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Fighting Back: Crime, Self-Defense, and the Right to Carry a Handgun



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Executive Summary

Ten years ago this month, a controversial "concealed- carry" law went into effect in the state of Florida. In a sharp break from the conventional wisdom of the time, that law allowed adult citizens to carry concealed firearms in public. Many people feared the law would quickly lead to disaster: blood would literally be running in the streets. Now, 10 years later, it is safe to say that those dire predictions were completely unfounded. Indeed, the debate today over concealed-carry laws centers on the extent to which such laws can actually *reduce* the crime rate.

To the shock and dismay of gun control proponents, concealed-carry reform has proven to be wildly popular among state lawmakers. Since Florida launched its experiment with concealed-carry in October 1987, 23 states have enacted similar laws, with positive results.

Prior to 1987, almost every state in America either prohibited the carrying of concealed handguns or permitted concealed-carry under a licensing system that granted government officials broad discretionary power over the decision to grant a permit. The key feature of the new concealed-carry laws is that the government *must* grant the permit as soon as any citizen can satisfy objective licensing criteria.

Concealed-carry reform reaffirms the basic idea that citizens have the right to defend themselves against criminal attack. And since criminals can strike almost anywhere at any time, the last thing government ought to be doing is stripping citizens of the most effective means of defending themselves. Carrying a handgun in public may not be for everyone, but it is a right that government ought to respect.

Introduction

Ten years ago this month, a controversial "concealed- carry" law went into effect in the state of Florida. In a sharp break from the conventional wisdom of the time, that law allowed adult citizens to carry concealed firearms in public. Many people feared the law would quickly lead to disaster. Blood would literally be running in the streets as citizens shot at one another over everything from fender benders to impolite behavior. Now, 10 years later, it is safe to say that those dire predictions were completely unfounded. Indeed, the debate over concealed-carry laws now centers on the extent to which those laws can actually *reduce* the crime rate.

To the shock and dismay of gun control proponents, concealed-carry reform has proven to be wildly popular among state lawmakers. Since Florida launched its experiment with concealed-carry in October 1987, 23 states have enacted similar laws, with positive results. [1]

Prior to 1987, almost every state in America either prohibited the carrying of concealed handguns or permitted concealed-carry under a licensing system that granted government officials broad discretionary power over the decision to grant a permit. The key feature of the new concealed-carry laws is that the issuing authority--usually a sheriff or the chief of police--*must* grant the permit as soon as a citizen can satisfy specific and objective licensing criteria. It is for that reason that those reforms are often referred to as "shall-issue" concealed-carry laws.

After a brief review of the history of concealed-carry laws and handgun licensing, this study will compare and contrast the discretionary permitting system with the new, "shall-issue" licensing regime. The study will then examine and refute the most common objections that have been lodged against the right of an adult citizen to carry a handgun in public. It is the thesis of this study that citizens have the right to defend themselves against criminal attack--and that the last thing government ought to be doing is stripping its citizens of the most effective means by which they can defend themselves. Carrying a handgun in public may not be for everyone, but it is a right that government ought to respect.

A Brief History of Firearms Regulation

In order to get some perspective on the concealed-carry debate, it will be useful to review the history of firearms regulation in the United States. Three historical observations are particularly relevant for the purposes of this study. First, firearms regulation has traditionally been a matter of state law. Second, while some states have had laws prohibiting the concealed-carry of weapons since the Civil War, it was, at the time those prohibitions were enacted, perfectly legal to carry a gun openly in public. In fact, it is still legal today, if not socially acceptable, to carry a gun openly in public in some states. Third, during the 20th century, most states adhered to a liberal policy concerning the acquisition or *ownership* of firearms but adopted strict rules concerning the *carrying* of concealed weapons in public.

The "Ignoble Act" of Carrying Concealed Weapons

There appears to have been no general statutory restrictions on the ability of citizens to carry arms in the American colonies (excluding, of course, the attempts of the English to disarm the colonists immediately preceding the American Revolution). Nor can one find any examples of general statutory restrictions of, or prohibitions against, the carrying of arms, either openly or concealed, in the early American states. That absence of restrictions corresponds perfectly to the historical fact that our forebears understood that they had an individual right to possess and carry arms for defense, subject to the common law restriction, noted by Sir William Blackstone, that one could not carry such arms as were apt to terrify the people or make an affray of the peace.

Restrictions on the concealed-carry of weapons first appeared in the South in the years preceding the Civil War; Kentucky's were the first in 1813. Few persons had revolvers in those days, and the most feared of concealed weapons was the Bowie knife, not the handgun. [2] By 1850 most Southern states, and Indiana,

had prohibited the concealed-carry of weapons, including firearms.

Clayton Cramer, who has made an extensive historical review of case law relating to the right to keep and bear arms under the Second Amendment and state constitutional guarantees, notes that the common characteristic of the states adopting those laws was slavery. The sole exception, Indiana, also serves to prove the point, because it was largely settled by Southerners with strong Southern sympathies. The 1850 Indiana constitution, Cramer points out, prohibited both slavery and free blacks from entering the state. Cramer suggests that the most likely explanation for concealed-carry laws is, therefore, to be found in the problem of race. [3]

Law professors Robert Cottrol and Raymond Diamond suggest that the desire to control blacks was the principal, or at least a significant, reason for the Southern gun control laws in the years preceding the Civil War. [4]

While that may explain the laws that licensed blacks to carry or own guns or prohibited them from carrying or owning arms, it does not explain why the Southern states took the additional step of restricting whites from carrying arms concealed. The answer, according to Cramer, may lie in the abolition movement.

The problem of mob violence directed against abolitionists was sufficiently widespread during the 1830s, when the concealed weapons laws became increasingly common in the South, that President Martin Van Buren's Inaugural Address, delivered in March of 1837, addressed the problem twice.

In the South, where slaveholders were overwhelmingly in control, laws to protect attacking mobs from the unfair advantage of abolitionists carrying concealed weapons would not be surprising. . . . In Northern states, where slaveholders had little direct influence on state governments, the need to keep abolitionists in fear might have been less obvious. . . .

The most obvious connection to prohibition of concealed carry of arms in the South is that most of these laws were adopted in the years immediately following Nat Turner's 1831 rebellion. While free blacks were banned from carrying weapons (openly or concealed) in statutes different from those that banned concealed carry, the curious grouping in geography and time of these laws suggests that fear of slave revolt, or of armed abolitionists, or both, provoked these laws. A detailed history of each state's concealed weapons statutes is . . . necessary to resolve the question of why these laws appeared almost exclusively in slave states during the antebellum period. [5]

While fear of slave revolts or armed abolitionists may have provided the underlying motivation for those laws, it was not, for obvious reasons, the stated justification for them. The Southern states that outlawed concealed-carry justified such laws, in theory, as a means of restricting the conduct of criminals, while leaving the law-abiding alone, free to carry honestly. In the words of the Louisiana Supreme Court, laws prohibiting the concealed-carry of weapons

became absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon

unsuspecting persons. [Such laws] interfered with no man's right to carry arms . . . "in full open view," which places men upon an equality. This [open-carry] is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to manly and noble defense of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassination. [6]

Thus, it is important to understand the background against which those prohibitions were upheld by the courts. The prohibition (as opposed to the licensing) of concealed-carry developed in states that generally did not restrict the open-carry of firearms, at least by whites. (Numerous Southern states outlawed either ownership or carrying of firearms by slaves and freed black men who, it was feared, would lead slave revolts.) Indeed, in some states it is still legal to carry firearms openly in public. Unlicensed open-carry is still the law in Virginia, Nevada, and Maine, for example.

At the time the restrictions were enacted, then, people were generally free to carry firearms openly. Honest men engaged in lawful behavior had no reason to take pains to hide their weapons, for weapons were a part of everyday life. In a society in which open-carry was the norm, the natural presumption was that one was unarmed if his weapon was not in plain sight. In that context, concealment was regarded as an act of deception, an ignoble act designed to gain unfair or surprise advantage over others. Open-carry placed men in a position of equality with respect to one another by giving all fair warning whether any was armed. Since those who carried concealed weapons sought a deadly, unfair advantage, criminal or malicious intent was effectively presumed.

States Assert Control over the Ownership of Handguns

Licensing systems regulating the concealed-carry of firearms appear to have developed in the Northeast and were put in place in most states in the years 1901-40. In 1911 New York enacted the Sullivan Law, which was to become the model for restricting the ownership and carrying of handguns. [7] The law outlawed handgun *ownership* without a police permit and was modeled after European firearms laws that were considered to be successful in dealing with political dissidents, anarchists, and labor agitators.

By 1934 Sullivan-type permit requirements for buying a handgun had been adopted by Arkansas, Michigan, Missouri, New Jersey, North Carolina, Hawaii, and Oregon. [8] National and local business associations were among the most vocal lobbyists in support of the Sullivan Law, and laws in other states modeled on it, emphasizing the increasing incidence of armed robbery. At the time, armed robbery was not merely an issue of public safety; the crime had distinct political connotations:

Armed robbery was associated in the public mind with foreign immigrants, not just because they were considered naturally lazy and inclined to violent acquisitiveness, but because armed robbery was a recognized tactic of the "foreign-born anarchists." In America from at least the turn of the century, and in Europe from the 1870s on, revolutionaries used bank and commercial robberies as a means of gathering funds to finance their underground activities. The businessmen's association could point out that Sacco and Vanzetti were originally apprehended for violation of Massachusetts' new handgun law, and that they were executed for murder committed in the

course of several armed robberies of which they were convicted. [9]

The Sullivan Law introduced two criteria that were to become widely adopted, with some variation, in most states throughout the 1920s and early 1930s. Handguns could not be acquired without a permit issued only to persons who had both "good moral character" and "good cause" to carry a handgun. That approach apparently was readily appealing to legislators in other states precisely because it seemed such a well-devised means of ensuring that the "wrong" sort of people did not obtain firearms, and could not carry them. The statute was not on its face discriminatory on grounds of race, religion, national origin, or political beliefs. Instead, broad, uncircumscribed discretion granted in self-validating yet empty licensing criteria ("good moral character," "good cause") enabled the police or other licensing authorities to target specific groups deemed the source of violent crime and political conflict: Italians, Jews, or the foreign-born (misperceived as naturally possessing criminal propensities or having little attachment to traditional American institutions and values), African-Americans, labor agitators, and those suspected of "anarcho-syndicalism" by virtue of their political beliefs, associational activities, or country of origin.

