– Essays on Race and Guns in America –

The Problem with Assumptions: Reassessing the Historical Gun Policies of Arkansas and Tennessee

Brennan Gardner Rivas[*]

Scholarship on the subject of historical firearm laws has, whether knowingly or not, tended to take certain ideas for granted. Chief among these assumptions is that post-Civil War public carry laws have been the primary vehicle for creating a racially inequitable right to arms. There is also widespread acceptance of the notion that openly carrying pistols was customary and therefore socially acceptable in the American South across the nineteenth and twentieth centuries. Finally, scholars (myself included) have tended to discuss firearm regulations as if all pistols were the same. This last idea is patently false, with tremendous repercussions for future examinations of public carry enforcement. The first two assertions are harder to pin down but suffice it to say that they are pseudo-axioms generated by simplifying what has been a complex and changing relationship among racism, policy development, and law enforcement in the United States.

Historiography on the deadly weapon regulations of Tennessee and Arkansas illustrates quite clearly the ways in which these three assumptions have combined to hinder the advancement of accurate, even-handed accounts of state-level gun laws and their effects upon Black communities. Accounts by Robert Cottrol, Raymond Diamond, Dave Kopel, George Moscary, Robert Leider, and William Tonso portray the regulatory regimes in Arkansas and Tennessee as out of step with regional trends, oppressive, racially motivated, or constitutionally insignificant. If federal courts were to adopt these scholars' perspectives, state-level case law from Arkansas and Tennessee (including the important antebellum cases of *Buzzard* and *Amyette*, upholding concealed-carry restrictions) would be stricken from discussion as irrelevant to contemporary Second Amendment concerns. Yet each of their accounts takes as a given one or more of these assumptions.

Cottrol and Diamond are the most guarded in their assertion of racist intent behind these states' public carry and sales regulations for small pistols, but the others simply assume it without question. All focus primarily upon the public carry laws—which forbade various weapons in public, including pistols, with the exception of those used by the United States Army or Navy—without delving deeply into the statutes banning the sale of non-army/navy pistols. The racist shibboleth to be denounced is the public carry prong of these states' two-prong approach, not so much the concomitant sales ban, despite its far more extreme social consequences. The reason for this prioritization appears to be a presentist desire to paint current public carry statutes with a racist brush, because any account taking Black Arkansan and Tennessean rights as a starting point would emphasize the sales ban as particularly egregious in its interference with their fundamental right to self-defense within their own homes. The scholarship in question has also treated army/navy pistols as a monolith universally owned by white residents and perennially beyond the financial means of their Black counterparts. For Kopel in particular, the public carry and sales restrictions in question represent a dramatic departure from a supposed southern tradition of permissive open

[*] Lloyd Lewis Fellow in American History, The Newberry Library.

carry that can only be explained by the "collectivist" Second Amendment analogs within the guiding Arkansas and Tennessee constitutions.

Reassessing the story of gun regulation in Tennessee and Arkansas requires us to question these reigning assumptions. Only then can we place the intriguing laws of these two states within their proper context and draw a new set of conclusions from their history.

The Two-Pronged Approach of Tennessee and Arkansas

In some ways, the development of a robust regulatory regime for deadly weapons in Tennessee and Arkansas mirrored that of other states. Both began with an antebellum movement against dueling and concealed carry, then enacted relatively stringent time-place-manner restrictions to reduce electoral fraud and political violence during Reconstruction. But in other ways, these states are uniquely connected to one another. In particular, Arkansas emulated Tennessee in terms of its state constitutional right to arms and in its development of comprehensive handgun regulations. Unlike several other southern states, these two repeatedly crafted Second Amendment analogs that protected a right to keep and bear arms for the "common defense" without including the individualist language, "for defense of themselves and the State."

Similarly, when Tennessee created a sweeping public disarmament policy in the early 1870s, Arkansas followed suit just a few years later. The neighbor to the north then went so far as to ban the sale, gift, or purchase of certain classes of pistols in 1879, and the southern cousin again quickly fell in step. The resemblance of their regulatory schemes was not lost on contemporary observers, and appellate judges from both states cited cases from their kindred courts on numerous occasions.

