

DARRELL A.H. MILLER

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ACADEMIC EXPERIENCE

Duke University School of Law

Associate Dean for Intellectual Life July 1, 2020-June 30, 2022

Melvin G. Shimm Professor of Law 2017-present • Professor 2013-2017

Visiting Professor Spring 2012

Courses: *Civil Procedure, Civil Rights Litigation, State & Local Government Law, Second Amendment Seminar, Readings in State Constitutionalism & Localism*

Faculty Co-director, Duke Center for Firearms Law 2019-present

Elected Member, American Law Institute

University of Chicago Law School

Charles J. Merriam Scholar, Visiting Professor of Law Fall 2019

University of Cincinnati College of Law

Professor 2012-2013 • Associate Professor 2010-2012 • Assistant Professor 2007-2010

SELECTED PUBLICATIONS AND WORKS IN PROGRESS

Books

THE SECOND AMENDMENT: GUN RIGHTS AND REGULATION (with Joseph Blocher, Jacob D. Charles, and Jody L. Madeira) (Foundation Press forthcoming)

NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob D. Charles, and Darrell A. H. Miller, eds.) (Oxford U. Press 2023)

THE POSITIVE SECOND AMENDMENT: RIGHTS, REGULATION, AND THE FUTURE OF *HELLER* (with Joseph Blocher) (Cambridge U. Press 2018)

• *cited in* Atkinson v. Garland (7th Cir. 2023) (Wood, J., dissenting); Duncan v. Bonta (9th Cir. 2021) (Berzon, J., concurring); Bevis v. City of Naperville, Ill. (N.D. Ill. 2022)

Articles and Essays

The New Outlawry,

COLUMBIA LAW REVIEW (forthcoming) (with Jacob D. Charles)

Technology, Tradition, and “The Terror of the People”,

NOTRE DAME LAW REVIEW (forthcoming) (with Alexandra Filindra & Noah Kaplan)

A Meditation on the Thirteenth Amendment and Constitutional Redemption,

MARYLAND LAW REVIEW (forthcoming)

Common Good Gun Rights,

HARVARD JOURNAL OF LAW & PUBLIC POLICY (forthcoming) (reviewing ADRIAN VERMEULE, *COMMON GOOD CONSTITUTIONALISM* (2022))

“A Map Is Not the Territory”: The Theory and Future of Sensitive Places Doctrine,

NEW YORK UNIVERSITY LAW REVIEW ONLINE (forthcoming) (with Joseph Blocher & Jacob D. Charles)

- cited in United States v. Allam (E.D. Tex. 2023)

Manufacturing Outliers,

2022 **SUPREME COURT REVIEW** 49 (2023) (with Joseph Blocher)

Firearms Law and Scholarship Beyond Bullets and Bodies,

19 **ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE** 165 (2023) (with Joseph Blocher & Jacob D. Charles)

Estoppel by Nonviolence,

85 **LAW & CONTEMPORARY PROBLEMS** 69 (2022)

Common Use, Lineage, and Lethality,

55 **UNIVERSITY OF CALIFORNIA, DAVIS LAW REVIEW** 2495 (2022) (with Jennifer Tucker)

- cited in National Ass’n for Gun Rights v. Lamont (D. Conn. 2023)

Violence and Nondelegation,

135 **HARVARD LAW REVIEW FORUM** 463 (2022) (with Jacob D. Charles)

Second Amendment Equilibria,

116 **NORTHWESTERN UNIVERSITY LAW REVIEW** 239 (2021)

The City's Second Amendment,

106 **CORNELL LAW REVIEW** 677 (2021) (with Dave Fagundes)

Pointing Guns,

99 **TEXAS LAW REVIEW** 1173 (2021) (with Joseph Blocher, Samuel Buell & Jacob D. Charles)

Constitutional Conflict and Sensitive Places,

28 **WILLIAM & MARY BILL OF RIGHTS JOURNAL** 459 (2019)