While Northern states may have favored the discretionary licensing laws as a means of ensuring that Italians, Jews, labor agitators, or others with radical political beliefs did not obtain arms, Southern states favored such laws because the broad discretion permitted maneuvering room to deny permits to African-Americans. [10]

The racist motivation for, and racist application of, such laws was noted in a 1941 court case involving Florida's old discretionary licensing system: "The statute was never intended to be applied to the white population and in practice has never been so applied. . . . [The] Act was passed for the purpose of disarming the negro laborers and to thereby reduce the [number of] unlawful homicides . . . and to give the white citizens in sparsely settled areas a better feeling of security. . . . There has never been, within my knowledge, any effort to enforce the provisions of this statute as to white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested. [11]

The Great Compromise: Liberal Rules on Gun Ownership, Strict Rules on Carrying Guns in Public

Faced with the threat of a growing number of states adopting Sullivan Law type prohibitions on the acquisition (and thus ownership) of handguns without police permits, the National Rifle Association endorsed and supported a compromise program to protect gun ownership while reducing crime associated with the carrying of handguns--the Uniform Firearms Act, also known as the Uniform Revolver Act.

The origin of the Uniform Revolver Act is somewhat unclear. Some sources report that the model act was drafted by a former president of the NRA, Karl T. Frederick, or by the NRA itself, and endorsed by the National Conference of Commissioners on Uniform State Laws in 1925. [12] Another source indicates "that it was the product of a committee appointed by the National Conference of Commissioners on Uniform State Laws in 1923, at the urging of the United States Revolver Association," and adopted in final form in 1930. [13]

Regardless, the model act avoided the Sullivan Law's requirement of a police permit to *acquire* a handgun but essentially adopted its criteria for purposes of licensing the *carrying* of handguns.

Concealed-carry without a license was made illegal (usually a misdemeanor). The licensing

authority--typically the sheriff, the chief of police, or a local court--was granted authority to issue permits to persons who both had "good moral character" and satisfied some needs-based requirement, such as having "good cause," or demonstrating a "need" to carry a handgun. The law was adopted in 1923 by California, North Dakota, and New Hampshire. By 1940 it had been adopted by virtually every state, including several that had previously adopted (but now repealed) Sullivan-type permit systems. [14] Essentially, then, it is the system established by the Uniform Revolver Act, with its twin requirements of demonstrating good character and some need to carry arms, that has been the focus of the recent shall-issue carry reforms, and it is that system that continues in the 15 states that still have discretionary licensing systems in place.

The point of this brief historical review is not to argue that the discretionary licensing system ultimately created by the Uniform Revolver Act is inherently racist, discriminatory on the basis of national origin, anti-Semitic, xenophobic, or illiberal because formed during the social conflicts of the labor movement, anarcho-syndicalism, massive immigration from Central and Eastern Europe, and racial strife. It is not. The point is that the twin criteria, "good moral character" and "need" or "good cause," were favored precisely because they were vague enough to ensure that only the "right" sort of people could carry arms, however conceived from age to age, or region to region. While self-justifying and apparently even-handed on the surface, the criteria are so broad, undefined, and devoid of any objective standards that they pose no obstacle to granting or withholding licenses in a highly discriminatory, prejudicial, arbitrary, or political manner. The history of the laws regulating the carrying of firearms also should alert us to the manner in which gun control laws embody the political and social fears of their time and the often unconscious class and social presumptions underlying those laws, easily justified and made antiseptic when discussed only in terms of the abstract concern for "public safety." [15]

The Arbitrary Nature of Discretionary Licensing

The most serious problem with discretionary licensing systems is the broad discretionary power that is wielded by government officials. Historically, as discussed above, the problems have been discriminatory application of those laws based on race, national origin, or political activities. The contemporary problems with those laws, however, tend to be (a) discrimination based on population density; (b) class discrimination; (c) arbitrary, inconsistent, and irrational application of the law; and (d) favoritism or corruption.

The operative language of the statutes in the jurisdictions that continue to use discretionary systems is essentially a variant of the Uniform Revolver Act requirements of "good moral character" and a "need" or "good cause." The arbitrary nature of the discretion granted to licensing authorities is apparent from the language of the state laws that maintain those systems. Here are a few examples:

- California: The licensing authority "may issue" a permit "upon proof that the applicant is of good moral character," and that "good cause" exists. [16]
- Colorado: The licensing authority "may issue" a permit following a background check to

determine "if the applicant would be a danger to others or to himself or herself." [17]

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New York: The licensing authority "shall issue" a permit if the applicant is of "good moral character," "no good cause exists for the denial of the license," and "proper cause" exists for the issuance of the license. [18]

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North Dakota: The licensing authority "shall issue" a permit if the applicant "has the written approval . . . from the sheriff of the applicant's county and, if the city has one, the chief of police or a designee of the city." [19]

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Rhode Island: The licensing authority "shall issue" a permit if the applicant "has good reason to fear injury to his or her person or property, or has any other proper reason for carrying," and is a "suitable person" to be licensed. [20]

Before examining the evidence of how discretionary licensing systems have actually operated, it will be useful to note some of the characteristics of those laws that so readily lend themselves to abuse. First, although some of the statutes provide that the licensing authority "shall issue" the permit, it is likely to make little practical difference in the application of the law because the licensing criteria are sufficiently undefined or vague to provide ample room to deny issuance of a permit. Statutes that provide that the licensing authority "may" issue permits to appropriate persons nevertheless provide *additional*, undefined discretion by suggesting that the criteria listed in the licensing statute are by no means exhaustive or determinative--other reasons, unstated, may be found by the licensor to deny the permit.

Second, the applicant must bear the burden of proving to the licensing authority's satisfaction that he has the requisite "moral character" and "justifiable need" or other "proper cause" to carry a firearm. As a practical matter, therefore, if the application for a permit is denied, even arbitrarily, the applicant's only remedy is to appeal to the courts for review. Such a procedure imposes significant cost and time burdens on the applicant for a permit to carry firearms--effectively precluding the acquisition of permits by the poor, by elderly pensioners, and by anyone else whose discretionary income does not permit a gamble on the court system.

Third, the fact that the statutes limit permits to persons who have "good reason to fear injury," "justifiable need," "proper cause," or similar qualifications gives short shrift to the general risk that each person faces simply by living in a society where predatory criminals roam about freely. Implicit in the needs-based language of discretionary statutes is the notion that the privilege of carrying arms is a function of the risk of criminal victimization: that people who, because of their circumstance, face an unusually high risk of criminal victimization and are in some sense "natural" targets of criminal assault or special targets of opportunity have a justifiable "need" to carry arms; the rest of the populace, who face only an "ordinary" risk, is not justified in wanting to carry arms to defend itself. Not only is there no reason to believe that those who face an unusual risk of criminal victimization are inherently more trustworthy or competent with a firearm than those who do not, but the implicit suggestion that some lives--because of wealth, fame,

unique job requirements, or the preferences of criminals--are somehow more worth protecting than others is morally repugnant and indefensible.

In essence, "need"-based or "cause"-based licensing systems imply that one's right to life is a function of one's risk of criminal victimization. Those for whom the risk is greatest have a right to life (i.e., to preserve that life by using a gun to defend one's self against unlawful deadly force). Those whose risk is low or ordinary are handicapped by the law--stripped of the right of self-defense. Despite the inherent, bizarre nature of the notion that one's right to life fades in and out of existence depending on fluctuations in the rate of violent crime or the preferences of criminals, one nevertheless hears the idea expressed in prestigious circles. Columnist Charles Krauthammer, for example, has observed that Americans would not be willing to accept strict gun control, including the banning of handguns, until the government could demonstrate that it could keep crime at a low level. [21] Krauthammer's claim implies that people will or should give up the right to defend their lives (a right, incidentally, that Hobbes, Locke, and the Founders described as "inalienable" and that the Declaration of Independence described as a right governments were instituted to secure) just as soon as government demonstrates its success at keeping the overall risk of criminal victimization low.

A review of how discretionary licensing systems have in fact been administered confounds any attempt to find a coherent or consistent application of the laws. In fact, one of the most respected American legal encyclopedias, *American Law Reports*, states simply that the results of cases that have specifically addressed the issue of who is entitled to carry firearms "are not necessarily reconcilable, differing results having been reached as to applications offering similar evidence or allegations concerning the kinds of dangers to which the applicants claimed they had been subjected, and from which they allegedly required means of personal protection." [22]

In other words, the laws, embodying similar concepts, are applied as those in charge of administering and interpreting them see fit on a case-by-case basis.

In Denver, Police Chief Ari Zavaras granted only 45 permits in a city of one-half million people. [23] The detective who administered Zavaras's permit program explained that only applicants with a "true and compelling need" could be granted permits. "Just because you fear for your life is not a compelling reason to have a permit," he said. [24]

Among those denied a permit was Denver talk-show host Alan Berg, who had received death threats from, and was later killed by, white supremacists.