The Tennessee legislature's initial plan was to prohibit the carrying of all pistols, knives, and other deadly weapons in public. A statute enacted in 1870 held that "it shall not be lawful for any person to publicly or privately carry a dirk, sword-cane, Spanish stiletto, belt or pocket pistol, or revolver." But a test case arose right away, prompting the state supreme court to strike down the part of that law banning "revolvers" carried in public. The reasoning behind the decision was that the United States Army and Navy had issued certain types of revolvers to some of its servicemen, making these "army/navy" models military—and therefore militia—arms protected by the state constitution.[1] The Tennessee legislature responded by enacting a replacement statute which carved out a unique, never-before-used exception. As of 1871, Tennesseans could not carry deadly weapons or any "belt or pocket pistol or revolver other than an army pistol, or such as are commonly carried and used in the United States Army, and in no case shall it be lawful for any person to carry such army pistol publicly or privately about his person in any other manner than openly in his hands." When another test case came before the high court, the justices affirmed the revised law's constitutionality by describing it as "a legitimate exercise of the power to regulate

[1] It is also worth noting that the Tennessee court in *Andrews* took "revolver" to also mean "repeater." The court limited itself to insisting that a repeating pistol was "a soldier's weapon—skill in the use of which will add to the efficiency of the soldier." But the wording itself could have been interpreted even more broadly to include revolving rifles and muskets as well as carbines typically referred to as "repeaters."

the wearing of the weapon, and is authorized by the Constitution, and does not interfere with the right of keeping the arm, or of bearing it for the common defense."

The trajectory in Arkansas occurred several years later but was altogether similar. A sweeping public carry law disallowing open and concealed carry with few exceptions came under fire from a redemption-era supreme court. In *Wilson v. State* (1878), the Arkansas high court reversed the precedent set two years before by holding that the legislature's authority to regulate the mode of carrying weapons did not give that body the power to criminalize carrying weapons altogether. The court's most telling statement in *Wilson v. State* was, "If cowardly and dishonorable men sometimes shoot unarmed men with army pistols or guns, the evil must be prevented by the penitentiary and the gallows, and not by a general deprivation of a constitutional privilege." Just like Tennessee, the Arkansas legislature soon thereafter provided a statutory remedy that exempted army/navy pistols when carried uncovered in the hand.

While the Arkansas public carry law became a legal-legislative football in the late 1870s, Tennessean reformers adopted a new policy that became the second prong in their ongoing war against rising handgun crime. An 1879 statute made it a misdemeanor to "sell, or offer to sell, or to bring into the State for the purpose of selling, giving away, or otherwise disposing of, belt or pocket pistols, or revolvers, or any other kind of pistols, except army or navy pistols." Army/Navy models were, in recognition of the high court's previous words about militia arms, exempted. Dealers had a limited window of time to divest themselves of their current stock, and any sales after the expiration risked prosecution.

If public carry was such a concern in Tennessee that it prompted a tug-of-war between the legislative and judicial branches, surely this would be a bridge too far for the state supreme court. Not only did it deprive citizens of their right to purchase weapons for home defense, it undermined the property rights of gun dealers and private owners who might want to dispose of their own possessions. But the test case for the sales ban breezed through the judiciary without so much as a dissenting opinion. In *State v. Burgoyne* (1881), the court likened the sales ban to similar endeavors prohibiting "intoxicating liquors" that fell well within the scope of the state's police power. "The private interests of the few must yield to the welfare of the many and good order in society." So much for individualism embedded within the southern legal tradition!

