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**CRUIKSHANK, PRESSER AND MILLER:
THE SECOND AMENDMENT TO THE U.S. CONSTITUTION
IN THE EARLY JURISPRUDENCE OF THE SUPREME COURT**

Abstract. The article analyzes early U.S. Supreme Court jurisprudence on the Second Amendment, focusing on *United States v. Cruikshank* (1876), *Presser v. Illinois* (1886), and *United States v. Miller* (1939). It examines how these rulings interpreted the right to keep and bear arms and their influence on shaping the amendment's meaning. Using case law analysis, historical methods, and comparative review of American and Polish legal scholarship, the study highlights that early Supreme Court decisions viewed the right to keep and bear arms not as an individual guarantee against state interference, but as a collective entitlement tied to well regulated militia. This collective interpretation dominated for over a century until *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago* (2010), which redefined the Second Amendment as a source of individual rights to possess and carry firearms. The analysis clarifies the historical evolution of Second Amendment interpretation and its enduring importance for contemporary constitutional debate. The findings demonstrate that early jurisprudence profoundly shaped American constitutional culture and that the modern, individual-rights understanding of the Second Amendment is a relatively recent product of constitutional reinterpretation.

Keywords: Cruikshank, Presser, Miller, Second Amendment, USA, Supreme Court of the United States.

1. General remarks

Second amendment to the Constitution of the United States of America states that “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” (U.S. Const. amend. II). Over the past two hundred years, the United States Supreme Court has frequently considered the substance of the Second Amendment. The purpose of this article is to analyze the early Supreme Court case law concerning this provision. Primarily, the following rulings

from the late 19th century and the first half of the 20th century deserve consideration: *United States v. Cruikshank* (92 U.S. 542 (1875)), *Presser v. Illinois* (116 U.S. 252 (1886)), *United States v. Miller* (307 U.S. 174 (1939)).

The aim of this work is to present the understanding of the right to keep and bear arms in three historical rulings concerning the Second Amendment. Although this constitutional provision has been commented on in recent years in English and Polish literature, with similar approaches (Dziuba, 2020), the issue remains relevant and deserves further in-depth analysis and an attempt to present a new interpretive perspective. The article addresses the following research questions: (1) How did early U.S. Supreme Court jurisprudence conceptualize the right to keep and bear arms under the Second Amendment? (2) Why was this right interpreted primarily as a collective entitlement linked to militia service rather than as an individual right enforceable against the states? The research hypothesis is that early Supreme Court jurisprudence established and entrenched a collective interpretation of the Second Amendment, which limited its scope, decentralized gun regulation, and shaped American firearms law until its reinterpretation in the twenty-first century. This hypothesis will be examined using case law analysis, historical methods, and an analysis of American and Polish literature on American gun rights. The cited rulings will be analyzed by outlining the factual circumstances underlying the Supreme Court's deliberations, then discussing the main arguments presented in the court's opinion for each ruling. Next, the dissenting opinions, both concurrence and dissent, of the justices in the minority will be considered. Finally, conclusions will be drawn and an attempt will be made to assess the impact of each ruling on the public perception of the right of U.S. citizens to keep and bear arms. These rulings will be related to subsequent U.S. Supreme Court case law.

Case law analysis was selected as the primary research method because the textual content of the Second Amendment is exceptionally concise and does not, by itself, provide sufficient normative guidance. As a result, the substantive constitutional meaning of the right to keep and bear arms has been developed predominantly through judicial interpretation. Moreover, the jurisprudence of the U.S. Supreme Court constitutes binding constitutional precedent and therefore represents the principal legally authoritative source for determining the binding meaning of the Second Amendment. Historical methods are employed to situate the analyzed rulings within their broader constitutional, political, and social context and to identify interpretative assumptions characteristic of nineteenth- and early twentieth-century constitutional adjudication. Finally, an analysis of

selected American and Polish legal scholarship is used to reconstruct existing interpretative frameworks and scholarly debates concerning the Second Amendment. Polish literature is included due to the Author's academic background and to provide a comparative perspective, while American scholarship serves to reflect the dominant doctrinal and theoretical approaches present in U.S. constitutional discourse.