From 1984 to 1992 the City of Los Angeles refused to issue a single permit. In a city of 3.5 million people, over a period of nine years, not one applicant was found to have both "good moral character" and "good cause" to carry a handgun for protection. [25] As of 1992 only about 400 concealed-carry permits were issued to Los Angeles County's population of 8.86 million (0.005 percent). As of 1994, prior to Virginia's adoption of a shall-issue licensing system, only 10 persons of Fairfax County's population of over 850,000 (0.001 percent) had permits. [26]

By comparison, as of 1994 two other states with discretionary licensing systems, Connecticut, with a population of about 3.28 million, and Indiana, with a population of about 5.54 million, had approximately 116,000 and 221,000 outstanding permits to carry firearms, respectively (3.54 percent and 3.99 percent, respectively).

To provide further perspective, contrast those numbers with the numbers in two states that had shall-issue licensing statutes. In 1992 Pennsylvania, with a population of about 12 million, had approximately 362,000 outstanding permits to carry firearms (3.02 percent), and Washington, with a population of about 4.86 million, had approximately 242,000 outstanding permits to carry firearms (4.98 percent). The Los Angeles City homicide rate around that time was approximately twice as high as that of Indianapolis and three times as high as that of Pittsburgh or Seattle. [27] The most dangerous city issued the fewest permits per capita.

It is hard to reconcile those wildly contrasting results with any uniform principle rationally related to (a) ensuring that law-abiding citizens may carry in public a means with which to protect themselves from deadly criminal force while (b) providing reasonable assurance to the public at large that those who do so may be reasonably expected to act responsibly, which one would expect ought to be the goal of a rational licensing system.

To the extent that it is possible to find any rule approximately describing those results, it is that permits are generally freely issued to law-abiding citizens in rural areas or areas of relatively low population density, while they are denied as a matter of course to persons who inhabit cities and metropolitan suburbs. There is a plausible sociological explanation for this state of affairs. Guns are not feared objects in rural areas. Crime is lower, guns are more a part of everyday life and have a "positive image," being associated predominantly with their sporting and recreational use. Everybody knows everybody, everybody knows many people who have guns, and most people do not think that their friends, neighbors, and relatives are likely to go on shooting sprees or shoot others in a moment of anger. By contrast, in cities, guns are associated in the popular mind mostly with criminal violence and are therefore evil objects to be despised. No one knows anyone, no one trusts anyone, and everyone knows that everyone else is a potential powderkeg waiting to explode. It is perhaps not surprising that if we enact a law that grants authority to issue permits to carry firearms on a discretionary basis, we will obtain results that mirror the different sociological perceptions of those who live in urban and rural areas, rural down-homeness and urban paranoia. Whether such perceptions serve well as a basis for providing equal protection of the law is another matter entirely.

Within metropolitan areas, the issuance of permits under discretionary systems depends on factors unrelated to any simple determination of whether the applicant can be reasonably expected to act responsibly. The list of permit holders in New York City, for example, strongly suggests that the Sullivan Law has been applied on the basis of wealth, celebrity status, political influence, and favoritism. Licensees have included and include such luminaries as Eleanor Roosevelt, Lyman Bloomingdale, Henry Cabot Lodge, Nelson Rockefeller, Laurence Rockefeller, Mayor John Lindsay, *New York Times* publisher Arthur Ochs Sulzberger, William F. Buckley Jr., Donald Trump, Leland DuPont, publisher Michael Korda, Arthur Godfrey, Sammy Davis Jr., Robert Goulet, Sid Caesar, Bill Cosby, Joan Rivers, and Howard Stern. Other licensees have included several major slumlords, a Teamsters Union boss who was a defendant in a major racketeering suit, and a restaurateur with ties to organized crime. [28] Meanwhile, taxi drivers, who face a high risk of robbery, "are denied gun permits because they carry less than \$2,000 in cash," [29] and city courts have ruled that ordinary citizens and store owners may not receive permits to carry firearms because they have no greater need for protection than does anyone else in the city.

A federal district court in California upheld similar class-based discrimination in Los Angeles County's policy of issuing permits to carry firearms almost entirely to retired police officers and celebrities, "because famous persons and public figures are often subjected to threats of bodily harm." [30] Thus, if you are famous enough to attract death threats, you may carry an effective means with which to defend your life. If you are not famous and the criminals do not extend the courtesy of first warning you that you may be victimized but simply surprise you one day with robbery, rape, or attempted murder, then you do not deserve the right to protect yourself with a handgun. Special treatment for special people.

There is also evidence to suggest that the discretionary systems invite favoritism and possibly corruption. On January 22, 1996, the New York City Police Department of Internal Affairs removed Deputy Inspector Henry Krantz, a 30-year veteran, from the pistol licensing division, removed licensing records, and took over administration of the office because he allegedly favored certain applicants and afforded preferential treatment in the grant of licenses and because he allegedly wrongfully directed other cops to grant favors. [31]

The point of these comparisons and observations is that the discretionary licensing systems invite and produce discrimination on grounds of class, race, religion, country of origin, fame, wealth, or political influence in a manner that has no rational correlation with risk of criminal victimization (assuming discrimination on the basis of victimization risk were proper or moral to begin with) or with trustworthiness or competence with a firearm. Such systems invite, and in fact produce, wholly inconsistent, arbitrary, and irrational results. Some opponents of shall-issue licensing laws criticize the inadequacy of training requirements in the shall-issue laws, but nothing in the discretionary systems ensures that celebrities or other permit holders will get any firearms training.

Opponents of shall-issue licensing laws often describe them as reforms that "liberalize" the laws permitting the carrying of arms, as if we were loosening the standards. In fact, the discretionary standards are not standards, for they do not produce standard results. As the preceding comparison of the number of permits issued in Connecticut and Indiana (discretionary-issuance states) with the number issued in Pennsylvania (a shall-issue state) indicates, there is nothing inherent in the discretionary licensing systems that guarantees that fewer permits will be issued per capita than under shall-issue systems (3.54 percent in Connecticut, 3.99 percent in Indiana, and 3.02 percent in Pennsylvania). [32] If you provide no defined rule to guide conduct, you cannot expect to obtain results that conform to any particular standard. [33] In short, the results appear to depend entirely on the subjective interpretations and whims of those administering the law. Regardless of one's opinion about whether law-abiding citizens should be permitted to carry arms, the discretionary licensing systems deserve to be repealed and replaced. They are intolerably arbitrary.

The Objective Nature of Shall-Issue Licensing

Critics of shall-issue licensing laws decry the fact that "anyone" or "everyone" can carry a gun. That is nothing but hyperbolic rhetoric. While the licensing criteria generally permit nearly all law-abiding adults to carry guns, they manifestly do not include just "anyone" or "everyone." In general, in the 25 states that have enacted shall-issue licensing systems, an applicant will be issued a permit to carry a concealed weapon if he or she

- is at least 21 years of age;
- is a resident of the state;
- provides fingerprints and submits to a criminal and mental health background check;
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- has not been convicted of a felony or any crime punishable by imprisonment for more than one year;
- is not a fugitive from justice;
- is not an illegal alien;
- is not an unlawful user of or addicted to any controlled substance;
- has not been adjudicated mentally incompetent or been committed to a mental institution;
- has not been dishonorably discharged from the armed services;
- is not subject to a restraining or protection order;
- has not been convicted of a misdemeanor crime of domestic violence;
-
- is not awaiting trial for, and does not have any charges pending for, a crime punishable by more than one year imprisonment;
- has completed a firearms safety or training course; and
- pays a licensing fee.

The term of the license varies from two to five years, and most states (60 percent) have adopted a term of four years. Fees to acquire a permit, exclusive of training course costs and fingerprint processing fees (which several states assess separately), vary from a minimum of \$6 (South Dakota) to \$140 (Texas), with the majority of states charging under \$100. Variations in licensing criteria exist from state to state, and some states impose more rigorous requirements than others. The requirements listed above are generally the minimum requirements present in most of the shall-issue licensing systems now in place. [Table 1](#) shows some of the specific criteria for each state.

There are two important differences between the discretionary licensing system and the shall-issue licensing system. First, under the shall-issue system, the legal presumption is on the side of the individual citizen. That is, the government must come forward with a reason why a citizen should not be allowed to carry a concealed weapon. Under discretionary licensing, the legal presumption is on the side of the government. That is, the citizen has to come forward with a reason why he should be permitted to carry a

concealed weapon. The second difference is that, whereas the eligibility requirements under discretionary licensing are vague and undefined, the eligibility criteria under a shall-issue system are objectively verifiable, as discussed below.

Disqualifications for Criminal Conduct

Most states expressly provide that anyone who is ineligible to possess a handgun under federal or state law may not obtain a permit. Federal law outlaws possession by anyone (a) who has been convicted of a crime punishable by imprisonment for a term exceeding one year, (b) who is a fugitive from justice, (c) who is an unlawful user of or addicted to any controlled substance, (d) who has been adjudicated a "mental defective" or been committed to a mental institution, (e) who is an illegal alien, (f) who was dishonorably discharged from the armed services, (g) who has renounced his U.S. citizenship, (h) who is subject to certain types of restraining orders, or (i) who has been convicted of a misdemeanor crime of domestic violence. [34]

Actually, it makes little difference whether the licensing statute refers to or restates those disqualifications. So long as the state requires a criminal background check, the check will disclose whether the applicant who desires to carry a firearm is permitted to possess a firearm under federal or state law. If not, obviously no permit may issue, and the applicant's possession of a weapon would be in violation of federal or state law. Further, since permit holders are registered, that is, the application information is maintained in the state's criminal records, the data provide a ready means of identifying and confiscating the weapons of permit holders who commit a crime postissuance or otherwise become disqualified (e.g., by drug use or mental illness). Critics of laws liberalizing the ability of citizens to carry firearms in public often ignore the fact that the new licensing statutes provide an ongoing way of policing compliance with federal and state laws regarding firearm ownership.