Watching these events unfold, Arkansas lawmakers adopted the Tennessean two-pronged approach by lumping a similar sales ban onto the statute replacing the one struck down by their supreme court. Again, the sales ban received no notable opposition and was indeed less constitutionally questionable than the short-lived comprehensive public carry law had been. As of 1881, it was illegal to sell, purchase, give, or carry a pistol in Arkansas save those in use by the US Army or Navy; and even then, the pistol in question had to be carried openly in one's hand—not visible in a waistband or tucked away in a saddlebag or even plopped on a carriage seat. An

included restriction upon the sale of pistol cartridges made the ownership and maintenance of later-model pistols an increasingly challenging affair.[2]

In the cases of both Tennessee and Arkansas, lawmakers tried to enact the most stringent gun regulations possible. Far from bastions of unquestioned acceptance of open carry, these two southern states passionately opposed "wantonly" carrying arms. Far from supporting the idea of customarily accepted open carry, or the "liquidation" of the Second Amendment in favor of open carry, the development of firearm regulatory policy in Tennessee and Arkansas stands as evidence of a strong southern rejection of gun-toting. The institutions shaping and enforcing culture (the legislatures, courts, and media) spoke with one voice in their denunciations of pistol carrying. News editors decried it, lawmakers banned it, and judges consistently charged their grand juries to initiate prosecutions for it.

The only reason why the comprehensive public carry statutes initially put forward by Arkansas and Tennessee policymakers failed to remain the law of the land was the intervention of their respective state judiciaries. Kopel has portrayed these courts as losing their nerve and yielding to popular pressure, but in fact it was the justices who had the legislators dancing a jig. If it was universally known but never explicitly spoken that the purpose of the original Tennessee and Arkansas statutes was to disarm freedmen through discriminatory enforcement, the intervention of the judiciary to protect military-grade handguns is nonsensical. A whites-only exemption (if that's what it was) to a law that was never intended to be applied to the white population would be like applying sunscreen indoors—unnecessary, wasteful, and foolish. The swift, purposeful action of two branches of government on display in this story speaks to the urgency of gun violence in the postbellum South, not a secret white supremacist plot to disarm Black residents or even a random conflict initiated by overzealous jurists.

Army/Navy Pistols

All of this raises an important question. What was an army/navy pistol, and how was it distinguished from a belt or pocket model? Now here is a simple question with a complicated answer.

At the most basic level, the language of the Arkansas and Tennessee statutes made reference to the three sizes of pistols that could be purchased in the middle and late nineteenth century: holster, belt, and pocket. Samuel Colt pioneered the idea of varying sizes during the 1830s, long before the United States government contracted to purchase pistols from him. The largest (and most likely to be purchased for military purposes) was the "holster" model, a .44 caliber that initially weighed upwards of four pounds and measured twelve or so inches in length. The Colt holster model was fashioned after the "horse pistols" that had been adopted by mounted units in Europe and the United States. The contract that Colt wanted—to arm US dragoons—went to a different gun-making business that agreed to produce .54 caliber, muzzle-loading pistols that used the recently

[2] The pistols of the 1860s and earlier were the cap-and-ball type, while innovations in the 1870s led to the development of cartridges as a replacement. The Arkansas statute in question (included in Sec. 3) seems to have been tantamount to a ban on the sale of bullets incompatible with army/navy pistols.

invented percussion cap system for ignition. That gun, the M1842, weighed over two pounds with an 8.5 inch barrel and measured about fourteen inches in total length. Colt's response was the Colt Walker and Colt Dragoon pistols, which emulated the size of the M1842 but with a slightly lower caliber (.44), more weight (four pounds or more), and six shots rather than one. Like its "horse pistol" competitors, the Colt holster models were designed to be carried in a saddle holster by mounted soldiers, not on the person by a foot soldier.