Before proceeding to the substantive analysis of the case law, it is necessary to clarify the meaning of one of the clauses contained in the United States Constitution. It is contained in the Fifth and Fourteenth Amendments to the US Constitution, and in American literature it is referred to as due process of law. It is divided, on one hand, into procedural due process, i.e., the element of compliance of the application of law in civil and criminal proceedings with constitutional guarantees, and, on the other hand, substantive due process, i.e., substantive law, which should be consistent with the catalog of rights and freedoms contained in the Constitution. This clause means that the state may not restrict the freedom of its citizens except within the limits of the law (Laidler, 2013). The process of interpreting the Fifth and Fourteenth Amendments was lengthy and involved many stages, and for the purposes of this paper, a brief overview will suffice.

In 1833, the case of *Barron v. Baltimore* (32 U.S. 243 (1833)) established that the guarantees granted to Americans by the Bill of Rights were limited not by state governments but by the federal government. In other words, states had no direct obligation to respect the Bill of Rights. This legal understanding persisted throughout the 19th century. It was supposed to be changed by the adoption of the Fourteenth Amendment in 1868, but in practice, state governments became obligated to comply with the first ten amendments only in the early 20th century due to a process that also proved complex and lengthy. This occurred, among other things, as a result of the ruling issued in 1873 in three cases known in literature as the *Slaughter-House Cases* (83 U.S. 36 (1873)). The Supreme Court then considered a lawsuit by Louisiana workers who claimed that the state government had violated their fundamental civil rights by granting a monopoly on the slaughter of all animals in New Orleans to a single company. The Court's decision in these cases hampered the application of the Fourteenth Amendment for years by establishing that only those privileges and immunities derived from federal law and the Constitution were protected under it. Consequently, a narrow and restrictive interpretation of the Fourteenth Amendment became permissible for a long time, resulting in the denial of individual rights protection to minorities, such as emancipated Black Americans (Ho, 2010).

It was only in the wake of *Gitlow v. New York* (268 U.S. 652 (1925)) that the Supreme Court began the era of incorporation, extending the guarantees of the first ten amendments to the U.S. Constitution to individual states. For example, in a 1925 ruling, the Supreme Court extended the First Amendment's guarantee of free speech to all U.S. states. Throughout the 20th century, similar extensions were made to other rights and freedoms, including freedom of the press, freedom of assembly, freedom of religious practice, and a number of procedural guarantees. Others, such as the freedom from quartering soldiers on private property or jury rights, were not deemed binding on individual states (Laidler, 2013).

The first of the rulings discussed in this article is historically set before the incorporation era and during a period when the U.S. Supreme Court had already established its authority to conduct judicial review of constitutional law. Following the *Marbury v. Madison* (5 U.S. 137 (1803)) ruling, the authority to review the constitutionality of statutes and executive branch actions was recognized as one of the Supreme Court's key responsibilities (Tomza, 2016).

2. United States v. Cruikshank

On Easter Sunday, April 13, 1873, a group of armed white Democrats attacked a group of Republican Black freedmen who had gathered at the Colfax Public Building to prevent its takeover by the opposition. Political tensions were fueled by the uncertainty surrounding the gubernatorial elections held several months earlier, with both parties declaring victory and attempting to fill government positions with their supporters. Although some Blacks were armed and resisted, it is estimated that between 100 and 280 African Americans were killed during the attack, most of them after surrendering. Three white Americans were also killed in the Colfax Massacre, considered the largest such tragedy of the Reconstruction Era. The events in Colfax resonated throughout the United States (Lane, 2010).

Attempts were also made to prosecute the perpetrators of the massacre. Some of them were charged with violating the Enforcement Act (Enforcement Act of May 31, 1870 (16 Stat. 141)), a law designed primarily to allow federal authorities to prosecute groups like the Ku Klux Klan for hindering Black freedmen from exercising their right to vote. Such secret organizations even resorted to murdering Black citizens in the United States to achieve this goal. State Attorney James Beckwith brought charges against ninety-seven perpetrators, of whom only nine were arrested, de-

spite having significant military forces and an armored riverboat at his disposal. During the trial, prosecutors, jury members, and witnesses testifying against the accused were intimidated, and there were instances of assaults on witnesses and other acts of aggressive obstruction of justice (Lane, 2010). Six of the defendants were acquitted, while the remaining three were convicted of conspiring to deprive two Black Republicans of their rights, specifically the right to peaceful association and the right to keep and bear arms (Pope, 2014).