Conversely, the registration aspect of those laws, with its attendant specter of the possibility of confiscation, may be one of the reasons why only a fraction of gun owners have applied for permits. The unlicensed carrying of a concealed handgun is generally a misdemeanor, not a felony. Some gun owners may prefer to take their chances with unlicensed carrying of a concealed firearm, presuming that so long as they are engaged in lawful activity, they may rely on their Fourth Amendment rights against unreasonable searches and seizures to avoid detection by the police.

Many states go beyond the criteria relating to ineligibility to own or possess a firearm. Typically, they do so in three ways. First, they provide either that permits may not be issued, or that the licensing authority has the discretion to deny the issuance of permits, to persons who have committed one or more crimes of violence constituting a misdemeanor within a certain time period, such as three years, prior to the date of the application.

Second, because the minimum age is generally 21, they provide disqualifications for adjudications of juvenile delinquency if the crime would have been a felony if committed by an adult, or if the crime was one of violence, would have been a misdemeanor and was committed within a certain period before the application was made.

Finally, in apparent recognition of the many means of sentencing criminals in a system that has insufficient resources to convict and jail every guilty person, the licensing statutes disqualify persons who have had adjudication of guilt withheld or imposition of sentence deferred or suspended on any felony unless a certain specified time, such as three years, has elapsed since the probation period or other conditions set by the court have been fulfilled.

Only one state, Texas, uses the licensing occasion to impose requirements not related to matters probative of whether the applicant may pose a danger to others if permitted to carry his weapon. Texas provides that the license may not be granted if the applicant is delinquent with child support payments, taxes, or has defaulted on a student loan. Whether other states will decide to use permits as a tool for social engineering remains to be seen.

Disqualifications for Mental Incapacity

Nearly all states that have enacted shall-issue licensing laws have provided that an adjudication of mental incompetency, mental deficiency, or mental illness disqualifies the applicant for a permit. That requirement is in accord with federal law relating to eligibility to own firearms. Many, if not most, state statutes, however, also provide that voluntary or involuntary commitment to a mental health institution within a specified time period preceding the date of application, such as three or five years, also disqualifies the applicant. [35]

At least one state, Oklahoma, makes attempted suicide grounds for denial. Texas goes furthest by providing that a prior diagnosis by a qualified, licensed physician of depression, manic depression, or posttraumatic stress syndrome disqualifies the applicant unless the applicant can present a certificate from a licensed physician attesting that he no longer suffers from that disability and is not on medication for that disability.

Several of the licensing laws specifically provide that the application constitutes a waiver of confidentiality or privacy laws granting the licensing authority access to mental health records at public and, in some cases, private health and drug treatment institutions. The waiver is not circumscribed in purpose or time and is seemingly permanent. The apparently permanent grant to the police of roving access to personal health records may be another reason why many individuals do not choose to apply for permits.

Disqualifications Relating to Alcohol and Drugs

Nearly all states provide that use of marijuana, narcotic drugs, or controlled substances disqualifies the applicant for a permit to carry a concealed weapon. Again, that minimum is essentially provided by federal law. Many, if not most, states go beyond the minimum in various ways. Generally, the laws will provide one or more of the following: (a) that being committed to an alcohol or drug treatment facility within a specified time period preceding the date of the application disqualifies the applicant; (b) that being convicted of a misdemeanor involving marijuana or other drugs within a specified time period (for example, five years) before the date of application disqualifies the applicant; or (c) that being convicted of one or more driving-under-the-influence offenses within a specified time period (for example, five years) preceding the date of application disqualifies the applicant. [36] A few states, such as Oregon and South

Carolina, have no express disqualifications for alcohol or drug use. Since those states run background checks, however, they automatically give effect to the minimum federal restrictions.

Training Requirements

Eighteen of the 25 states (72 percent) that have enacted shall-issue licensing laws require the applicant to have taken some training course. With the sole exception of New Hampshire, every state that has enacted a shall-issue licensing system since 1991 has required some sort of training. The statutory requirements are generally phrased in terms of the applicant's being required to demonstrate "competence," "familiarity" or "proficiency" with a handgun by providing the government with a certificate from a qualified or licensed firearms trainer or an approved training course. The statutes generally specify the types of courses that are approved so that the training course requirements are not left entirely to the discretion of the police. While some licensing laws require or authorize the issuing authority to offer training courses, all states with training requirements permit the requirement to be satisfied by privately offered courses.

In general, the training course specifications fall into two categories: some states simply specify the acceptable types of courses, without specifying content requirements, and other states specify course content requirements. States that simply specify course type generally permit the training requirement to be satisfied by several or all of the following:

- completion of a hunter education or hunter safety course;
- completion of any NRA firearms safety or training course, including its personal protection program;
- completion of any firearms safety or training course or class available to the general public offered by law enforcement, junior college, private or public institution, organization, or other firearms training school, using instructors certified by the National Rifle Association, by the licensing authority or by other specified divisions of the state; or
- firearms training received in the armed services.

The purpose of the training requirement, presumably, is to provide reasonable assurance to society at large that permit holders know how to safely handle a firearm, possess minimum shooting proficiency, and are familiar with the state's laws relating to the justifiable use of lethal force in self-defense, much as a driver's license assures society that those driving on public roads have a minimum skill in handling their vehicles and a minimum knowledge of traffic rules and regulations. Judging by that standard, [37] there are three potential problems with the training requirements that specify only course type, without regard to content:

- There is no specified requirement that the applicant actually demonstrate safe handling of handguns and shooting proficiency at a firing range (as distinguished from demonstrating an understanding of the principles of such behavior, by written test, for example).

- No objective specification of minimum shooting proficiency is provided.

-

There is no specified requirement that instruction be given in the state's law regarding the justifiable (or excusable) use of lethal force in self-defense.

Note that those omissions are only a *potential*

problem because some courses might actually address those issues, depending on the instructor. Since the requirements are not specified in the law, however, there is no uniform standard that the public can look to for assurance that permit holders possess certain minimum skills and knowledge.

For example, firearms training in the military would not necessarily involve education in a state's laws relating to the justifiable use of lethal force, although it would obviously entail training in the safe handling of weapons and range training. Similarly, hunter education courses are generally taken by boys and girls in their midteens in order to obtain a hunting license. Since most hunting is done with rifles or shotguns, such training will involve knowledge of the safe handling of loaded weapons, but it will not involve instruction in a state's self-defense laws. Nor do such programs necessarily involve range time, even with a rifle or shotgun.

Arguably, therefore, states that permit hunter education courses and military training to satisfy the training requirement have the weakest training standards. On the other hand, people who have been hunting for a number of years or who have served in the military arguably have more experience safely carrying loaded weapons and firing their weapons under some stress or pressure (even when hunting, for example, the shot must be fired quickly but accurately, for the deer, rabbit, or whatever will soon be gone or move behind obstructions). The selection of this standard is not, therefore, per se irrational; its principal weakness is the lack of education in the state's laws regarding the use of lethal force in self-defense.

Five states, namely, Alaska, Arizona, Oklahoma, Texas, and Utah, specify content requirements for training courses. Each of those states requires some basic knowledge of the laws governing the use of lethal force in self-defense, but only three of the five expressly require range time. (Again, depending on the instructor, licensees may have to demonstrate their skills in firing and handling a gun at a range; the statute simply does not specify it).

Only one state, Alaska, specifies an objective or specified measure of minimum shooting proficiency. Alaska provides that the licensing authority will approve handgun training courses, including the NRA's personal protection course, that test the applicant's (a) knowledge of Alaska law relating to firearms and the use of deadly force, (b) familiarity with the basic concepts of the safe and responsible use of handguns, (c) knowledge of self-defense principles, and (d) physical competence with each type of handgun the applicant wishes to carry under the permit and the maximum caliber for each type the applicant wishes to carry under the permit. "Competence with a handgun" is further defined as meaning "the ability to place in a life size silhouette target (a) seven out of 10 shots at seven yards; (b) six out of 10 shots at 15 yards." Unlike many police firearms proficiency tests, the Alaska statute imposes no time restriction (e.g., 30 seconds) within which that must be accomplished or limits on the number of "tries" one can make during the test.

Arizona provides that the training course must be at least 16 hours in length and address the following: "legal issues relating to the use of deadly force; weapon care and management; mental conditioning for the use of deadly force; safe handling and storage of weapons; marksmanship; judgmental shooting." Oklahoma provides that the course "shall be designed and conducted in such a manner that the course can be reasonably completed . . . within an eight-hour period." The course content must include "a safety inspection of the firearm to be used by the applicant in the training course; instruction on pistol handling, safety and storage, dynamics of ammunition and firing; methods or positions for firing a pistol; information about the criminal provisions of the Oklahoma law relating to firearms; the requirements of the [licensing statute] . . . ; self-defense and use of appropriate force; a practice shooting session; and a familiarization course."

Utah provides that the training course must include instruction in "(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and (ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of deadly force, transportation and concealment."

The Case for Shall-Issue Licensing Systems

The case for shall-issue licensing is based on three primary arguments: (a) the right of self-defense, (b) a social utility argument that those laws deter crime, and (c) the constitutional right to "bear" arms without governmental interference. In addition, the available evidence, after 10 years' experience in 25 states, indicates that permit holders do not create law enforcement problems, that crimes committed by permit holders involving firearms are the very rare exception, and that the predictions by critics that "Dodge City" would return and that "blood will run in the streets" have decidedly not come true.

The Right of Self-Defense

The argument or justification made by those who seek to secure the right to carry firearms through shall-issue licensing laws, as opposed to a privilege granted at the discretion of the police, sheriff, court, or other state authority, is based on a simple principle: the right of self-defense. That is, the right to repel a criminal assault that threatens imminent danger of death or grievous bodily injury. [38] Every state recognizes the right of its citizens to use lethal force in self-defense. Self-defense, so defined, is not lawlessness; it is in accord with the law. It is, in fact, the same law that the police rely on when they use lethal force. That right belongs to each person, not merely those who are deemed to have some special or extraordinary need as determined by the police or some other governmental authority.