By the onset of the Civil War, horse pistols were falling out of fashion in favor of revolvers like the Colt 1860 Army, which measured about twelve inches in total length and weighed less than three pounds. The United States Army also began issuing pistols to classes of soldiers other than strictly cavalry. Officers and light artillery received pistols and would have carried them on the person in a hip holster. Still, most Union soldiers did not receive a military issued handgun, though many owned one through private purchase at one time or another. Some enlisted men who carried pistols with them to war were forced by their officers to surrender them, and others discarded them as unnecessary weight on long marches. Information regarding Confederate soldiers is less clear, and it may have been more common for them to carry pistols for the duration of the war; however, most pistols circulating in the American South even at the time of the Civil War had been the product of private purchases rather than arms issued by the War Department of the Confederacy or the rebel state governments. In other words, veteran status among white men in Tennessee and Arkansas did not correlate to ownership of a cost-free army pistol.[3]

The second type of pistol in circulation was the "belt" model. Often referred to as "navy pistols," these midsized handguns were purchased by the thousands by the United States military during the Civil War. Smaller in size and caliber than the army/holster pistols, navy models would have been worn in a hip holster attached to the belt. Navy pistols varied widely across the second half of the nineteenth century, but they were generally about .36 caliber with a shorter stock and barrel than the army/holster model. Beginning with the 1851 Colt Navy, these midsized "belt" pistols became popular among civilian purchasers and may have been the most common type of revolver in the country around the time of the Civil War.

The fact that navy models were technically "belt" pistols makes the Arkansas and Tennessee statutes especially confusing. Tennessee's 1871 public carry statute prohibited any "belt or pocket pistol or revolver other than an army pistol, or such as are commonly carried and used in the United States Army." This effectively lumped navy/belt models with pocket pistols into a class of weapon falling outside the open-in-hand exception reserved for army/holster pistols. But the 1879 Tennessee sales restriction applied to "belt or pocket pistols, or revolvers, or any other kind of pistols, except army or navy pistols," which provided some protection for the purchase of navy/belt models even if they theoretically could not be openly carried in the same manner as army models.

[3] On pistols and other arms issued during the Civil War, see Katelyn Brown, "Armed to the Teeth," *Military Images* 33, no. 4 (Autumn 2015), 32-36; Joseph G. Bilby, *Civil War Firearms: Their Historical Background and Tactical Use* (Conshohcken, PA: Combined Books, 1996); Graham Smith, *Civil War Weapons* (New York: Chartwell, 2011); Jack Coggins, *Arms and Equipment of the Civil War* (New York: Fairfax Press, 1982); *Arms and Equipment of the Union* (Alexandria, VA: Time-Life Books, 1999); Ken Bauman, *Arming the Suckers: A Compilation of Illinois Civil War Weapons* (Dayton, OH: Morningside House, 1989).

By 1880 though, the state's high court interpreted the public carry law to exempt pistols carried openly-in-hand so long as they were "an army or navy [model], or such as used in civilized warfare."

The trajectory taken for public carry in Arkansas was more straightforward, with the initial 1875 statute prohibiting "any pistol of any kind whatever" and its 1881 replacement exempting "such pistols as are used in the army or navy of the United States" so long as it was "uncovered" in the hand. The sales ban, however, was more complicated by forbidding the disposition of various deadly weapons including "any pistol of any kind whatever, except such as are used in the army or navy of the United States, and known as the navy pistol." While a simple reading might indicate that the sale of army models fell outside the statute's protection, that is an improbable interpretation. It is far more likely that the phrase widened the scope of protected arms by exempting pistols "known as" navy models rather than exclusively those issued by the United States Army or Navy. The Colt labels seem to have become proprietary eponyms so commonly used that they were written into regulatory statutes like the ones in Arkansas and Tennessee.

This is a critically important point to note because the trend in the postbellum decades (for Colt as well as other pistol manufacturers, like Remington) was to use the old labels of army/holster, belt/navy, and pocket while changing the parameters of each model and introducing numerous varieties of each. Army pistols got smaller, aligning more closely to the antebellum navy models.[4] Then, the Colt 1873 Single Action Army (SAA) was issued by the United States Army to some regiments as a .45 caliber sidearm with either a 7.5 or 5.5 inch barrel; but the civilian model, called "the gun that won the West," had a 4.75 inch barrel. Which version of this "army" pistol could be sold or carried in-hand in Arkansas and Tennessee? The legislation and appellate cases do not specify.

