Spring 2001

Guns, Privacy, and Revolution

Glenn Harlan Reynolds

GUNS, PRIVACY, AND REVOLUTION

GLENN HARLAN REYNOLDS*

Many Americans believe that they have a fundamental right to revolt against a government that oppresses them, and that the right to keep and bear arms is an important means of preserving this right. Many Americans also believe that they have a right to control their fertility, including the right to choose an abortion, and that laws that infringe this right are oppressive and arbitrary. Though it would be a gross oversimplification to say that these two groups of Americans—one cherishing a right to arms, the other cherishing reproductive freedom—do not overlap, it is fair to say that the camps are regarded as distinct. Certainly where, for example, Supreme Court appointments are discussed, the two rights are treated almost as mutually exclusive, and it would not be an exaggeration to say that the Republican and Democratic parties have become mirror images of one another where gun and abortion rights are concerned.

Such a division certainly makes sense with regard to the way modern political interest groups raise money and incite their respective constituencies. Yet, such tawdry matters aside, it is not clear why constitutional doctrine should mirror present day fundraising categories. And, in fact, it does not.

This point is made particularly clear by the recent Tennessee Supreme Court decision in *Planned Parenthood v. Sundquist*.[1] That decision, which struck down some Tennessee abortion statutes that violated the Tennessee Constitution's right to privacy, sheds considerable light on the intersection between limited government powers and the right to revolution. In this Essay I will discuss the Tennessee right of privacy, its relationship to the right of revolution explicitly guaranteed by the Tennessee Constitution, and the ramifications of the Tennessee Supreme Court's approach to constitutional interpretation. The findings will not, I fear, satisfy ideologues of either conventional persuasion, but they may shed some light on the Tennessee Constitution and on constitutional interpretation in general.

I. THE TENNESSEE CONSTITUTION AND THE ROLE OF GOVERNMENT

From its first adoption in 1796, the Tennessee Constitution has underscored a key notion of Framing-era constitutional thought: that governments are constituted by the people and granted defined powers for limited purposes. As James Iredell, later a Justice of the United States Supreme Court, said during debates concerning North Carolina's ratification

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1. 38 S.W.3d 1 (Tenn. 2000).

of the federal constitution, a constitution is "a declaration of particular powers by the people to their representatives, for particular purposes. It may be considered as a great power of attorney, under which no power can be exercised but what is expressly given."[2]

The Tennessee Constitution underscored this commonplace of late-eighteenth century political thought with several explicit provisions. Article 1, sections 1 and 2 provide that all governmental power stems from the people and that the people have the right—and perhaps even the duty—to rebel against a government that is arbitrary and oppressive:[3]

> Sec. 1. All power inherent in the people—Government under their control.—That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.
> Sec. 2. Doctrine of nonresistance condemned.—That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.[4]

Another provision, now codified at Article XI, section 16, provides:

> The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the General powers of government and shall forever remain inviolate.[5]

These sentiments are radical today; they were less so at the time. As Edward Corwin points out to the framers:

> Not even the majority which determines the form of the government can vest

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2. GORDON WOOD, THE CREATION OF THE AMERICAN REPUBLIC: 1776-1787, at 600 (1969) (quoting James Iredell).

3. This right is rather explicit, but in case there are any doubts, further reading will make clear that the Tennessee Supreme Court interprets it this way. *See infra* notes 17-25; *see also* Otis H. Stephens Jr., *The Tennessee Constitution and the Dynamics of American Federalism*, 61 TENN. L. REV. 707, 710 (1994) (stating that these provisions "clearly assert the right of revolution"); *cf.* Cravens v. State, 256 S.W. 431, 432 (Tenn. 1923) (emphasizing the importance of retaining a spirit of resistance against despotism).

4. TENN. CONST. art. I, §§ 1, 2.

5. TENN. CONST. art. XI, § 16; *see also* Keith v. State Funding Board, 155 S.W. 142, 144-45 (Tenn. 1913) (stating that this provision limits the legislative power both in terms of express constitutional restrictions and in terms of implied limitations).