- cited in United States v. Walter (D.V.I. 2023)

Owning Heller,

1 **UNIVERSITY OF FLORIDA JOURNAL OF LAW & PUBLIC POLICY FORUM** 1 (2019)

reprinted 30 **UNIVERSITY OF FLORIDA JOURNAL OF LAW & PUBLIC POLICY** 153 (2020)

- cited in United States v. Daniels (5th Cir. 2023) (Higginson, J., concurring); Vermont v. Misch (Vt. 2017)

Self Defense, Defense of Others, and the State,

80 **LAW & CONTEMPORARY PROBLEMS** 85 (2017)

- cited in State v. Lampkin (Minn. 2023)

Institutions and the Second Amendment,

66 **DUKE LAW JOURNAL** 69 (2016)

- cited in Bridgeville Rifle & Pistol Club v. Small (Del. 2017) (Strine, C.J., dissenting)

What is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment,

86 **UNIVERSITY OF CHICAGO LAW REVIEW** 295 (2016) (with Joseph Blocher)

Continuity and the Declaration of Independence,

89 **UNIVERSITY OF SOUTHERN CALIFORNIA LAW REVIEW** 601 (2016)

Lethality, Public Carry, and Adequate Alternatives,

53 **HARVARD JOURNAL ON LEGISLATION** 279 (2016) (with Joseph Blocher)

Text, History, and Tradition: What the Seventh Amendment Can Teach Us About the Second,

122 **YALE LAW JOURNAL** 852 (2013)

- cited in Silvester v. Becerra (U.S. 2018) (Thomas, J., dissenting from denial of cert.); AFAB Indus Serv. v. Pac-West Distrib. NV LLC, (E.D. Pa. 2023)

The Thirteenth Amendment and the Regulation of Custom,
112 **COLUMBIA LAW REVIEW** 1811 (2012)

Racial Cartels and the Thirteenth Amendment Enforcement Power,
100 **KENTUCKY LAW JOURNAL** 23 (2012)

Guns, Inc.: Citizens United, McDonald, and the Future of Corporate Constitutional Rights,
86 **NEW YORK UNIVERSITY LAW REVIEW** 887 (2011)
• cited in Korte v. Sebelius (7th Cir. 2013)

Retail Rebellion and the Second Amendment,
86 **INDIANA LAW JOURNAL** 939 (2011)
• cited in Heller v. District of Columbia (D.C. Cir. 2011) (Kavanaugh, J., dissenting)

Guns as Smut: Defending the Home-Bound Second Amendment,
109 **COLUMBIA LAW REVIEW** 1278 (2009)
• cited in McDonald v. City of Chicago (U.S. 2010) (Stevens, J., dissenting)

White Cartels, the Civil Rights Act of 1866, and the History of Jones v. Alfred H. Mayer Co.,
77 **FORDHAM LAW REVIEW** 999 (2008)

Book Chapters and Edited Volume Contributions

Prohibitions on Private Armies in Seven State Constitutions,
in **NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY** (Joseph Blocher, Jacob D. Charles, Darrell A. H. Miller, eds.) (Oxford U. Press 2023)

African Americans and the Insurrectionary Second Amendment,
in **BRENNAN CENTER FOR JUSTICE, PROTESTS, INSURRECTION, AND THE SECOND AMENDMENT** (Eric Ruben, ed. 2021)

The Expressive Second Amendment,
in **GUNS IN LAW** (Austin Sarat, et al., ed.) (U. Mass. Press 2019)

The Janus of Civil Rights Law,
in **THE GREATEST AND THE GRANDEST ACT: THE CIVIL RIGHTS ACT OF 1866 FROM RECONSTRUCTION TO TODAY** (Christian Samito, ed.) (S. Ill. U. Press 2018)

A Thirteenth Amendment Agenda for the Twenty-First Century: Of Promises, Power and Precaution,
in **THE PROMISES OF LIBERTY: THE HISTORY AND CONTEMPORARY RELEVANCE OF
THE THIRTEENTH AMENDMENT** (Alexander Tsesis, ed.) (Columbia Univ. Press 2010)