Advocates of shall-issue licensing laws note some salient realities. Approximately 87 percent of violent crimes occur outside the home. [39]

Even assuming that the victim can "see it coming" and has the time and ability to call the police, the police can get to the scene within five minutes only about 28 percent of the time. [40] The idea that police protection is a service that people can summon in a timely fashion is a notion that is mocked by gun owners, who love to recite the challenge, "Call for a cop, call for an ambulance, and call for a pizza. See who shows up first."

Criminals choose the time and place of their assaults, and they take pains to ensure that their crimes occur

when the police are not around. Criminals choose their victims, and they take pains to choose those over whom they believe they have an advantage, be it in the possession of a weapon, youth, strength, or number. It is in the nature of things, therefore, that the victim will almost certainly be alone and be at a disadvantage relative to his assailant. The encounter will not be on equal terms; the fight will not be "fair." Without a weapon, an "equalizer" to overcome those natural disadvantages, it is unlikely that the victim will have an effective means of defending himself. Without a weapon, it is very likely that whether the victim lives or is maimed or injured will depend largely or entirely on the mercy of his assailant.

The discretionary licensing laws that are currently on the books succeed only in disarming those who respect the law. Perversely, by ensuring that those who abide by the law will not carry weapons outside the home, the law aids and abets criminals by ensuring that they will find easy victims, for unarmed men and women may be assaulted with greater confidence than those who are, or might be, armed.

To make matters worse, while laws deprive citizens of the ability to effectively defend themselves outside the home, thereby placing citizens in the position of having to rely on the police for their protection *in extremis*, it is a settled principle of law throughout the United States that the police have no legal duty to protect any individual citizen from crime. That may come as a surprise to many people, but the principle holds even in cases where the police have been grossly negligent in failing to protect a crime victim. [41] The function and responsibility of the police is to serve solely as a general deterrent, for the benefit of the community as a whole; they are not personal bodyguards. Those who would prohibit the carrying of arms for self-defense thus bear a burden of establishing on what basis and on what moral authority the government, having no obligation to protect any particular individual, deprives particular individuals of the ability--and means--to protect themselves. [42]

The most fundamental justification for concealed-carry laws is the right to life. Each person has a right to life, not just those who have demonstrated some special "need" or "proper cause." Indeed, our Declaration of Independence asserts that governments are instituted to secure the right to life. The right to life of necessity implies the right to maintain or continue one's life by defending it against violent criminal assault. Yet the right to defend one's life is meaningless, or a hollow promise, unless that right also encompasses the right to the means necessary for the effective exercise of that right.

Thus, for example, the fundamental right of free speech would be relatively meaningless if it only encompassed the right to speak one's mind wherever one happened to be standing or to shout one's opinions in a public park to those within listening distance. The right has been rendered meaningful, full-bodied, and effective by protection of the freedom of the press, that is, by protection of the instrumentality by which one in fact exercises the individual right within society.

Since the right to life implies a right to the means to protect that life, the individual's right to his own life necessarily implies a right to keep and bear arms suitable for self-defense. In this place and time, that means a handgun, small enough to be carried at almost all times. The presumption, therefore, of a government that respects its citizens' right to life and self-defense must be that they are permitted to carry arms to protect themselves.

It is a matter for debate whether any licensing system adequately honors that presumption, since all

licensing systems, by definition, are a prior restraint on the exercise of liberty, and a conditional right is not really a right at all but a privilege. However, the licensing system that most accords with this principle is a shall-issue system. Under such a system, the right is subject to reasonable restrictions designed to provide reasonable assurance to the public that those who are granted permits will not be a danger to others. Arguments may be made concerning just what those criteria are, but the fundamental point is that the presumption and reality must be that law-abiding adults have a right to protect themselves from lethal criminal assault with means effective for that purpose, when and where they need to do so, and not just in their homes.

Social Utility

The *Lott-Mustard Study*. With the publication of the Lott-Mustard study, "Crime, Deterrence and Right-to-Carry Concealed Handguns," [43]

advocates of shall-issue licensing systems have significant criminological support for the claim that shall-issue systems save lives, prevent rapes and robberies, and confer benefits that extend well beyond those garnered by the people who are issued the permits. Analyzing crime data from all 3,054 counties in the United States throughout the period 1977-92, Lott and Mustard found that when shall-issue licensing laws went into effect in a county, murders fell by 7.65 percent, rapes fell by 5.2 percent, robberies fell by 2.2 percent, and aggravated assaults fell by 7 percent. In 1992 there were 18,469 murders, 79,272 rapes, 538,368 robberies, and 861,103 aggravated assaults in counties that did not have shall-issue licensing systems. Had those counties had such laws, Lott and Mustard found, there would have been 1,414 fewer murders, 4,177 fewer rapes, 11,898 fewer robberies, and 60,363 fewer aggravated assaults. On the other hand, property crime rates increased 2.7 percent--after the passage of shall-issue laws--so there would have been 247,165 more property crimes. Lott and Mustard conclude that criminals respond to the threat of being shot by victims by substituting less risky, nonconfrontational crimes. The results further showed that, while passage of shall-issue laws resulted in immediate altered violent crime rates, an additional reduction occurred over time, and that for most violent crimes like murder, rape, and aggravated assault, concealed-weapon laws had the greatest deterrent effect in counties with high crime rates.

The results were obtained after taking into account and factoring out the effect of other variables that could account for the reduction in violent crime, such as changes in population, income levels, racial and age breakdown, changes in arrest rates, conviction rates, increased sentencing penalties, and changes in other gun control laws. For example, one of the other conclusions an analysis of the data provided was that waiting periods appear to have no effect on the violent crime rate.

Using a method pioneered by the National Institute of Justice for estimating the economic losses associated with crime--losses from fear, pain, and suffering; lost productivity; property losses; out-of-pocket expenses such as medical bills; and lost quality of life--Lott and Mustard calculate that, had those counties without shall-issue licensing systems had such laws, they would have realized a savings of \$6.2 billion, in 1992 dollars, while the cost of the increase in property crimes would have been \$417 million, resulting in a net savings of \$5.74 billion. More important, the study estimates that the issuance of each additional concealed-carry permit reduces victim losses by up to \$5,000, with the result that "concealed handguns are the most cost-effective method of reducing crime thus far analyzed by economists, providing a higher return than increased law enforcement or incarceration, other private

security devices, or social programs like early educational intervention." [44]

Because of the possibility, often raised by critics of concealed-carry laws, that increased carrying of handguns would result in increases in accidental deaths from firearms, Lott and Mustard also examined the effect of shall-issue laws on the accidental death rate from firearms. Their analysis showed that the accidental handgun death rate rose by about 0.5 percent when shall-issue concealed handgun laws were passed. Because the number of accidental handgun deaths is already low (156 in the United States in 1988), their analysis predicts that implementing shall-issue licensing systems in the states that do not have them would have resulted in less than one (.851) more death.

Similarly, critics of shall-issue licensing laws sometimes argue that passage of those laws will spark an "arms race" among ordinary citizens and criminals, with the result that more criminals will begin carrying guns and be quicker to use them. [45]

Lott and Mustard examined whether criminals were committing more murders with guns in response to the risk that their intended victims might be also be carrying arms. Their analysis showed that passage of shall-issue licensing laws was associated with equal drops in both gun and nongun murders. They report that "carrying concealed handguns appears to make all types of murders relatively less attractive." [46] Apparently, criminals are not overly committed to the sporting notion of a "fair fight"; they are looking for easy prey.

Criticism of Lott-Mustard. Despite its careful research, the Lott-Mustard study is not immune to serious criticism. In December 1996 the Center for the Prevention of Handgun Violence held a forum at the National Press Club in Washington, D.C., to address the Lott-Mustard study. Lott presented the study's findings, and they were criticized by Professors Jens Ludwig of Georgetown University and Daniel Nagin of Carnegie Mellon University. Subsequently, Professors Nagin and Dan A. Black, also of Carnegie Mellon University, have written a paper, "Do Right-to-Carry Laws Deter Violent Crime?" that criticizes the Lott-Mustard study. At the National Press Club forum and in that paper, Ludwig, Black, and Nagin argue that their independent analyses suggest that other, unspecified factors account for the decreases in crime reported by Lott and Mustard and that there is simply no good evidence that concealed-carry laws have *any*

effect on crime--that is, either a good effect or a bad effect. Some of the objections seem well-founded and, pending further analysis, may in fact undercut Lott and Mustard's findings, or prove them wrong.

Ludwig raised several important objections at the National Press Club forum. First, he noted that there was no evidence that more people were carrying concealed weapons after the laws went into effect than before. That is, permit holders may be people who carried guns illegally before the law went into effect. If approximately the same number of persons carried guns before and after the law, it is more difficult to attribute the decline in violent crime rates to the law. [47] The Lott-Mustard study itself points out that problem but does not address it. However, even if the number of persons carrying concealed firearms did not significantly change, it is possible that the law could still account for a decrease in violent crime because the publicity associated with the law serves to notify criminals that citizens may be carrying guns. Such a theory could account, for example, for the fact that, according to the Lott-Mustard study, the violent crime rates appear to drop quite quickly after the mere enactment of the law, despite the fact that it obviously takes time for any significant number of permits to be issued. Of course, proceeding on that

"law-as-publicity" theory, it is also possible that criminals overestimate their chances of encountering an armed victim, and that the decrease is attributable to an overreaction on their part. It may be that, if they had known the truth about how few permit holders there were (generally, they do not exceed 5 percent of the state's population), crime rates would not have fallen as far as Lott and Mustard conclude that they did, or that as the criminals' experience confirms that most people are not carrying guns, crime rates could again rise.