> its agent with arbitrary power, for the reason that the majority right itself originates in a delegation by free sovereign individuals who had "in the state of nature no arbitrary power over the life, liberty, or possessions" of others
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> . . . .
> Finally, *legislative power is not the ultimate power of the commonwealth*, for "the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject."[6]

In light of this view, Joseph Story, author of the most influential treatise on constitutional law in the first half of the nineteenth century, explained that—entirely apart from specific provisions in bills of rights—the power of legislatures in our political system must be regarded as limited:

> Whether, indeed, independently of the constitution of the United States, the nature of republican and free governments does not necessarily impose some restraints upon the legislative power, has been much discussed. . . . The fundamental maxims of a free government seem to require, that the rights of personal liberty, and private property should be held sacred. At least, no court of justice, in this country, would be warranted in assuming, that any state legislature possessed a power to violate and disregard them; or that such a power, so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expression of the will of the people, in the usual forms of the constitutional delegation of power. The people ought not to be presumed to part with rights, so vital to their security and well-being, without very strong, and positive declarations to that effect.[7]

While such legislative restrictions, according to Story, were implicit in "the nature of republican and free governments,"[8] they appear to be *explicit* in the Tennessee Constitution. As the provisions quoted above make clear, the framers of the Tennessee Constitution wished to guard against any claim that oppressive legislative powers could lurk under general grants of legislative authority, or under general delegations of constitutional power. In short, these provisions make clear that under the Tennessee Constitution, governmental powers are islands in a sea of individual rights, rather than the other way

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6. Edward Corwin, *The "Higher Law" Background of American Constitutional Law*, 42 HARV. L. REV. 365, 390 (1928) (quoting JOHN LOCKE, *Of the Extent of the Legislative Power*, *in* SECOND TREATISE ON CIVIL GOVERNMENT (Everyman's ed. 1924)).

7. JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 510-11 (R. Rotunda & D. Nowak eds. 1987). Justice Story's spelling of "transcendental" is different from modern spelling, but not erroneous. Story was writing before Noah Webster's dictionary standardized American spelling.

8. *Id.*

around—and that those rights are to be guarded even to the point of revolution.

II. THE RIGHT TO KEEP AND BEAR ARMS

It is in this context, of course, that the Tennessee right to keep and bear arms appears. In the context of the analogous federal right under the Second Amendment to the federal Constitution, there have been some arguments to the effect that the right protected is only one of states to have militias. Whatever the merits of these arguments, they are clearly inapplicable with regard to the right protected under the Tennessee Constitution. State constitutions cannot protect state institutions from federal interference. Furthermore, the Tennessee Constitution, unlike the Second Amendment, separates the militia from the right to keep and bear arms.[9]

Tennessee case law, in fact, has made quite clear that the right to bear arms protected under the Tennessee Constitution is an individual one, and that it exists largely to protect the right of revolution—and, perhaps, to exercise a salutary deterrent effect on those government officials who might otherwise be tempted to overstep their bounds. Indeed, in the case of *Aymette v. State*, generally regarded as one of the most important state cases on the right to arms, the Tennessee Supreme Court said that the purpose of the right was to enable the citizenry to "protect the public liberty, to keep in awe those who are in power, and to maintain the supremacy of the laws and the constitution."[10] The Court went on: "If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments upon their rights by those in authority."[11] This reasoning was underscored by a later case, *Andrews v. State*, that stressed that the right was an individual one, and included such penumbral rights—not specifically mentioned in the text but fairly present by implication—as the right to purchase arms and ammunition, keep them in proper condition for use, practice shooting, have them repaired, and in general to use them for "all the ordinary purposes, and in all the ordinary modes."[12] And while the Legislature could regulate the wearing of arms with a view to preventing crime, any such legislation must have a well-defined relationship to this prevention, and not simply reflect general prejudices against guns or an armed

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9. Under the Tennessee Constitution, Article I, section 24 deals with the militia, mostly by way of describing the evils of standing armies. TENN. CONST. art. I, § 24. Article I, section 26 deals with the right to arms. TENN. CONST. art. I, § 26.