During a circuit riding tour, Supreme Court Justice Joseph P. Bradley, along with Justice William B. Woods, considered the case. Justice Bradley issued an opinion in which he found the verdict to be incorrect and acquitted the defendants. Justice Woods disagreed with this interpretation, and the dispute moved to the U.S. Supreme Court. In the case of *Cruikshank v. United States*, heard before the U.S. Supreme Court in 1875, the acquittal of the Colfax aggressors was handed down in 1876. The court issued a majority opinion, signed by eight of the nine justices. The court began by pointing to a characteristic feature of the American political system – the duality of authority. In the United States, the individual state authorities operate in parallel with a central, sovereign authority, each distinct from the other. As a result of this system, an American is both a citizen of the United States and a citizen of the state in which he or she lives. In such a situation, a distinction must be made between their rights. Some will accrue to them by virtue of state citizenship, while others will accrue to them by virtue of federal citizenship. The court also pointed out that, despite the fact that the federal government is superior to state governments, it cannot guarantee or secure citizens' rights or privileges unless they are directly entrusted to it. Everything that cannot be protected by federal power remains the responsibility of the individual states.

The Supreme Court, addressing the alleged violation of the right of two American citizens of African descent to freely and peacefully associate for lawful purposes, stated that the public's right to association existed before the adoption of the Constitution and, moreover, that it is and has always been an attribute of citizens of a free state. The court also stated that its source lies in rights universally recognized throughout the world by civilized man. This right is present wherever civilization exists and has merely been recognized as such by the American state. The court found that the right expressed in the First Amendment was never intended to limit the power of state governments over their citizens, but was addressed to the central government to prevent Congress from infringing on those rights. To protect the rights enshrined in the Constitution, citizens should

turn to state governments, as they are vested with the power to protect civil rights.

The Court similarly addressed the issue of rights described in the Second Amendment. It pointed out that the Second Amendment limits only and exclusively the rights of federal governments. In other words, it does not apply to situations in which individual citizens deny their fellow citizens the right to keep and bear arms, or any other rights enumerated in the Bill of Rights. According to the Supreme Court, in situations where the individual right to keep and bear arms is restricted, citizens should seek protection from local legislation. According to the Supreme Court justices, the right described in the Second Amendment to the American Constitution is not granted by the Constitution, nor is it in any way dependent on it. The declaration contained in the Second Amendment, which states that the right described therein shall not be infringed, according to the Supreme Court, means only that it shall not be infringed by Congress. Therefore, what remains for citizens is to seek protection from state governments, which have not been limited by Congress in this regard.

The Court's opinion received only one dissenting vote. While it agreed with the operative part, namely, the acquittal of the defendants, it contained critical remarks regarding the justification for the verdict itself. The author of the dissenting opinion, Justice Nathan Clifford, argued that the Fourteenth Amendment, as well as Section 5 of the Enforcement Act, grant the federal government the authority to criminalize individuals who restrict the rights of others. However, Judge Clifford criticized the imprecise wording of the indictment, which prevented the defendants from fully preparing for an effective defense, which was their inviolable right. The charges against the defendant should be sufficiently certain and specific to prevent surprise and to prevent the defendant from hindering the defense of the party suspected of committing the crime.

In terms of its significance for American jurisprudence, the case of *United States v. Cruikshank* has been considered by some to be one of the most important, if not the most important, judicial decisions concerning civil rights. It was in this case that, for the first time, the application of the Fourteenth Amendment was limited only to specifically defined violations of state law, and not, as previously understood, to the actions of individual citizens. It also resolved the controversial issue of whether the Privileges or Immunities Clause of the Fourteenth Amendment protects the rights enumerated in the Bill of Rights. Furthermore, the applicability of the Equal Protection Clause of the Fourteenth Amendment, as well as the prohibition of racial exclusion from voting in the Fifteenth Amendment, were clarified

– protection of Black people was limited only to proven and intentional acts of racial discrimination (Pope, 2014).