Shorter Essays and Book Reviews

Tainted Precedent,

74 **ARKANSAS LAW REVIEW** 291 (2021)

response to Mark R. Killenbeck, *Sober Second Thought? Korematsu Reconsidered*, 74 **ARKANSAS
LAW REVIEW** 151 (2021)

Constitutional Pronouns,

27 **DUKE JOURNAL OF GENDER LAW & POLICY** 227 (2020)

The Geography of a Constitutional Right: Gun Rights Outside the Home,

83 **LAW AND CONTEMPORARY PROBLEMS** i-vii (2020) (with Joseph Blocher & Jacob D.
Charles)

Romanticism Meets Realism in Second Amendment Adjudication,

68 **DUKE LAW JOURNAL ONLINE** 33 (2018)

response to Eric Ruben & Joseph Blocher, *From Theory to Doctrine: An Empirical Analysis of the
Right to Keep and Bear Arms After Heller*, 67 **DUKE LAW JOURNAL** 1433 (2018)

Comments on an Amendment to Repeal the Natural Born Citizen Clause,

13 **DUKE JOURNAL OF CONSTITUTIONAL LAW & PUBLIC POLICY** 77 (2018)

response to Kevin C. Walsh, *The “Irish Born” One American Citizenship Amendment*,
13 **DUKE JOURNAL OF CONSTITUTIONAL LAW & PUBLIC POLICY** 57 (2018)

Dignity and Second Amendment Enforcement,

74 **WASHINGTON & LEE LAW REVIEW ONLINE** 438 (2018)

response to William Araiza, *Arming the Second Amendment—And Enforcing the Fourteenth*,
74 **WASHINGTON & LEE LAW REVIEW** 1801 (2017)

Fear and Firearms,

52 **TULSA LAW REVIEW** 553 (2017)

reviewing MICHAEL WALDMAN, *THE SECOND AMENDMENT: A BIOGRAPHY* (Simon &
Schuster 2014) *and*

FIRMIN DEBRABANDER, *DO GUNS MAKE US FREE? DEMOCRACY AND THE ARMED
SOCIETY* (Yale 2015)

The Thirteenth Amendment, Disparate Impact, and Empathy Deficits,
39 **SEATTLE UNIVERSITY LAW REVIEW** 847 (2016)

Second Amendment Traditionalism and Desuetude,
14 **GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY** 223 (2016)
• reprinted in *Annuaire International de Justice Constitutionnelle 2020* (2021)

Book Review of Ann Larabee, *THE WRONG HANDS: POPULAR WEAPONS MANUALS AND THEIR HISTORIC CHALLENGES TO A DEMOCRATIC SOCIETY* (Oxford 2015),
131 **POLITICAL SCIENCE QUARTERLY** 882 (2016)

Peruta, the Home-Bound Second Amendment, and Fractal Originalism,
127 **HARVARD LAW REVIEW FORUM** 238 (2014)

Analogies and Institutions in the First and Second Amendments: A Response to Professor Magarian,
91 **TEXAS LAW REVIEW SEE ALSO** 137 (2013)

Book Review of GLENDA GILMORE, *DEFYING DIXIE: THE RADICAL ROOTS OF CIVIL RIGHTS, 1919-1950*,
52 **AMERICAN JOURNAL OF LEGAL HISTORY** 379 (2012)

Iqbal and Empathy,
78 **UNIVERSITY OF MISSOURI-KANSAS CITY LAW REVIEW** 999 (2010)

Newspaper, Magazine and Other Commentary

Bruen and Constitutional Gnosticism, **BALKINIZATION** (Dec. 1, 2022)

Facts Still Matter, Even Before This Supreme Court, **NEWSWEEK** (Oct. 4, 2022) (with Rosanna Smart and Andrew R. Morral)