10. Aymette v. State, 21 Tenn. (2 Hum.) 154, 158 (1840). Note that my treatment of the Tennessee right to keep and bear arms is necessarily rather sketchy here. For a more detailed treatment see Glenn Harlan Reynolds, *The Right to Keep and Bear Arms Under the Tennessee Constitution: A Case Study in Civic Republican Thought*, 61 TENN. L. REV. 647 (1994).

11. *Aymette*, 21 Tenn. (2 Hum.) at 158.

12. Andrews v. State, 50 Tenn. (3 Heisk.) 165, 178-79 (1871).

citizenry in general.[13]

The right of revolution, thus, is seen as necessary to the protection of freedom, and the right to bear arms as necessary to the right of revolution. As Story himself said:

> The right of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of a republic, since it offers a strong moral check against the usurpation and arbitrary power of rulers, and will generally, even if these are unsuccessful in the first instance, enable the people to resist and triumph over them.[14]

To protect the right of revolution, Tennessee citizens have the Article I, section 26 right to keep and bear arms, along with the implied rights necessary to make that right effective. Yet, in a very real sense, the right to keep and bear arms might itself be implied from Article I, sections 1 and 2, along with Article XI, section 16. The Declaration of Rights, after all, explicitly provides a right of revolution, and Article XI, section 16 provides that any right protected in the Declaration of Rights is "excepted out of the General powers of government" and hence "inviolate."[15] Under these circumstances it is hardly a stretch to imply a right to possess the means of revolution—guns and ammunition—even in the absence of explicit constitutional protection. Certainly it is no greater stretch than the altogether unremarkable construction of the right to keep and bear arms to include the right to purchase ammunition, guns being useless otherwise.

Yet this is only the beginning. The right of revolution exists as a final remedy for official tyranny. In a constitutional system that, as Justice Iredell reminded us, operates like a great power of attorney in which officials can exercise only what powers they are given, tyranny consists of officials exercising power beyond that granted by the Constitution. But as the Framers recognized, revolution is strong medicine—a choice as likely to kill as to cure and thus reserved for truly desperate times. Can we, by looking at the first principles established by Article I, sections 1 and 2, and Article XI, section 16, find a way short of revolution to prevent official overreaching? The answer, at least in all but the most desperate of times, is yes.

Indeed, Justice Iredell's "power of attorney" characterization is particularly apt.[16] For if Justice Iredell's notion of a "great power of attorney"

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13. *Id.*

14. 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §1897 (Melville M. Bigelow ed., 5th ed. Little, Brown & Co. 1891). Interestingly, this passage from Story—which dates from its original publication in 1833—was quoted by the Tennessee Supreme Court in one of the cases upholding the Tennessee Constitution's right to keep and bear arms that is mentioned above. *Andrews*, 50 Tenn. (3 Heisk.) at 183. For more on this latter topic see generally Reynolds, *supra* note 10.

15. TENN. CONST. art. XI, § 16.

16. *See supra* note 2.

is to mean anything, it must mean that the power exists only where exercised for appropriate ends. And who normally determines whether a power of attorney has been exceeded? The courts, of course. One might expect, under this theory, to see courts examining a particular legislative enactment by weighing its purposes against the legitimate ends of government (as established, perhaps, by the relevant Tennessee constitutional provisions, and by our knowledge of what the framers of that document considered to be the legitimate ends of government) and then upholding or striking down the law based on whether it is consistent with those ends or not.

III. THE RIGHT OF PRIVACY

Interestingly, this is precisely what the Tennessee courts have done in the privacy cases. And they have even cited—repeatedly—the right of revolution as their basis for doing so. The clearest example of this is in the case of *Davis v. Davis*.[17]

A. Parenting and Procreation

Davis v. Davis was a case of first impression. The immediate question was: What rights do parents have with regard to frozen embryos? The case has been quite influential,[18] but its importance to our discussion stems more from its analysis than its outcome.

One part of *Davis*'s analysis dealt with the question of how much authority the state could exercise to limit individuals' procreational autonomy. The answer was not much. According to the Tennessee Supreme Court, the Tennessee Constitution, together with the "fundamental maxims of a free government,"[19] prohibits the passage of laws that are oppressive or interfere with liberty. "Indeed," the court continued,

> the notion of individual liberty is so deeply embedded in the Tennessee Constitution that it, alone among American constitutions, gives the people, in the face of governmental oppression and interference with liberty, the right to resist that oppression even to the extent of overthrowing the government. The relevant provisions establishing this distinctive political autonomy appear in the first two sections of Article I of the Tennessee Constitution, its Declaration of Rights:

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17. 842 S.W.2d 588 (Tenn. 1992).