As a result of the *United States v. Cruikshank* ruling, the situation of Black Americans significantly worsened, as they were outright denied the right to keep and bear arms, and efforts to prevent African Americans from participating in democratic elections intensified. As a result of this ruling paralyzing the federal government in numerous attempts to counter discrimination against Black Americans, organizations like the Ku Klux Klan gained the opportunity to develop and continue to use aggression against newly emancipated fellow citizens who attempted to assert themselves through civic activism – including attempts to participate in local democratic elections (Levy, 2000).

After the ruling in this case was published, no critical opinions were issued by the justices for nearly a century and a half. Only in 1978, in *Regents of the University of California v. Bakke* (438 U.S. 265 (1978)), did one of the justices point out that the Supreme Court in *United States v. Cruikshank*, through its reasoning, had severely restricted the rights of Black Americans. In 2010, in an opinion approving the ruling in *McDonald v. City of Chicago*, Justice C. Thomas described the 1876 ruling as disrespectful. Its assertion that African Americans could only rely on state authorities to protect their right to keep and bear arms allowed private armed organizations, sometimes supported by local authorities, to re-enslave Black Americans. This return to the era of slavery was achieved through violence intended to prevent Black people from participating in public life and to instill them into submission (Pope, 2014).

3. Presser v. Illinois

On September 24, 1879, Hermann Presser, a member of the socialist paramilitary organization *Lehr und Wehr Verein*, which loosely translates to “educational and defense association,” was indicted. The organization brought together workers, primarily of German descent, whose goal was to resist the private armies of capitalists and to prepare, even with arms, for the impending war between classes. Presser was charged with parading armed without the governor’s permission. Riding a horse and carrying a cavalry saber, Presser led a procession of about forty men armed with unloaded rifles. Hermann Presser was convicted by the Criminal Court of Cook County and fined ten dollars. The Supreme Court of Illinois subsequently upheld the conviction. The US Supreme Court decided to take up this case,

but the verdict was issued only 7 years after the Lehr und Wehr Verein march, in 1886 (Halbrook, 1999).

It should be explained that the last decades of the 19th century were a time of increased activity organizations such as by Lehr und Wehr Verein often paramilitary in nature. State governments attempted to prevent this type of social activity for fear of riots and unrest. As D. Kopel notes, the National Guard and other paramilitary organizations under the authority of state authorities, and sometimes the US Army, were used to suppress such strikes (Kopel, 2014). The Lehr und Wehr Verein was just one of many such organizations operating in the 1880s in the USA. Others included the Detroit Rifles, the Rifle Union in Cincinnati, the International Guards operating in Omaha, the International Guards Association operating in New York, and the armed wing of the Shriners, centered in San Francisco. Representatives of the capitalist class did not remain passive as they supported the development of the National Guard, as well as the development of private military companies such as the Pinkerton Agency (Halbrook, 1999). One legal attempt to prevent riots was to ban armed public parades. Illinois was one of the states to implement such a ban. In 1879, a law was passed establishing a State Militia and prohibiting the formation of paramilitary organizations without the governor's consent. This law sparked considerable controversy, particularly among lawyers, who wondered whether it might violate, for example, the United States Militia Act ("The Lehr und Wehr Verein" 1886).

During ongoing legal proceedings before the Supreme Court, Presser accused the state of Illinois of violating his civil right to keep and bear arms. His attorneys argued that the Second Amendment right applies to both groups and individuals. The defense further argued that the constitutional concept of bearing arms also includes the ability to use them – which includes training, drill, and organizing, all of which are therefore components of the right to keep and bear arms.

The Supreme Court's opinion echoes arguments similar to those presented in *United States v. Cruikshank*. As it did years ago, the court pointed out that the Second Amendment only limits Congress, not state governments. Individual states can regulate access to firearms as they see fit, and they can do the same with paramilitary permits, which Illinois did by introducing the ban described earlier. The Supreme Court clearly held that prohibiting the formation of paramilitary groups, or organizing military exercises or public marches with weapons, in circumstances other than those permitted by law, does not violate the right to keep and bear arms as defined in the Second Amendment to the U.S. Constitution.