State Gun Regulations Are a Messy Patchwork. The Supreme Court's Bruen Decision Won't Help, **THE HILL** (Aug. 20, 2022) (with Rosanna Smart and Andrew R. Morral)

The Next Front in the Fight Over Guns, **WASHINGTON POST** (July 1, 2022)

A Supreme Court Head-Scratcher: Is a Colonial Musket 'Analogous' to an AR-15?, **NEW YORK TIMES** (July 1, 2022)

Conservatives Sound Like Anti-racists — When the Cause is Gun Rights, **WASHINGTON POST** (Oct. 27, 2021)

SCOTUS Taking Up 2nd Amendment Case Could Mean Cuts To Broad Swaths Of Gun Regulation, **TALKING POINTS MEMO** (Apr. 29, 2021) (with Joseph Blocher)

“Lineal Descendant” Analysis in Second Amendment Litigation, **HARVARD LAW REVIEW BLOG** (Apr. 7, 2021)

How to Safeguard Progressive Legislation Against the Supreme Court: Poison Pills, **WASHINGTON POST** (Oct. 26, 2020) (with Aziz Huq)

Gun Laws Were Meant to Ban Private Militants. Now, Our Hands are Tied, **WASHINGTON POST** (Sept. 2, 2020)

A Simplistic Interpretation of “Defund the Police” May Embolden Vigilantes, **NEWSDAY** (June 20, 2020)

Guard These True Monuments to Martin Luther King Jr., **NEWSDAY** (March 31, 2018)

The Second Amendment and Second-Class Rights, **HARVARD LAW REVIEW BLOG** (March 8, 2018)

EDUCATION

Harvard Law School 2001

J.D. *cum laude*

Notes Editor, **HARVARD LAW REVIEW**

Oxford University 1997 (2002)

B.A. Modern History & English

M.A. (Oxon.)

British Marshall Scholar 1995-1997

Anderson University 1994

B.A. *summa cum laude* English & Education

PROFESSIONAL EXPERIENCE

Vorys, Sater, Seymour and Pease LLP, Litigation Associate 2002-2007

- Practiced in areas of appellate advocacy and complex commercial litigation including MDL, class action, and civil fraud litigation

Hon. R. Guy Cole, Jr., U.S. Court of Appeals for the Sixth Circuit, Law Clerk 2001-2002

SELECTED PRESENTATIONS

Presenter, “Our Right to Bear Arms: A History of America’s Most Debated Amendment,” United States Capitol Historical Society (July 2022)

Panelist, 2021-2022 ACS National Supreme Court Review (June 2022)

Presenter, “Estoppel by Nonviolence,” St. John’s University School of Law Faculty Workshop (March 2022)

Panelist, “Violence and Non-Delegation,” Guns, Violence and Democracy, Harvard Law School, Cambridge, MA (March 2022)

Moderator, Privatizing the Gun Debate, Duke Law School, Durham, NC (March 2022)

Moderator, Race and Guns, Duke Law School, Durham, NC (Nov. 2021)

Panelist, Loyola University Chicago School of Law/George Washington University Law School, 12th Annual Constitutional Law Colloquium, Washington, DC (Nov. 2021)

Panelist, “The 2nd Amendment at the Supreme Court: ‘700 Years of History’ and the Modern Effects of Guns in Public (Oct. 2021)

Panelist, “Guns vs. Speech: Does the 2nd Amendment Threaten the 1st?,” Brennan Center for Justice (Sept. 2021)

Moderator, “Corpus Linguistics and the Second Amendment,” Duke Law School, Duke Center for Firearms Law (June 2021)

Moderator, “Second Amendment and the Monopoly of Violence,” Duke Law School (Apr. 2021)

Moderator, “The Future of Qualified Immunity,” Duke Law School, Duke Journal of Constitutional Law & Public Policy Symposium (Apr. 2021)

Presenter, “Second Amendment Equilibria,” Indiana University Workshop (Feb. 2021)