18. *See, e.g.*, Hecht v. Superior Court, 20 Cal. Rptr. 2d 275, 281 (Cal. Ct. App. 1993) (quoting *Davis*); Janicki v. Hospital of St. Raphael, 744 A.2d 963, 970 (Conn. Super. Ct. 1999); Kass v. Kass, 673 N.Y.S.2d 350, 354-55 (N.Y. 1998), *aff'g* 663 N.Y.S.2d 581, 586 (N.Y. App. Div. 1997) (discussing *Davis*).

19. *Davis*, 842 S.W.2d at 599 (quoting Thiede v. Town of Scandia Valley, 14 N.W.2d 400, 405 (Minn. 1944) (quoting Story itself)). This quote from Story is also set out above in the text at note 7.

> *Section 1. All power inherent in the people—Government under their control.*
> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an inalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.
> *Section 2. Doctrine of nonresistance condemned.*
> That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.
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> . . . .
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> Obviously, the drafters of the Tennessee Constitution of 1796 could not have anticipated the need to construe the liberty clauses of that document in terms of the choices flowing from *in vitro* fertilization procedures. But there can be little doubt that they foresaw the need to protect individuals from unwarranted governmental intrusion into matters such as the one now before us, involving intimate questions of personal and family concern.[20]

This passage is striking. The Court draws first on principles of limited government—after all, a state Constitution that grants the right to revolt against arbitrary and oppressive power can hardly be construed to grant such power to the government it establishes—as a source of protection for individual rights, despite the absence of any direct textual warrant. Though this opinion is steeped in "original intent," it is a far cry from the majoritarianism that Robert Bork, and many scholars on the Left as well, routinely champion. In the *Davis* court's approach, the sphere of government is not unlimited, nor are individual rights narrowly delimited islands of affirmative textual protection in an otherwise boundless sea of governmental

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20. *Davis*, 842 S.W.2d at 599-600. The "right of revolution" mentioned by the court is not unique to Tennessee as the court thought. The New Hampshire Constitution declares:

> Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

N.H. CONST. art. I, § 10. It is, however, possible that Tennessee is the only state whose official history speaks approvingly of armed rebellion against the constituted authorities—and not just in the distant past, either. *See A History of Tennessee*, in TENNESSEE BLUE BOOK 1999-2000, at 337, 422-23 (1999) (describing the "Battle of Athens," in which ex-GIs shot it out with the Sheriff and 50 "deputies" defending the corrupt political machine in McMinn County, Tennessee, as the beginning of a statewide cleanup of corrupt politics, rather than as a lawless insurrection).

power. Rather, governmental power is limited, within a sea of individual rights. It is worth noting, too, that this is a decision of a conservative state court, not one noted for its expansiveness in the creation of new rights.

Davis's progeny are similar in approach. Later cases such as *Hawk v. Hawk*[21] and *Lewis v. Donoho (In Re Askew)*[22] go well beyond the right of procreational autonomy to recognize a right on the part of parents to raise children as they see fit, subject to state supervision only in cases where the parents are unfit and there is a risk of substantial harm to the child. In *Hawk* the court struck down a reasonable-sounding statute that allowed grandparents visitation rights on the basis that the state is without power to intervene in parenting decisions where there is not a significant risk of substantial harm to the child.[23] As generally positive as grandparent visitation is, the court reasoned, the State is without power to require it. Parenting is simply too important, too central to people's lives, to assume that the citizenry meant to delegate power over it to the government, absent extraordinary circumstances like child abuse or divorce.[24]

The most recent in this line of cases is *Planned Parenthood v. Sundquist*.[25] In that case the Tennessee Supreme Court explicitly tested some Tennessee abortion laws against the right of privacy—and, also quite explicitly, against Article I, section 1's language forbidding oppressive or arbitrary government power—and found them wanting.