Courts and legislatures did not venture a more specific definition of army/navy pistols—a wise decision insofar as the models used by the military or falling within that moniker varied over time, and silence allowed for flexibility. But the ultimate reason was deference to criminal procedure; determining whether a pistol carried openly-in-hand was indeed an allowable army/navy model constituted a matter of fact for a jury to decide. The problem of identification was made ever more challenging by continual design changes from government-contracted manufacturers. Fortunately for Arkansas and Tennessee juries, the open-in-hand stipulation meant that many (perhaps most) cases did not require them to ascertain what kind of gun was carried—because defendants seem to have been arrested for carrying their weapons otherwise than openly in their hands.[5] Defendants

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[4] The antebellum Colt 1851 Navy had a 7.5 inch barrel while models from later in the century, like the 1889 New Navy, had only a 6 inch barrel. Meanwhile, the full-sized, army models were scaled down from having an 8 inch barrel to no more than 7.5, and the New Army and Navy models of 1892-1903 essentially merged the Colt Army and Navy models into one military model with calibers ranging from .20 to .41 and barrels measuring no more than 6 inches. See Wilson, *The Colt Heritage*, 207.

[5] There was a brief period in which Arkansas appellate courts required prosecutors to prove what type of pistol a defendant carried, even if he/she had done so otherwise than openly in the hand. This raised the bar for conviction so high as to be impossible and sparked such confusion among judges, grand juries, and prosecutors that the court reverted to the older method within just a few years. See *McDonald v. State* (1907), *Vaughan v. State* (1907), *Blacknall v. State* (1909), and *Henderson v. State* (1909)

arguing that a pistol carried in-hand was indeed an army/navy model would have to marshal evidence concerning the gun's caliber, barrel length, unique features, and origin to make their case. What this likely meant on the ground is that guns produced by the elite manufacturers—the ones that had government contracts, serial numbers, and iconic engravings—could more easily be proven to fall within the exemption than those made by upstart or imitation brands.

The type of pistol universally condemned regardless of their manufacturer was the "pocket" model, the third size of pistol circulating at this time. Substantially smaller than the holster and belt models, pocket pistols ranged from single-shot, muzzle-loading derringers with barrels under two inches to revolvers along the lines of Colt's "pocket navy" six-shooter with a three-inch barrel. Concealability was their very purpose, and their low caliber of .32 or under rendered them all but useless for open warfare.[6] Though these small models had been available prior to the Civil War, it was in the decades following that they became increasingly popular. Gunmakers transitioning from military to civilian sales marketed them as guarantors of personal safety hidden away in one's pocket, or surefire home defense in case of an intruder. The nation's premier manufacturer, Colt, produced a "ladies' model" as well as a "house" pistol—though the latter became more widely known as a "Fisk" for its use in the infamous murder of the robber baron Jim Fisk in 1872. The Colt "police" models of the 1870s and 1880s varied in caliber and barrel length to such an extent that some might have been large enough to be "known as navy pistols." The explosion of production was all the more pronounced by the entry of imitation brands that used lower quality metals with less sophisticated workmanship to sell pocket pistols for a small fraction of the $25 to $40 price tag commanded by even the smallest Colt pistols. These cheap revolvers could be had for a few dollars, with used ones selling for even less. The retail cost plummeted across the Gilded Age to such an extent that Colt—unwilling to lower its quality standards—stopped producing them.[7]

The sales bans did not put an end to traffic in firearms and permissible pistols in either Arkansas or Tennessee. Newspapers in circulation between 1882 and 1900 featured advertisements for dealers in firearms, with some Tennessean merchants promoting their collection of pistols alongside other guns, rifles, and fishing tackle. Gun, dry goods, and hardware dealers in both states likely sold the legal army/navy pistols if and when they could get them, and a robust contraband trade of illegal belt and pocket models may have existed without leaving much of a trace. Evidence from the twentieth century indicates that unlawful carry defendants were expected to divulge where they obtained the illegal pistol, and police departments investigated illicit sales. The two-pronged approach of public carry plus sales restrictions was not a perfect solution, but between the

[6] During the Civil War, some pocket-sized pistols were issued by governments in small numbers. But the coalescence of military grade revolvers around the army/navy models of .36 caliber or higher eventually eliminated such ordnance provisioning. Some Civil War soldiers carried these small pistols as a weapon of last resort, but they would have been the product of private purchase rather than a military issued arm.