Importantly, the Supreme Court stated in its opinion that while states may freely shape issues related to access to firearms, they may not restrict access to firearms in such a way as to deprive the public of the tools to maintain public safety or prevent them from fulfilling their duty to the state, which is to belong to a militia. However, the Court held that forming military groups or organizing exercises or parades involving the use of firearms, unless sanctioned by appropriate federal or state law, cannot be considered an attribute of citizenship. Such actions are subject to special oversight by all countries, and the Court found no justification for the existence of such a right in the Constitution or other laws of the United States – acts of this type are subject to the legislation and control of federal and state authorities, which act in accordance with their prerogatives and within the bounds of the law. The ruling in this case was unanimous, and none of the justices dissented.

Although the Court did not directly address the scope and meaning of the Second Amendment in *Presser v. Illinois*, it clearly indicated that it does not conflict with the law prohibiting the formation of paramilitary organizations (Stowell, 2014). The impact of this ruling on American case law can be assessed through the lens of references to its reasoning in subsequent Supreme Court decisions. *Presser v. Illinois* was cited primarily as an argument that, similarly to the Court's definition in the first discussed decision, the Fourteenth Amendment does not protect the rights and guarantees contained in the Bill of Rights, and therefore, consequently, the Second Amendment is merely a limitation on federal power, not state power. According to this understanding, the Bill of Rights has no direct impact on the legislation and actions of individual states. The ruling discussed in this subsection was cited twice in the context of the nature of citizens' militias. Furthermore, the reasoning in *Presser v. Illinois* was used to argue for the separate but equal doctrine. Still other arguments from *Presser v. Illinois* have become instrumental in arguing for the limitation of free speech rights in situations where exercising this freedom would discourage citizens from serving in the military. S. P. Halbrook's assertion that *Presser v. Illinois* is a relic of a bygone era of understanding the U.S. Constitution and its Bill of Rights must be accepted. The Supreme Court's denial of the direct application of civil rights and guarantees to state governments gave way, beginning in the early 20th century, to a process of incorporation, that is, the extension of the applicability of specific rights to state governments as well (Halbrook, 1999). However, before the Second Amendment was incorporated, another significant ruling had to be issued, which, like the two previous ones, can be interpreted as diminishing the significance of the Second Amendment.

4. United States v. Miller

On April 18, 1938, Oklahoma and Arkansas state police arrested two repeat offenders known for previous bank robberies – Jack Miller and Frank Layton. The men were found in possession of an unregistered sawed-off shotgun and were charged with violating the National Firearms Act (The National Firearms Act, 48 Stat. 1236). To the defendants' surprise, the trial court acquitted them, citing the unconstitutionality of the National Firearms Act – specifically, that it violated the Second Amendment to the U.S. Constitution. The case ultimately reached the Supreme Court in *United States v. Miller*, where the trial court's judgment was reversed, and Miller and Layton were found guilty of violating the law. The Supreme Court determined that the Second Amendment does not guarantee the right to keep and bear any type of firearm – in this case, a sawed-off shotgun (Frye, 2008).

The National Firearms Act itself was passed by the U.S. Congress in 1934, shortly after the repeal of Prohibition in 1933. This act was the first federal law to restrict public access to firearms. Its introduction was intended as a response to persistent gang warfare, rising crime, and the failed assassination attempt on President Roosevelt in 1933 (Spitzer, 2015). The restrictions introduced by the National Firearms Act consisted of taxing the manufacture, sale, and transfer of rifles and shotguns with shortened barrels, machine guns, and silencers. Furthermore, concealed carry firearms were required to be registered, and unregistered firearms were prohibited from being transferred between states. The new law was expected to significantly reduce access to particularly dangerous weapons and generate a significant budget impact – each concealed carry firearm was subject to a \$200 tax. Sellers of such weapons and their manufacturers were subject to annual taxes of \$300 and \$500, respectively. However, this did not happen, as the amounts specified in the act often exceeded the value of the weapons themselves several times, leading to a halt in their purchases. The act thus achieved its goal, initiating the introduction of increasingly restrictive federal gun control policies. The power of this act was to disguise the prohibition on the sale of gangster weapons as a tax measure (Frye, 2008).