I will not discuss the substance of the statutes, which had to do with waiting periods, informed consent, and so on, because this is not an article about abortion. The statutes in question were of a sort passed (and usually struck down) in many places, and might not have withstood even the lenient "undue burden" analysis that some urged. What is interesting to me is the extent to which the right the court defined depends on the right of revolution.

The question, according to the court, was whether the right to abortion is protected by the Tennessee right of privacy, which it derived from Article I, sections 3, 7, 19, and 27, "and also from the grants of liberty in Article I, sections 1, 2, and 8."[26] Locating rights in penumbras of various specific

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21. 855 S.W.2d 575 (Tenn. 1993) (holding that neither courts nor legislatures may properly intervene in parents' decisions absent a substantial risk of significant harm to the child).

22. 993 S.W.2d 1, 1 (Tenn. 1999) (holding that neither courts nor legislatures may properly intervene in parents' decisions absent a substantial risk of significant harm to the child).

23. *See Hawk*, 855 S.W.2d at 580-81; *accord* Beagle v. Beagle, 678 So.2d 1271, 1272 (Fla. 1996) (basing on action on FLA. CONST. art. I, § 23, an explicit right of privacy).

24. In *Campbell v. Sundquist*, the Tennessee Court of Appeals—also quoting Article I, sections 1 and 2 and the right to revolution that they embody—found that state anti-sodomy laws failed of any legitimate government purpose and hence were unconstitutional. 926 S.W.2d 250, 261, 266 (Tenn. Ct. App. 1996).

25. *See* 38 S.W.3d 1 (Tenn. 2000).

26. *Id.* at 13.

provisions is nothing new, of course, and penumbral reasoning is routinely engaged in by courts regardless of their location on the political spectrum.[27] More interesting is the court's characterization of Article I, sections 1, 2, and 8, as "grants of liberty."[28]

At first glance this might appear odd. Unlike provisions protecting specific, positive rights—freedom of speech,[29] for example, or of religion[30]—these provisions do not grant any particular liberties. Sections 1 and 2 are the popular sovereignty and anti-nonresistance provisions, and section 8 is the "law of the land" clause, which is more or less analogous to the federal Constitution's due process provisions.[31] None of these provisions, on first glance, would appear to constitute "liberties" of the sort typically protected by constitutional provisions. None outlines protected acts, or classes of acts, and none forbids particular governmental actions or classes of actions.

Yet the Tennessee Supreme Court's characterization of these provisions as protecting liberties is not so far-fetched on closer analysis. For if government exercises only powers delegated it by the people and if "general delegations" are not to be interpreted as grants of oppressive or arbitrary power, then the provisions that underscore that point may do more to protect liberties than any number of specific protections. This argument, in fact, was popular at the time of the framing of both the Tennessee and federal Constitutions and led to the adoption of the federal Constitution's Ninth Amendment.[32]

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27. *See, e.g.*, Glenn H. Reynolds, *Penumbral Reasoning on the Right*, 140 U. PA. L. REV. 1333 (1992); Brannon P. Denning & Glenn H. Reynolds, *Comfortably Penumbral*, 77 B.U. L. REV. 1089 (1997).

28. 38 S.W.3d at 13.

29. TENN. CONST. art. I, § 19.

30. TENN. CONST. art. I, § 3.

31. TENN. CONST. art. I, § 8.

32. As Iredell said at the North Carolina ratifying convention: "Let any one make what collection or enumeration of rights he pleases, I will immediately mention twenty or thirty more rights not contained in it." DANIEL FARBER & SUZANNA SHERRY, A HISTORY OF THE AMERICAN CONSTITUTION 224 (quoting Iredell). Iredell's point, in part, was that the enumeration of rights could not possibly be a sufficient protection for liberty; rather, limitations on government power were required. Though the Ninth Amendment was adopted in response to Iredell's concern, it should be noted that it is intended to underscore Iredell's point, not to answer it by an endless enumeration. As Joseph Story wrote:

> This clause was manifestly introduced to prevent any perverse, or ingenious misapplication of the well known maxim, that an affirmation in particular cases implies a negation in all others; and *e converso*, that a negation in particular cases implies an affirmation in all others. The maxim, rightly understood, is perfectly sound and safe; but it has often been strangely forced from its natural meaning into the support of the most dangerous political heresies.