[7] On size, variability, and manufacture of Colt pistols, see Jim Rasenberger, *Revolver: Sam Colt and the Six-Shooter that Changed America* (New York: Simon and Schuster, 2021); Martin Rywell, *Colt Guns* (Harriman, TN: Pioneer Press, 1953); R. L. Wilson, *The Colt Heritage: The Official History of Colt Firearms from 1836 to the Present* (New York: Simon & Schuster, 1979).

early 1880s and the mid-twentieth century it gave local law enforcement a way to combat gun violence by prosecuting unlawful sellers and/or carriers.

Conclusions

This reevaluation of firearm regulatory policy in Tennessee and Arkansas should leave us with a different impression than the works previously published on the topic. Prohibiting the carry and sale of non-militia firearms was well within the authority of the state governments as understood at that time (a much more invasive, robust police power than we are familiar with today). A militia-focused interpretation of the Second Amendment and its state-level analogs drove the courts to their decisions to strike down parts of the comprehensive initial laws. The resulting army/navy-in-hand exception was the legislatures' accommodation to these constitutional requirements set by their respective state judiciaries, not a whites-only exemption. Furthermore, the exempted weapons would have primarily been the product of private purchase either before or after the Civil War as opposed to a government-issued, cost-free military arms.

Scholars have assumed that Black residents would have been unable to afford the exempted weapons, which was undoubtedly true for some people at certain times or under certain circumstances. Freedmen and free Blacks of the 1860s and early 1870s surely encountered obstacles if they tried to purchase handguns, not least of which was an inability to finance the transaction. Poor people at the turn of the twentieth century could not afford to spend upwards of $10 for a used or second-rate pistol, let alone drop two or three times as much on a nicer model. But the Black Tennesseans who moved to the Orange Mound neighborhood of Memphis, those who congregated in North Nashville to make it a Black educational and cultural center in the Upper South, and the residents of the West Ninth Street neighborhood in Little Rock were another matter.

In our efforts to call out racism, we have inadvertently succumbed to the fallacy of assuming that all Black southerners were the same—poor dirt farmers with nary a possession to their names. This overlooks the stratification of Black postbellum society into middling and laboring classes, and ignores the growth of Black commercial and residential districts across the South. Black landownership was possible, though the vagaries of the global cotton market in conjunction with poor access to credit left them particularly vulnerable to losing that property. By no means do I intend to paint Gilded Age Tennessee or Arkansas as a colorblind utopia, but Black communities there were able to acquire personal property, form fraternal organizations, and assist one another in building a better life for their families. It would be naïve to presume that they were all unilaterally incapable of affording new or used army/navy pistols.

In fact, Black southerners could and did prioritize the safety of their homes and families by purchasing firearms that could be used in self-defense. Their preferences, however, may have leaned in the direction of long guns that were more lethal than pistols and subject to fewer regulations.[8] Ida B. Wells-Barnett, who knowingly carried a pistol contrary to law, famously

[8] Rosa Parks talked about her father having a shotgun; when Emmett Till was abducted, his uncle had retrieved a shotgun.

quipped that "the Winchester rifle deserved a place of honor in every black home." The yet wider range of uses for a shotgun and its more deadly firepower at close range may have elevated that weapon as the Black family's surest form of home defense, particularly in rural areas where such gun ownership would have been so common as to make it non-threatening in the eyes of white neighbors. While Black Americans no doubt owned and carried handguns when and where they could, long guns feature prominently in the stories of Black armed resistance and communal self-defense.[9]

Most importantly, a gun more often used—one that served a day-to-day purpose within a rural household—was one more likely to be clean and functional in a moment of need. We take it for granted that a handgun stuffed in a drawer inside a dry, air-conditioned home will fire when called upon, but poor Black sharecroppers whose windows had no panes would have reached for a *trusted* weapon, not a boutique or unreliable one, to stave off a racist attack.