Presenter, “Second Amendment Equilibria,” University of Arizona Workshop (Feb. 2021)

Panelist, “Second Amendment Equilibria,” Constitutional Law Workshop, Loyola Law School Chicago (Nov. 2020)

Symposium Panelist, “The Second Amendment’s Next Chapter,” Northwestern University (Oct. 2020)

Panelist, “Policing in America: Past and Present,” Duke University, Durham, NC (July 2020)

Presenter, The University of Chicago Symposium on Gun Violence, Chicago, Ill. (Mar. 2020)

Debater, 36th Annual Jefferson B. Fordham Debate, S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah (Sept. 2019)

Presenter, “Cities and Constitutional Change,” Amending America’s Unwritten Conference, Boston College, Boston, Ma. (May 2019)

Panelist, “Gun Violence: Law, Politics, and Public Policy,” Marshall M. Criser Distinguished Symposium at the University of Florida, Gainesville, Fla. (Apr. 2019)

Speaker, “History of Gun Rights and Regulations,” National History Center, Congressional Briefing, Washington, D.C. (March 2019)

Panelist, “Bill of Rights Journal Symposium: Constitutional Rights: Intersections, Synergies, and Conflicts,” Williamsburg, Va. (March 2019)

Conference Organizer and Panelist, “Reconstruction,” Duke University Law School (March 2019)

Keynote Speaker (with Joseph Blocher), “The Second Amendment as Positive Law,” The Second Amendment 228 Years Later, Annual Law & Society Symposium, Charleston Law Review/Riley Institute at Furman, Charleston, S.C. (Feb. 2019)

Panelist, “Judicial Courage, Judicial Heroes and the Civil Rights Movement,” AJEI/ECAPI 2018 Summit, Atlanta, Ga. (Nov. 2018)

Speaker, “Fourteenth Amendment Sesquicentennial – Origins, Evolution, and Enduring Relevance,” National Bar Association, 93d Annual Judicial Convention, New Orleans, La. (Aug. 2018)

Presenter, “Enforcing a Bill of Rights: Lessons from the American Experience,” W.G. Hart Legal Workshop, London, UK (June 2018)

Speaker, “Fourteenth Amendment Sesquicentennial – Origins, Evolution, and Enduring Relevance,” Judges Retreat, U.S. District Court for the District of Minn. (June 2018)

Panelist, “The Story of the Fourteenth Amendment and America’s Second Founding,” National Constitution Center, Philadelphia, Pa. (April 2018)

Panelist, “The Tenth Anniversary of *Heller*,” Teleforum Federalist Society, Criminal Law & Procedure Practice Group (April 2018)

Panelist, “The Second Amendment and Second Class Rights,” Southern Illinois University School of Law, Carbondale, Ill. (April 2018)

Panelist, “American Universities, Monuments, and the Legacies of Slavery,” Provost Symposium, Duke University (March 2018)

Speaker, “The Positive Second Amendment,” Simon Lecture, Loyola University School of Law, Chicago, Ill. (March 2018)

Speaker, “The Civil Rights of 1866,” Duke BLSA Black History Month Series, Duke Law School (Feb. 2018)

Moderator, “Guns in American Society,” Shasha Seminar for Human Concerns, Wesleyan University, Middletown, Conn. (Oct. 2017)

Speaker, “The Positive Thirteenth Amendment,” American Constitution Society Constitution Day Address, Duke Law School (Sept. 2017)

Moderator, “Religious Commitment and the Profession,” Duke Law School (Sept. 2017)

Panelist, “Section 1983 & Qualified Immunity,” Federal Judicial Center, Cleveland, Ohio (May 2017)

Panelist, “Counteracting Islamophobia: Rights, Policy, and Next Steps,” Duke Law School (Feb. 2017)

Moderator, “Class Action Settlement Conference,” Center for Judicial Studies, San Diego, Calif. (Oct. 2016)

