationship typically is cast in terms of a fundamental, even paradoxical, tension between the dual demands of institutional autonomy and public accountability," writes Michael McLendon, demonstrating a dominant pattern throughout the twentieth century of "increasing involvement and intervention by state governments in the higher education sector."[148] Regardless of future court decisions removing today's uncertainties, this conflict, these emerging demarcation lines, will also need to do battle outside of the court rooms.

These battles of opposing cultures, of different outlooks to essential priority and needs, will become highly relevant fields of study in understanding even broader issues in contemporary America. By means of *Heller-McDonald*, the U.S. Supreme Court has delivered a brand new arena for the contestants of old clashes to explore. As such, with its highly controversial political, cultural, and constitutional aspects, the issue of gun control vs. gun rights on college and university campuses, despite being acutely diverse and views spread across a wide spectrum, provides a very useful avenue of insight into the mindset of this huge and puzzling nation.

Guns at college?
Only in America.

VI Conclusion

With *Heller-McDonald* the Supreme Court dramatically altered the ways of guns in the United States. *Heller* affirmed the existence of an individual right to keep and bear arms, regardless of any militia service. *McDonald* ruled that this right applies not only to federal jurisdiction, but also to states. By implication, these changes also affect the nation's public institutions of higher education, and these institutions' authority to regulate the presence of guns on their campuses.

148 Micheal K. McLendon, "State Governance Reform of Higher Education: Patterns, Trends, and Theories of the Public Policy Progress," in John C. Smart (ed.), *Higher Education: Handbook of Theory and Research*, VOL XVIII, (Springer Science+Business Media, 2003): 57.

In today's landscape, there is an acute need for a workable balance between campus safety and intellectual freedom, unfettered by the silent threat of guns. However, as anyone giving even the slightest attention to these issues will recognize, there are obvious disagreements on what constitute safety. One person may feel very safe knowing that he has a law-abiding, well-armed campus citizenry around him, whereas the exact same scenario to another would be no less than terrifying.

As we have seen, in a discussion on these universities' independence when it comes to regulatory power, a wide array of continually altering factors need to be taken into account. Among them are Second Amendment concerns, state constitutional and statutory law, a dynamic political struggle between state legislators and college administrators, as well as a number of local concerns. As of today, nobody knows the outcome of these processes. Nobody knows whether privacy concerns will allow students to keep guns in their dorms, whether *Heller*, ultimately, will pave way for extensive concealed carry among college professors and students in the nation's auditoriums, whether university presidents will lose much of their regulatory power to preemption initiatives from state legislatures.

In a broader perspective, this entire issue is indeed one of the most divisive in contemporary America, to such a degree, even, that it is bordering on being a matter of belief—not mere reason. As the saying goes, "If guns are outlawed, only outlaws will have guns."[149] Still, the mere availability of guns creates potentially dangerous situations. With guns around, the margin of error is smaller, the proximity of death nearer. In other words, it may be argued that the idea of keeping ourselves safe through an armed citizenry, on campus or elsewhere, is in itself causing increased risk. We are people, fallible human beings; neither predictable, nor pure; and as such susceptible to put our fellow man into harm's way either by intent or neglect. Sometimes, therefore, disasters do happen.[150]

149 See e.g. Robert E. Shalhope, "The Ideological Origins of the Second Amendment," *The Journal of American History* 69, no. 3 (Dec., 1982): 599–614, for an early discussion of gun mythology, where he also looks at such simplistic slogans as being "symbolic of much deeper and more complex ideological beliefs," ibid., 599.

150 Illuminating reads are David J. Harding et al., "Studying Rare Events Through Qualitative Case Studies: Lessons from a Study of Rampage School Shootings," *Sociological Methods Research* 31, no. 2 (2002); Katherine S. Newman, et al., *Rampage: The Social Roots of School Shootings* (New York: Basic Books, 2004); and Peter Langman, *Why Kids Kill: Inside the Minds of School Shooters* (New York: Palgrave Macmillan, 2009).

The study of loaded firearms on America's campuses is not one of hypothetical issues, of fictional characters performing deeds of lust and love in a literature syllabus, of imaginary drama lectured in our auditoriums; it is a matter of real-world life and death. Despite even the most wide-reaching precautionary measures, by all probability, such homicidal acts, such tragedies, will keep on repeating themselves. As of now, therefore, this rugged landscape of guns and campuses is still out there, undecided, still in dire need of attention.