Captured by police, Miller and Layton were arraigned in a trial court. Both men were prepared to plead guilty to the charges, but Judge Heartsill Ragon persuaded one of them, Jack Miller, to plead not guilty, arguing that he believed the National Firearms Act was unconstitutional. Frank Layton pleaded guilty and was convicted, though his sentence was suspended.

Miller, on the other hand, was found not guilty by the trial court and released. He owed his plea to having previously turned in the other members of his criminal group. Shortly after Jack Miller's release, federal authorities appealed the trial court's ruling, and the case went to the U.S. Supreme Court under the name *United States v. Miller*. Miller had neither the intention nor the financial means to defend his case before the Supreme Court, so the case proved easily won for the federal authorities. Years later, it turned out that from the outset, i.e., from the proceedings before Judge Ragon, the case had been a carefully planned operation aimed at gaining the Supreme Court's support for the widely criticized National Firearms Act. However, the defendant, Jack Miller, did not live to see the publication of the Supreme Court's decision – he was murdered by unknown assailants in April 1939, about a month before the case was to be decided (Frye, 2008).

The Supreme Court's reasoning in *United States v. Miller* has been subject to various interpretations. Both proponents of the individualistic and collective understanding of the Second Amendment argue that the Court adopted their position in this case. The opinion states that the National Firearms Act is not unconstitutional in its ability to convict a citizen of carrying an unregistered shotgun with a barrel shorter than 18 inches without a permit, and that such a conviction does not violate the Second Amendment. The Court emphasized that a weapon with a barrel shorter than 18 inches cannot be considered essential to the maintenance or effective operation of a well-trained militia, and therefore, the Second Amendment cannot be considered to guarantee citizens access to such weapons. Therefore, the Court certainly could not consider this type of weapon to be similar to any other used by the armed forces, nor could it be considered beneficial to the general defense of society.

The Court's further considerations also merit citing the militia. It pointed out that the term militia was already present in the era of American colonialism and the Philadelphia Convention, as well as in the writings of renowned commentators on American constitutionalism. The Court's opinion cited sources such as Blackstone's *Commentaries* and Adam Smith's *National Treasure*. These references were intended to demonstrate that the militia, as understood in American constitutional thought, referred to the entire body of men physically capable of acting in defense of the local community. These men, known as the citizenry enlisting for military service, were obligated to report under arms when called upon, equipped from their own resources with weapons commonly in use at the time. The Court further explained the difference between a stationary army and a citizen

militia. While the character of a militia member predominates as that of a worker, tradesman, or artisan, the character of a soldier predominates as that of an army member.

This entire argument, however, is only part of the reasoning that ultimately led the Supreme Court to conclude that most, if not all, states had enacted laws regulating the right to keep and bear arms. Differences in language naturally led to discrepancies in the understanding of the scope of these rights. However, in the Court's view, none of these variants supported the arguments expressed in the first-instance court's ruling, and therefore the Supreme Court was forced to reverse the lower court's ruling.

In summary, the Court adopted the principle that the Second Amendment does not guarantee access to firearms used by criminals, but only those that could reasonably be combined with militia service. Short-barreled shotguns, for example, were excluded from this scope. However, it did not specify what type of firearms are eligible for Second Amendment protection, nor what that protection would entail. Furthermore, it should be noted that the Court, in issuing its ruling in the case in question, left much room for interpretation. This explains why the opinion in *United States v. Miller* is cited by both supporters of universal gun control and opponents – each can find an argument for their own cause. An important aspect of American law is that, since the *Miller* case, Congress has had the Supreme Court's permission to restrict the right enshrined in the Second Amendment. The National Firearms Act was merely the first federal law introducing restrictions on the sale and distribution of firearms. It was soon replaced by subsequent similar acts. The *United States v. Miller* opinion itself ultimately proved to be very unclear regarding the meaning of the Second Amendment. What it clearly states is that Congress has full legitimacy to impose reasonable restrictions on it, without, however, taking away the right expressed in principle.