Second, Ludwig noted that concealed-carry laws would be expected to have the greatest effect on crimes committed in public spaces, where persons, but for concealed-carry laws, would not otherwise have access to a gun. The violent crime most committed in public is robbery, which occurs anywhere from 50 to 67 percent of the time in public spaces, according to Ludwig. Yet Lott and Mustard show that concealed-carry laws had the least effect on such crimes (a decrease of 2.2 percent) and had a far greater effect on reducing murders (7.65 percent) and rapes (5.2 percent)--crimes that occur more often in the home or other nonpublic spaces. According to Ludwig, that counter-intuitive result suggests that something else might be accounting for some or all of the decrease in crime rates that Lott and Mustard observed. Lott did not attempt to address that issue at the National Press Club meeting, but the Lott-Mustard study does so. Robbery includes not only street robbery but also commercial robberies, service station and convenience store robberies, residence robberies, and bank robberies. Given that the FBI data on robberies include many categories of robberies besides those that take place between strangers on a street, "it is not obvious," Lott and Mustard note, "why this should exhibit the greatest sensitivity to concealed handgun laws." [48]

In other words, Ludwig's intuition is just that--an intuition--and he needs more to make his case.

Third, Ludwig noted that carrying concealed weapons was permissible only for adults. Since juveniles are not permitted to carry guns in any event, only violent crimes affecting adults should affect the crime rates for adults. If juvenile crimes are mixed in, it is possible that a large decrease in crime against juveniles would explain the Lott-Mustard results. Ludwig pointed out that Lott did not control for crimes against juveniles and that the Florida homicide data for the period Lott and Mustard studied showed that the juvenile homicide rate fell but that the homicide rate for adults rose slightly. An analysis that factors out violent crimes perpetrated by juveniles against juveniles might, therefore, undermine the Lott-Mustard results. It is possible that Ludwig is correct. However, it is also possible that juveniles will commit fewer violent crimes against other juveniles as a result of the fact that adults are carrying handguns. Apart from schools, where of course guns do not exist because schools are legislated "gun-free zones," juveniles inhabit a world populated by adults and must therefore reckon on the possibility that an adult, possibly armed, may stumble upon them while they are victimizing another juvenile. That may have a "chilling effect" on their criminal activity. [49]

Black and Nagin note that the Lott-Mustard study makes two assumptions: first, that the impact of shall-issue licensing laws is the same across all 10 states that passed the laws in the period 1977 to 1992 (the "geographic aggregation assumption") and, second, that the laws have an impact on crime rates that is constant over time (the "intertemporal aggregation assumption"). By performing additional analyses on the Lott-Mustard data, Black and Nagin endeavor to disaggregate the results in 10 separate states. The results cause them to reject Lott and Mustard's assumption that shall-issue licensing laws may be expected to have a uniform (positive) effect in all states:

The estimates are disparate. Murders decline in Florida, but increase in West Virginia. Assaults fall in Maine, but increase in Pennsylvania. Nor are the estimates consistent within states. Murders increase, but rapes decrease in West Virginia. Moreover, the magnitudes of the estimates are often implausibly large. The . . . estimates imply that RTC [right-to-carry] laws increased murders 105 percent in West Virginia but reduced aggravated assaults by 67 percent in Maine. While one could ascribe the effects to the RTC laws themselves, we doubt that any model of criminal behavior could account for the variation we observe in the signs and magnitudes of these parameters. Widely varying estimates such as these are classic evidence that, even beyond the assumption of homogenous impacts across states, the model is misspecified. [50]

In other words, Black and Nagin found that not only is it unreasonable to expect that shall-issue licensing laws will have approximately the same positive effects in each separate state that enacts them, but that the wild variations of both positive and negative effects from state to state and within states for different categories of violent crimes made it highly likely that the Lott-Mustard study was simply wrong in attributing the positive effects it reports to the shall-issue licensing laws. Other factors, not adequately accounted for in the study, were at work, creating false results. In fact, the large variation in results suggested to Black and Nagin that the Lott-Mustard results could be biased and driven by a single case for which their model does a poor job of accounting for the data, and Black and Nagin found reason to suspect that was true for Florida. When they isolated the results for Florida, they discovered that those results accounted for 80 percent of the total social benefit of the shall-issue licensing laws under the Lott-Mustard study. In other words, Black and Nagin claim that the evidence of the deterrent value of shall-issue laws vanished with the removal of Florida from the analysis. The data from the other states demonstrated no significant effect on violent crime rates from concealed-carry laws.

At the National Press Club forum, Nagin argued that there were two major social upheavals in Florida during the period that might have caused the Florida rates to rise to otherwise unusual heights and then fall dramatically as law enforcement rallied to bring them under control--the Mariel boat-lift and the emergence of South Florida as a major drug trafficking center. It is possible that other factors associated with those events account for the "decrease" observed by Lott and Mustard, not the concealed-carry laws.

Black and Nagin also argue that, when they performed additional analyses to test the Lott-Mustard study's "intertemporal assumption," they also find no significant evidence that the shall-issue laws have any impact on crime rates. Rates were declining for homicide, rape, and assault in certain states prior to adoption of the laws and continued to decline after their passage. Black and Nagin's point, in part, is that, since the Lott-Mustard study does not or cannot capture and isolate the factors causing the downward trend in violent crime rates that began before the licensing laws were enacted, it cannot specify to what extent the downward trend after enactment is caused by licensing laws. Again, such findings suggest not only that the intertemporal assumption made by Lott and Mustard is wrong but also that the "results" it attributes to shall-issue licensing laws are in fact attributable to other factors not taken into account in their model.

At the National Press Club forum, Lott was given some time to rebut Black and Nagin's arguments. He denied that his results depended solely on Florida and showed a graph of similar decreases calculated from his data excluding Florida. He also showed graphs to rebut Black and Nagin's arguments that

homicides, rapes, and assaults were all declining prior to enactment of the shall-issue licensing laws. Lott introduced other criminologists from other universities who had confirmed his results and were running further studies using his data. Presumably other analyses, pro and con, will be forthcoming.

Lott's Rebuttal. In an unpublished paper dated September 17, 1997, entitled, "The Concealed Handgun Debate," Lott makes a rigorous demonstration of why each and every one of Black and Nagin's claims is wrong. Lott not only claims to identify serious methodological flaws or shortcomings with the Black-Nagin criticisms (e.g., "Black and Nagin's use of quadratic individual state time trends makes it impossible for their reported estimates to test any individual state level impacts from the concealed handgun laws") [51] but also presents new and additional evidence of the impact of the shall-issue licensing laws across states and over time to demonstrate that the original Lott-Mustard findings hold and that Black and Nagin's analysis is in error.

Lott purports to show that the results from the original Lott-Mustard study, excluding Florida, produce "only a few, very small differences from his original findings." [52] Moreover, he notes that "despite legitimate interest in seeing whether the results are sensitive to inclusion of a single state, the reasons given by Black and Nagin for excluding Florida are factually wrong. Figure 3 depicts the murder rate in Florida from the early 1980's until 1992. The Mariel boat lift did dramatically raise violent crime rates like murder, but these rates had returned to their pre-Mariel levels by the early 1980's. For murder, the rate was extremely stable until the concealed handgun law passed there in 1987, when it began to drop dramatically." [53]

Further, Lott notes that some of the erratic or disparate results from state to state cited in Black and Nagin's paper as a basis for believing that the Lott-Mustard model is misspecified result from Black and Nagin's approach of excluding all counties under 100,000 population in their analysis. "Counties with more than 100,000 people are rare in some states so it can be misleading to label estimates from these counties as representing what is happening in these states. For example, Black and Nagin discuss the results for West Virginia, yet in West Virginia they have examined only one single county—Kanawha. The other 54 counties in West Virginia, with 89 percent of the state's population, were excluded from their estimates." [54]

Black and Nagin argue, on the other hand, that it is necessary to exclude counties with small populations to avoid false or misleading results due to large percentage increases or decreases attributable to a small number of crimes. For example, a county of small population that goes from one murder in year 1 to two murders in year 2 has experienced a 100 percent increase in the murder rate.

So, Do Shall-Issue Licensing Laws Have Social Utility? The lay person who lacks the necessary econometric tools has no independent way of resolving the conflicting claims regarding the validity of the Lott-Mustard study and must wait for further publications and a scholarly consensus to develop on this issue, in hopes that one day we will all know the truth about what happened in the period 1977-1992. (Since 1992, of course, more states have enacted such laws, and doubtless a repeat analysis will eventually be done with expanded data.) At present then, lay persons cannot say whether shall-issue concealed-carry laws in fact deter violent crime. It is too early to tell whether Lott and Mustard's findings will emerge intact from the intense scrutiny now being brought to bear on them or whether the critics' position, that

shall-issue licensing laws have no demonstrable effect on crime rates, will prevail.

Nonetheless, it is remarkable that while critics of concealed-carry laws argue that they will result in more deaths, more accidents, and greater mayhem, the social scientists criticizing the Lott-Mustard study are arguing only that the concealed-carry laws have no measurable or provable effect on crime--that is, neither a positive effect nor an adverse effect. That, as Lott himself has noted, is a major turning point in the debate over the social utility of firearms.