Panelist, “Guns and the Supreme Court: The Influence of History,” Aspen Institute, Washington D.C. (Sept. 2016)

Debater, “The Second Amendment Should Be Amended,” Berkeley Forum, University of California (Aug. 2016)

Organizer, with Joseph Blocher and Eric Ruben of the Brennan Center for Justice, “The Second Generation of Second Amendment Law and Policy,” NYU/Brennan Center (April 2016)

Panelist, “Gun Control: Past, Present and Future,” Duke Law School (March 2016)

Organizer, Panel Honoring Justice Antonin Scalia, Duke Law School (Feb. 2016)

Organizer and Panelist, “The Thirteenth Amendment and Civil Rights: A Celebration of 150 Years,” Duke Law School (Nov. 2015)

Panelist, “Protecting the Right to Bear Arms: History and Challenges,” Heritage Foundation/Georgetown Law Center, Washington, D.C. (Nov. 2015)

Presenter, “The Declaration of Independence as a Continuity Tender,” at “The Declaration of Independence and the Nation that Followed,” National Constitution Center, Philadelphia, Pa. (April 2015)

Panelist, “Race and Firearms: A Conversation with Historian Clayton Cramer and Duke Law Professor Darrell Miller,” Duke Law School (April 2015)

Moderator, “Pluralism in the Private Sector,” Duke Law School (Feb. 2015)

Coordinator, Moderator, and Panelist, “Teach-In on Policing, Civil Rights, and Race,” Duke Law School (Feb. 2015)

Presenter, “The City as a Self-Defense Institution,” The Fordham Comparative Urban Law Conference, London, England (June 2014)

Panelist, “Preventing Gun Violence: The Problem, Solutions, and What the Second Amendment Allows,” ABA/William Mitchell Law School, St. Paul, Minn. (June 2014)

Presenter, “Second Amendment Institutions,” Brooklyn Law School Workshop (April 2014)

Moderator, “Hobby Lobby, Healthcare and Religious Expression,” Duke Law School (March 2014)

Presenter, “Guns and Roses: The Past, Present, and Future of Firearm Rights and Regulations in North Carolina,” North Carolina Bar Association CLE Program (March 2014)

Panelist, “Locked & Loaded: Charlotte Law Review's Symposium on Gun Rights and Gun Control,” Charlotte Law School (March 2014)

Panelist, “Second Amendment Traditionalism and Desuetude,” Duke Law School Roundtable on Custom, Convention, and Tradition in Constitutional Law (Nov. 2013)

EDUCATIONAL AND CIVIC ACTIVITIES

Duke University Review Committee for Dean Kerry Abrams (2021)

Faculty Director, A.B. Duke Memorial Scholarship (2018-2021)

Office of University Scholars and Fellows, Duke University (2015-2021)

Faculty consultant for Rhodes, Marshall & Mitchell scholarships

University Judicial Board (2019-2023; Chair 2021-2023)

Advisor, Duke Journal of Constitutional Law & Public Policy (2015-present)

Entry Level Appointments Committee, Duke Law School (2016-2017, 2017-2018, Chair 2018-2019, ex-officio 2020-2021, ex-officio 2021-2022)

Lateral Appointments Committee, Duke Law School (2013-2104, 2014-2015, 2015-2016, 2023-2024)

Clerkships Committee, Duke Law School (2015-2016)

Workshop Committee, Duke Law School (2019-2020, 2020-2021, ex officio 2021-2022)

Admissions Committee, Duke Law School (2014-2015, 2017-2018)

Academic Council, Duke University (2015-2020)

Reporter, Civil Justice Committee, N.C. Commission on the Administration of Law & Justice (2015-2016)

MEMBERSHIPS

Life Member, U.S. Court of Appeals, Sixth Circuit Judicial Conference

American Bar Association

Bar Admissions: State of Ohio, U.S. Court of Appeals for the Sixth Circuit; U.S. District Court, Northern District of Ohio; U.S. District Court, Southern District of Ohio