5. Conclusions

The Supreme Court's decision in *United States v. Miller* was the first and last ruling on the meaning of the Second Amendment in the 20th century. This ruling, along with the *Cruikshank* and *Presser* cases, led to the entrenchment of a narrow interpretation of the Second Amendment in American law in the 20th century. Early Supreme Court jurisprudence significantly limited the scope of the Second Amendment. An analysis of the early Supreme Court case law suggests that throughout the 19th century and

the first half of the 20th century, the official meaning of the Second Amendment, established by constitutional precedent, was understood in a distinctly collective manner. The right to keep and bear arms was treated not as an individual citizen's right, but as a competence related to the functioning of a well regulated militia as part of the American defense mechanism.

This interpretation not only limited the Second Amendment's meaning but also fostered significant variation in state law regarding gun control. Given the Supreme Court's interpretation of the Second Amendment, the system of gun control was decentralized, with states deciding who, under what circumstances, could own a gun and who could be denied such a right. This resulted not only in varying the legal status of citizens depending on the jurisdiction but also in the perpetuation of social inequalities. Early Supreme Court jurisprudence on the Second Amendment had tangible consequences for ordinary citizens, particularly for marginalized groups during the Reconstruction Era in the United States. By interpreting the right to keep and bear arms as a collective entitlement linked to militia service and by denying its enforceability against the states, the Court effectively left individuals without federal constitutional protection against state-level disarmament. In practice, this legal framework facilitated the selective use of firearms regulations to control politically and socially vulnerable populations, most notably African Americans who had formally acquired civil and political rights after the American Civil War. Historical experience demonstrates that restrictions on access to arms often operated alongside other legal and extralegal mechanisms designed to limit the effective exercise of newly granted rights, including voting rights. Events such as the Colfax Massacre illustrate how the absence of meaningful legal protection for the possession of arms contributed to an environment in which political participation could be suppressed through intimidation and violence. From this perspective, early Second Amendment jurisprudence not only reflected prevailing constitutional doctrines but also indirectly reinforced existing power structures by prioritizing state regulatory authority over individual security.

It should be noted that although the Supreme Court twice addressed the Second Amendment in the 19th century, it was not truly given much attention until the 1930s. This was partly because, prior to the passage of the National Firearms Act in 1934, the issue of federal restrictions on gun ownership was nonexistent, and the era of incorporation had not yet fully begun (Reynolds, 2014). The 1939 case of *United States v. Miller* was the first attempt to define the relationship between federal restrictions and the constitutional right to bear arms, with the Supreme Court failing to recognize

an individual's right to bear arms outside the context of a militia, a position interpreted as evidence of the Supreme Court's support for a collective model of interpretation of the Second Amendment. It should not be overlooked that in the last of the aforementioned decisions, the Supreme Court explicitly affirmed the principle that, from the perspective of the United States Constitution, some restrictions on access to firearms are permissible. This means that the legislature can impose bans on the possession or sale of specific categories of weapons without violating the Second Amendment. Although the essence of the Second Amendment underwent a significant change in subsequent case law, the principle of permissibility of object-specific regulation – relating to the type and nature of weapons, and not the right to possess them itself – remained valid.

Only the late 20th century, due in part to increasingly restrictive federal law, brought increased interest in various aspects of limiting gun control and, in a sense, a reassessment of the Second Amendment's meaning. With general expansion of government regulation, numerous restrictions on firearms were introduced – including taxes, sales bans, and gun-free zones – which, in practice, primarily affected ordinary citizens, while upper-middle-class individuals remained largely unaffected due to the safety of their surroundings and lifestyle (Lerner, 2020). Importantly for this study, the right to keep and bear arms which is explicitly derived from the Second Amendment to the U.S. Constitution, was extended to individual states only in the 21st century. Initially, in 2008, it was extended to a district with a special legal status, the District of Columbia, in the case of *District of Columbia v. Heller* (554 U.S. 570 (2008)). However, the extension of the right to the remaining states did not occur until 2010, following the ruling in *McDonald v. Chicago*. Subsequent 21st-century Supreme Court rulings relating to the Second Amendment, while not introducing the changes as significant as *Heller*, have certainly enriched the case law on gun control in the United States with additional aspects. The case of *Caetano v. Massachusetts* (577 U.S. 411 (2016)) confirmed that the Second Amendment generally covers all bearable weapons, even those that did not exist at the time of the Constitution's adoption, and that its protection is not limited to firearms. *New York State Rifle & Pistol Association, Inc. v. Bruen* (597 U.S. — (2022)) confirmed that the Second Amendment protects the right to bear arms in public for self-defense, in the same time presenting a novel approach to understanding the Fourteenth Amendment (Lisle Whitman II, 2023), while in *United States v. Rahimi* (598 U.S.— (2024)), the Court allowed for the temporary prohibition of firearms possession in the context of civil domestic violence restraining orders.