Thus, even if shall-issue licensing laws do not benefit society as a whole to any significant extent by deterring crime, it is also true that they do not appear to increase crime or result in a greater number of accidents. After intense scrutiny of 15 years of national data, there is no rigorous comprehensive economic analysis supporting the view that such laws are a danger to public safety. In a free society, the burden of proof is borne by those who would restrict the liberty of others. Opponents of shall-issue licensing laws seem to be lacking in hard criminological data or analysis justifying their desire to prevent persons who satisfy the licensing standards from carrying arms for self-defense. Indeed, on that basis (that there is no demonstrable downside to the licensing laws), advocates of shall-issue licensing systems are free to make the argument favored by Handgun Control Inc. in support of the Brady Act, and with equal moral authority: "If it saves just one life, . . . "

Relevance of the Constitution

It is not necessary to appeal to the Second Amendment to make strong arguments for shall-issue licensing systems. Some advocates of shall-issue licensing systems do invoke the U.S. Constitution, however, and some advocates assert rights under state constitutional guarantees to carry arms for self-defense. The Second Amendment provides, "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." Some state constitutional guarantees (such as West Virginia's) refer expressly to a right of individuals to keep and bear arms for self-defense or have been interpreted by state supreme courts as providing such a right, and shall-issue licensing systems in those states are effectively constitutionally required. [55]

It is beyond the scope of this study to resolve the debate over whether the Second Amendment affirms an individual right to keep and bear arms or only a right of the states to maintain their own militias. Proponents of the latter, "states' right" view, would claim that the Second Amendment's right to "bear" arms is limited to the carrying of arms as part of a citizen's service in a state militia. [56] The implication suggested by proponents of that view is that the states, and the federal government, are free to enact restrictions on the ownership or carrying of weapons outside of militia service. [57] The overwhelming weight of modern legal and historical scholarship regarding the Second Amendment, however, is that the amendment affirms an individual right to keep and bear private arms. [58] As summarized by the historian Joyce Lee Malcolm,

The Second Amendment was meant to accomplish two distinct goals, each perceived as crucial to the maintenance of liberty. First, it was meant to guarantee the individual's right to have arms for self-defense and self-preservation. Such an individual right was a legacy of the English bill of rights. This is also plain from American colonial practice, the debates over the constitution, and

state proposals for what was to become the Second Amendment. . . .

The second and related objective concerned the militia, and it is the coupling of these two objectives that has caused the most confusion. The customary American militia necessitated an armed public, and Madison's original version of the amendment, as well as those suggested by the states, describe the militia as either "composed of" or "including" the body of the people. A select militia was regarded as little better than a standing army. [59]

Most of the Second Amendment literature, however, has focused on the question of whether the amendment affirms an individual right, a right of the states, or a right of the individual to serve in state militias, and has focused on the limitations on federal or state laws restricting firearms *ownership*. Very little attention has been given to the scope of what the amendment guaranteed by way of the right to "bear" arms. There is strong evidence, however, that suggests that the amendment was presumed to affirm the right of private individuals to carry weapons, either openly or concealed, for their private self-defense, subject to the common law restriction that one could not carry arms that were apt to terrify the public or in such manner as to make an affray of the peace, and that the right to carry arms was regarded as a "privilege and immunity" of American citizenship. [60]

For example, the notorious decision in *Dred Scott*, in which the Supreme Court held that free blacks were not citizens of the United States, listed, among a number of rights and privileges that free blacks would have if they were to be regarded as citizens, the rights to hold public meeting upon political affairs, and "to carry arms wherever they went." [61]

Chief Justice Taney's evident intention in listing the privileges and immunities of citizenship to which free blacks would be entitled was to demonstrate that the Southerners who helped write the Constitution could not possibly have intended such an absurd state of affairs. [62]

Similarly, the Freedmen's Bureau Act of 1866, enacted by Congress to restore the civil rights of the freed slaves following the enactment by Southern states of the notorious Black Codes, provided that "the right . . . to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, . . . including the constitutional right to bear arms, shall be enjoyed by all the citizens of such State or district without respect to race or color or previous conditions of slavery." [63] Later, in introducing the Fourteenth Amendment, Sen. Jacob Howard explained that its purpose was to protect "personal rights," including "the right to keep and bear arms" from state infringement. [64] Although the Supreme Court has found most of the protections in the Bill of Rights applicable to the state governments through the doctrine of incorporation under the due process clause of the Fourteenth Amendment, it appears that Senator Howard viewed the right to keep and bear arms as a "privilege and immunity" of citizenship.

At this time, there appears to be insufficient scholarly investigation or consensus on the scope of the right to carry arms for self-defense intended to be protected by the Second Amendment. If it in fact was intended to protect a right of citizens to carry handguns for self-protection, either openly or concealed, as a privilege and immunity of citizenship, it is possible that licensing could be regarded as an unconstitutional prior restraint on the exercise of a right constitutionally required to be recognized in each state as a privilege and immunity of citizenship. In that view, shall-issue licensing systems are regarded by some supporters as "a good first step" to the full restoration of rights intended to be guaranteed by the

Second Amendment, while other staunch Second Amendment advocates regard them as a potentially dangerous precedent entrenching an incursion upon the original right.

The Experience of States with Licensing Laws

From the available evidence, the experience of states that have enacted shall-issue licensing systems demonstrates that (a) almost no person with a criminal history applies for a permit; (b) permit holders do not become embroiled in arguments or traffic disputes leading to gun battles or "take the law into their own hands" (or such is the very rare exception), despite dire predictions by opponents of the laws that "blood will run in the streets"; (c) shall-issue licensing states have almost no problems with violent criminality among permit holders; and (d) some permit holders have used their weapons to defend themselves. As of this writing, shall-issue licensing laws are creating no reported law enforcement problem in any of the 25 states that have enacted them. After 10 years, there appears to be no reported case of any permit holder adjudged guilty of murder committed outside the home or licensee's business premises (the only locations where permits would come into play) with a handgun carried in public. In general, the number of persons in possession of permits to carry firearms at any given time generally ranges from less than 1 percent to 5 percent of the state's population. Of course, the mere fact that a person possesses a permit does not mean that he is carrying a gun at any or every given moment in time. [65] Not everybody is carrying a gun (at least legally).

The best and most readily available evidence is from Florida and Texas, as those states are required by their licensing statutes to keep centralized statistical records. From October 1, 1987, to August 31, 1997, Florida received 466,489 applications. A total of 1,676 of those were denied, 873 for criminal history and 803 for incomplete application. A total of 457,299 licenses were issued, of which 208,089 were valid and outstanding on August 31, 1997. That represents about 1.6 percent of Florida's population of 12.9 million.

A total of 915 licenses have been revoked, 313 of which were for a crime *prior* to licensure and 486 of which were for a crime *after* licensure, 85 of which involved a firearm. [66] Thus, of the 457,299 licensees, approximately 1 in 5,000 (0.0186 percent, to be precise) had a license revoked for a crime involving a firearm.

Only 1,186 of 466,489 applicants (0.25 percent) had a prior criminal history constituting grounds for denial of a permit. Criminals, in other words, are not applying for permits to carry guns. Further, since only 602 licenses (0.13 percent) were revoked (excluding the 313 revoked for crimes committed prior to licensure), permit holders are not creating law enforcement problems.

From September 1987 to August 1992, the Dade County police kept records of all arrest and nonarrest incidents involving permit holders in Dade county. During that period, there were four cases involving criminal misuses of firearms by permit holders, including two cases of aggravated assault and one accidental and nonfatal shooting. In the same period, there were seven cases involving the defensive use of firearms, including two thwarted robberies, one thwarted rape, and one case in which a robber disarmed the permit holder. [67]

Cramer and Kopel report that the tracking program "was abandoned in the Fall of 1992 because of the rarity of incidents involving carry permit holders." [68]

As of the end of 1996, there were approximately 111,400 Texans licensed to carry handguns concealed, or about 0.66 percent of the state's population of 16,986,500. Only 1,202 applicants had been denied permits, and there had been about 57 "incidents" involving licensees, mostly for possessing a gun while intoxicated or for failing to conceal the weapon. As reported in the *Texas Lawyer*, in the first year the law was effective (1996), no civil suits had been filed, whether wrongful death claims or claims against property owners, and no significant criminal charges had been pressed against licensees solely on the basis of a newly allowed concealed handgun. [69]

One death can be traced to the new law—it happened during the highly reported incident that occurred in Dallas in February 1996 involving an argument that ensued when a delivery van and a pickup truck scraped their sides, causing minor damage to the vehicles side-view mirrors. [70] The drivers stopped, an argument ensued, and one man began punching the driver of the other vehicle in the head through the open window. The seated driver, a licensed permit holder, drew his gun and shot his assailant, killing him. In March the grand jury refused to indict, evidently convinced that the shooter had acted in lawful self-defense. [71]

Common Objections to Shall-Issue Licensing

Arguments opposing the adoption of shall-issue licensing systems generally fall into seven categories: (a) a paternalistic "the police know best" argument for retaining discretionary systems; (b) police officer safety; (c) the potential danger to the citizen from carrying a firearm; (d) inability of ordinary citizens to successfully defend themselves with a firearm; (e) the inadequacy of firearms for self-defense; (f) the general threats to public safety resulting from firearms; and (g) the most common and basic argument, best summed up in the phrase, "the blood will run in the streets."

The Police Know Best

Opponents of concealed-carry laws occasionally argue for the retention of the discretionary systems on the basis that the police are uniquely qualified, because of the nature of their work and their experience, and uniquely positioned to determine, because of their knowledge of the community they serve in, precisely which applicants may be safely entrusted with to carry arms. It would be dangerous or imprudent, the argument runs, to override their judgment in such matters by replacing it with a rigid objective standard that permits practically any law-abiding citizen to carry arms.

That "trust the professionalism of the police" argument has great appeal in certain quarters, but it suffers from at least two problems. First, it eliminates the presumption that individuals have the right to defend themselves and makes the citizen a supplicant for that privilege by placing the burden on the applicant to demonstrate to the satisfaction of a police officer his worthiness or need to carry. Second, the argument is completely belied by at least 60 years of experience with discretionary licensing laws, which demonstrates that the issuance of permits under discretionary systems has little to do with rational determinations of who is likely to act responsibly when carrying a gun--the sole matter that ought to be of concern to the public at large. The power that is conferred on the government under discretionary licensing systems is so broad and uncircumscribed that there is nothing to prevent the police from acting arbitrarily. In arguing for the continuation of discretionary systems, the opponents of shall-issue licensing are arguing for

government by men, not by law.