Even while exploring the ways in which Black southerners armed and defended themselves during the Jim Crow era, we can still acknowledge that in the Tennessean and Arkansan two-pronged approach to public disarmament, the sales ban represented the greater burden upon their rights. This was not a statute that fell into desuetude in the twentieth century. But attitudes toward far-reaching measures like banning the sale, gift, transfer, or importation of a pistol changed over time, with Arkansas and Tennessee residents interpreting the policy as increasingly oppressive. This change in sentiment toward firearms was not confined to these states, or indeed to a particular region of the United States. More work remains to be done on the subject, but it emerged at least in part as a response to the efforts of sport-shooting organizations like the National Rifle Association promoting firearm awareness and safety to an American public that had lived through one or more international wars.

The Tennessee sales ban was repealed piecemeal in the late-1950s, beginning with decriminalizing the sale of non-army/navy pistols intended for sport shooting or home defense so long as the purchase was recorded and police were notified.[10] The changes made enforcing the law more difficult, and over the ensuing decades the firearm regulatory landscape in Tennessee has changed dramatically to the point that the state is now among those allowing permitless carry of handguns in public.

The most onerous element of these states' no-pistols policy was disassembled quietly, in response to the popular will and as a reflection of evolving attitudes toward gun control. The change was not a product of judicial activism, interest-group politics, or culture war vitriol—an apt example of how policies can and should change in light of new attitudes, technologies, and philosophical approaches to governance.

[9] This is true in the final section of Cottrol's and Diamond's groundbreaking "Afro-Americanist Reconsideration" article as well as more recent publications by Charles E. Cobb, Akinyale Umoja, and Simon Wendt.
[10] *Chattanooga Daily Times* (Chattanooga, TN), February 18, 1959; *Knoxville News Sentinel* (Knoxville, TN), August 28, 1960; *Knoxville News Sentinel* (Knoxville, TN) December 1, 1963.

The timing for Tennessee may be suspicious, overlapping as it does with the period of "massive resistance" to the gains made by the Freedom Movement earlier in the decade. But if the sales ban had always been designed and applied in a racially discriminatory manner, why would a Democratic-dominated state legislature begin taking it apart at the height of massive resistance to Black civil rights? And even though the policy had necessarily fallen more harshly upon Black Tennessean communities, did its repeal not offer them some improvement in their ability to acquire, train with, and ultimately use firearms in defense of themselves? If we can recognize that some laws—despite good intentions—become racially inequitable, can we not also acknowledge that other laws—even those that might have been inspired to some extent by white fears of Black empowerment—might have a serendipitously beneficent effect upon communities of color?

In the end, the problem with previous scholarship on historical pistol policies in these two states is this: by assuming racist intent, assuming the primacy of public carry over sales restrictions, assuming a timeless southern custom of open carry, assuming the monolithic nature of army/navy handguns, assuming their prevalence among white veterans, and assuming the inability of Black residents to access them, we are left with a view of Arkansas and Tennessee firearm regulation that is universally oppressive, regionally aberrant, and therefore constitutionally inconsequential. Despite the seeming uniqueness of their Second Amendment "collectivist" analogs, their shared approach of enforcing public disarmament, and the chronological overlap of that development in the 1870s and 1880s, these two states are not particularly distinctive. Instead, the actions and words of their legislatures, courts, and media reflect what was an altogether ubiquitous concern "to prevent carrying a pistol with a view of being armed and ready for offense or defense in case of a conflict." In other words, to prevent the kind of preparatory public carry that gun-rights proponents call for today. We should not allow the assumptions named here to go unchallenged and thereby remove these states from the relevant historical record.

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