STORY, *supra* note 7, at 711. I think it is fair to say that the framers of both the federal and the

In *Sundquist* the Court agreed that the state's asserted interest in protecting maternal health was a legitimate government interest under Article I, section 1.[33] It found, however, that many of the statutory provisions in question were more about creating obstacles to abortion (*not* a legitimate state power under Article I, section 1) than about protecting maternal health.[34]

IV. REVOLUTION AND FREEDOM

The Tennessee privacy cases shed some interesting light on constitutional interpretation and on modern political debate. As I mentioned early on, both modern political parties present themselves in a somewhat contradictory fashion: each promises to protect its constituents against the *other* party's efforts to undermine favored rights, while also promising to do its best to undermine the rights favored by those on the other side. In either case—at least at the level of campaign sloganeering and all too often at the level of governance—it is a case of "freedom for me, and big government for thee."

There is, however, no such thing as limited government only some of the time. The principles of limited government embodied by the Tennessee Constitution are generally applicable. This makes sense: in entering into a social compact, people give up some power to push others around, in exchange for others doing the same.[35] An honest acknowledgment of this tradeoff would give politicians less to posture about, but, as they say in the computer world, that is not a bug—it is a feature. It seems fair to assume that, like the framers of the federal Constitution, the framers of the Tennessee Constitution were concerned with dangers of factionalism and feared that putting too much power into the hands of the government would inspire just the sort of fear and divisiveness that political consultants and direct-mail fundraisers love, but that are dangerous and destructive for the rest of us. As I write this, the United States has just passed through an extremely close and disputed election without bloodshed. One reason for that was that losers did not fear anything more serious than the loss of a few federal jobs. Had they feared the sort of consequences common in some other countries—police harassment, imprisonment, religious outlawry, perhaps even mass execution or genocide—violence would have been certain. Limited government thus promotes political stability by making government not worth fighting over. For everyone except political consultants, that is a good thing.

Tennessee Constitutions would have viewed any argument that governmental power extended to all objects not expressly forbidden by bills of rights as heretical indeed.

33. 38 S.W.3d at 18.

34. *Id.* at 24.

35. Subject, of course, to Corwin's statement, quoted above at note 6, that there are some powers that are not properly possessed by even the largest majority. *Cf.* KY CONST. art. 13, § 2, which provides that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

The right of revolution is interesting in another way. In the ongoing debate over the Second Amendment to the federal Constitution, some have claimed that the federal right to arms could not possibly exist in order to protect the means to revolution. No constitution, they say, could possibly encompass the possibility of its own dissolution.

These arguments have been admirably refuted, on grounds of both logic and history, by Professor David Williams.[36] But the right of revolution under the Tennessee Constitution also constitutes a straightforward counterexample—an existence disproof, if you like—to those arguments. Like the man who, when asked if he believed in adult baptism, replied—"Believe in it? Hell—I've seen it done!"—we can confidently report that a constitution can last for over two hundred years with an explicit acknowledgment of such a right and that such a right can even do constructive work toward preserving liberty without being put into practice. As the Tennessee Supreme Court put it: "There is no better statement of our constitution's concept of liberty than this audacious empowerment of Tennesseans to forcibly dissolve the very government established but one Article later in our constitution."[37]

As an academic, I am perhaps given to starry-eyed idealism, though my students may disagree. But I cannot help hoping that the way in which the right of privacy and the right to arms are intertwined under the Tennessee Constitution might inspire some sense of interdependence among those who are often at each other's political throats. Certainly any effort to excise either from the Tennessee Constitution would likely do as much violence to the rights that each side holds dear as to the rights they despise. The framers of that document would probably have said that this holds true for all the rights it protects, not just those involving guns and abortion. And they would have been right. For it is just that interdependence that makes a republic possible. Let us hope that our leaders remember this—and that if they forget, that the voters will not.

36. David C. Williams, *The Constitutional Right to "Conservative" Revolution*, 32 HARV. C.R.-C.L. L. REV. 413 (1997).

37. 38 S.W.3d at 14.