Analyzing the Cruikshank, Presser, and Miller cases apart from other U.S. Supreme Court rulings concerning gun rights allows us to observe two historical periods in which the meaning of the Second Amendment was understood in significantly different ways. These three rulings provided the legal basis for a collective interpretation of the Second Amendment, which significantly narrowed the protection of citizens with respect to state action, particularly state authorities. The second stage of the evolution of the Second Amendment, initiated by the Heller and McDonald rulings, transformed this right into a broad individual civil right. Understanding the first of these stages of the Second Amendment's evolution is crucial for interpreting contemporary disputes over the scope of gun rights in the United States. For over two hundred years, constitutional law has maintained an interpretation of the Second Amendment that is difficult to reconcile with today's, much broader, meaning of the right to bear arms in the United States.

Although the present article focuses on early Supreme Court jurisprudence, this body of case law remains relevant for contemporary Second Amendment debates. The collective-rights interpretation developed in cases such as Cruikshank, Presser and Miller constitutes an alternative constitutional framework that could regain practical significance in the event of future changes in the composition of the U.S. Supreme Court. If a collective interpretation were to prevail, it would substantially broaden the regulatory discretion of both federal and state authorities in the field of firearms control. In such a scenario, considerations of public safety would likely take precedence over individual access to firearms, facilitating the expansion of existing federal and state regulatory schemes. Even under the current individual-rights model, access to firearms in the United States is already subject to significant limitations, as certain categories of weapons – such as automatic firearms and so-called Title II weapons regulated under the National Firearms Act – require special permits, while unrestricted access is limited primarily to selected categories of firearms. State-level regulation further illustrates the contemporary relevance of early jurisprudence. For example, the legal framework governing concealed carry permits varies significantly among states, with some jurisdictions imposing far more restrictive requirements than others. Paradoxically, despite the constitutional protection of an individual right to bear arms, public carry in some U.S. jurisdictions is more tightly regulated than in certain European permit-based systems, including Poland, where, once a general firearms permit has been granted, concealed carry of handgun-type firearms constitutes the default lawful mode of carrying such weapons. These regulatory divergences demonstrate that, despite the recognition of an in-

dividual right in *Heller* and *McDonald*, the scope of permissible regulation remains a contested issue. Against this background, early Supreme Court decisions interpreting the Second Amendment as a collective right retain analytical value as potential reference points in ongoing constitutional discourse.

From a chronological perspective, it is significant that the individual model of interpretation of the Second Amendment is a relatively new phenomenon in US constitutional law. Over two hundred years passed between the end of ratification process of the Bill of Rights in 1791 and the landmark *District of Columbia v. Heller* ruling in 2008, with over 130 years of that period, starting with *United States v. Cruikshank* in 1876, dominated by a collective understanding of the right to arms, which tied it to the operation of state militias and limiting its applicability to state law. Only in the 21st century, beginning with the *Heller* ruling, did the Supreme Court recognize that the Second Amendment protects an individual's right to keep and bear arms regardless of militia service. The collective interpretation of the Second Amendment persisted for over a century because it was embedded in broader constitutional doctrines prevailing throughout the nineteenth and early twentieth centuries. The absence of incorporation against the states, the Court's deference to state police powers, and the perception of the Second Amendment as a structural provision related to militia organization rather than as an individual right all contributed to its doctrinal stability. The displacement of the collective model occurred only in the context of increasingly intensive federal and state firearms regulation, together with the emergence of originalist interpretive methodologies and renewed judicial engagement with individual constitutional rights. In this context, the contemporary interpretation, although binding under constitutional precedent, is relatively recent and is a result of a significant reinterpretation of the United States Constitution.

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