Police Officer Safety

Another common objection is that the carrying of handguns by law-abiding citizens jeopardizes the safety of the police by increasing the risk that they will be shot, either by hot-headed, previously law-abiding citizens or in shoot-outs involving previously law-abiding citizens now taking the law into their own hands. As a Handgun Control Inc. (HCI) pamphlet, "Carrying Concealed Weapons--Questions and Answers," avers, "It is our nation's police officers who are at the greatest risk from the NRA's CCW [carry concealed weapon] campaign, and . . . under these laws, police officers must assume that everyone is carrying a firearm and willing to take the law into their own hands; every verbal confrontation, at a bar, in a restaurant, at a traffic stop, could become a potential gun battle."

Note that according to the HCI pamphlet, it is not the nation's criminals, the permit holders themselves, or general members of the public who are most likely to suffer from laws permitting concealed-carry but the nation's police officers, when previously law-abiding citizens decide that the best way to handle a "verbal confrontation" with a policeman is to shoot him, thereby trading up from whatever infraction the officer was speaking to them about to the crime "cop killer." Alternatively, the HCI pamphlet could be read as implying that police officers are in greater danger because they will be involved in more gun battles as previously law-abiding citizens with permits start settling their disputes with gunfire. That is a textbook case of hysteria. There are no reported cases of a permit holder's shooting down, or even shooting at, a police officer.

The Citizen's Danger to Himself or His Loved Ones

Opponents of shall-issue licensing laws sometimes argue that guns are far more dangerous to those who possess them or use them for self-defense than they are to criminals, suggesting that state legislators would do well to restrict their use and to vote against shall-issue licensing laws. The arguments are that, by having a gun, one creates the risk that one will shoot oneself or another by accident, that one will have available a ready means to quit life in an impulsive moment of dark despair or to intentionally murder a loved one or a friend in an impulsive moment during a heated exchange, and that the likelihood of *those* events far exceeds the likelihood that one will employ the weapon to *save* life. Typically, supporters of those claims cite the conclusion of a public health article that appeared in the *New England Journal of Medicine*--that a gun in the home is 43 times more likely to be used in a suicide, criminal homicide, or accidental gunshot death than to kill in self-protection. [72] While that study measured the risk of firearm ownership in the home and not in public, the only place where concealed-carry laws have relevance, those who cite it implicitly ask that we make the assumption that if firearms are that dangerous to those who own or use them in the home, they are likely to be dangerous everywhere. Alternatively, they might intend for legislators, and the rest of us, to question whether the perceived additional peace of mind gained from carrying a gun on city streets is worth the increased risk in the citizen's home life.

There are a number of serious problems with the "43 times" statistic. First, the study measures the social benefits of firearms ownership only in terms of a "body count" of dead criminals, ignoring the number of times firearms may be used to deter crimes without having to kill the assailant. Criminologist Gary Kleck

has found that over 75 percent of the time firearms are used defensively; they are not fired. [73] In other words, the mere display of a firearm is, most of the time, all that is necessary to bring about an end to the crime. Measuring the social benefits of firearm ownership by body count is no less misguided than measuring the benefits of the police solely by the number of criminals they kill each year.

Second, over half of the deaths on the 43 times side are suicides. Including them all presupposes that none of those desperate souls would have committed suicide but for the presence of a gun--an unlikely proposition.

Third, it is not surprising that Kellerman and Reay's analysis shows that homicide victims are armed in disproportionate numbers, for it appears that a large and growing proportion of homicide victims are criminals themselves. [74]

In other words, by focusing his analysis on households in which homicides occurred, Kellerman and Reay may be finding out information only about the characteristics of homicide victims, and people who commit murder, without any assurance that such information may be safely generalized to the gun-owning public at large. It is possible that the households in which homicides occur are far from representative of typical or average households in which guns are present. If so, treating the 43 times statistic as though it were a universal law applicable to all gun owners, rather than as descriptive of a discrete, aberrant subset, is simply wrong and misleading.

Thus, while it is tautologically true that one cannot have an accident with a gun, commit suicide with a gun, or kill a loved one or friend in a moment of anger with a gun unless one first has a gun, there is no good evidence to support claims that those possibilities are more likely and prevalent occurrences for the typical gun owner--and a greater risk to the typical gun owner or his family members--than are the potential benefits of gun ownership.

Ordinary Citizens Lack the Necessary Competence

Many objections to concealed-carry permits relate in some fashion to the inadequacy of training requirements. The import, though, is not fundamentally different from that of objections discussed elsewhere--that because of unrealistic expectations regarding the utility of firearms for self-defense, or insufficient or inadequate training, citizens who carry firearms will be a danger to themselves and others.

In most cases, the argument is essentially that the 8 to 16 hours of training required to obtain a concealed-carry permit are insufficient to properly prepare anyone to carry a gun and can only result in false confidence and insufficient skill. The argument has commonsensical appeal, and the opponents of shall-issue licensing systems are not in error in pointing out such possibilities. However, as a review of the experience of states with shall-issue licensing systems illustrates, there is little to no evidence, after 10 years, to support the proposition that those potential adverse consequences actually occur with troubling frequency. Lacking hard evidence, those who raise such objections make reference to the experience of the police to suggest the gross inadequacy of the requirements for permit holders.

For example, the Handgun Control, Inc. pamphlet, "Carrying Concealed Weapons--Questions and Answers," notes the following:

Importantly, police know the dangers associated with the use of firearms. They are extensively trained on the use and security of their service weapons, yet many are still killed every year by guns. A recent FBI study showed that police officers who are killed in the line of duty rarely even fire a round at their assailant, and frequently the police officer's own firearm is taken from him/her and used against him/her. An FBI study of 51 incidents where 54 police officers were killed found that 85% did not fire their weapon while 20% were killed with their own gun. [75]

In addition, consider the following exchanges reported on an October 1, 1995, *60 Minutes* episode on the Florida licensing system:

Officer Walter Philbrick (Firearms Instructor): Congratulations, Leslie.

Leslie Stahl: Thank you.

Officer Philbrick: You have passed the course with flying colors.

Stahl (voiceover): The course I passed with flying colors qualifies me to carry a concealed weapon. And, frankly, I don't know any more now about handling a gun than I did before I took the course.

Officer Philbrick: In the police academy, officers get 18 weeks of training. All right? Eighteen weeks before--before they're given that firearm to carry on duty.

Stahl (voiceover): Eighteen weeks for a police officer, but for someone like me, who has never even fired a weapon, a couple of hours one night in a classroom was enough to get me a license to pack a gun. [76]

First, it is important to set aside the hyperbole. Police do not literally receive 18 weeks of firearms training. The Florida officers referred to in the *60 Minutes* program have 18 weeks to learn all the basic skills they need to begin their further on-the-job training as a "rookie," including classroom instruction in the laws they will be enforcing, witness interview techniques, search and seizure procedures. The precise amount of time spent in classroom study of the law of justifiable homicide and shoot/don't shoot scenarios and firearms training at the range would be the relevant comparison, and that information is generally not divulged by the police, presumably because it comprises comparatively little of the total training time, and the information would simply be grist for the mill for lawyers representing people who have been wrongfully shot by the police.

The remaining argument rests, for its validity, on an assumption that the experience of the police provides a valid and comparable basis for predicting the likely experience of permit holders. There are several reasons to expect that that is not true.

Permit holders need concern themselves with only one thing: protecting themselves from a sudden, violent assault that threatens life or grievous bodily injury. Rape, robbery, and attempted murder are not typically actions rife with ambiguity or subtlety, requiring special powers of observation, great book-learning, or a stint at the police academy to discern. When a man pulls a knife on a woman and says, "You're coming

with me," her judgment that a crime is being committed is not likely to be in error.

Police, by contrast, do not carry arms solely for the purpose of defending themselves, but also for the purpose of enforcing the law. They deliberately inject themselves into potentially dangerous and violent situations, responding to calls for assistance, investigating crimes, intervening in domestic violence, and making arrests.

Consider, for example, an argument that is not made by opponents of licensing laws but that they could also use to suggest that citizens' carrying arms will result in needless deaths. The police, who are "extensively trained" in the use and security of their weapons, mistakenly kill about 330 innocent citizens a year. [77]

How many more wrongful deaths, then, might one expect at the hands of poorly trained permit holders? Although the argument exhibits the same logic, opponents of licensing laws do not seize on it. Doubtless that is due in part to the fact that it does not show the police in too favorable a light, yet it is upon them that the opponents of licensing laws are asking us to rely when they try to disabuse us of the notion of relying also on ourselves. But a more telling reason is that the information is actually available to refute it. In fact, gun owners mistakenly kill about 30 innocent persons a year, one-eleventh of the number killed by police. [78]

Were we to adopt the reasoning of gun control proponents in this circumstance, we might argue that such a fact shows that citizens are more responsible with firearms than are police, or that police culture is one of brutality. The difference might be more innocently explained, however, by the significant differences between the activities of the police and those of law-abiding citizens seeking only to protect themselves, differences that render their experiences incomparable. The intended victim is always at the scene of the crime; he knows precisely who his tormentor is. It is the police who, because they are rarely at the scene of the crime when it occurs, are more likely to find themselves in situations where guilt or innocence is not so clear-cut, and the probability for mistakes is correspondingly higher.

In sum, there are serious problems with the assumption that the experience of the police may serve as a useful guide to predicting the experience of licensed permit holders, or that the training requirements for police provide the benchmark for the training required to carry a gun as a citizen.

According to criminologist Gary Kleck, guns are fired in only about 24 percent of the cases in which they are used for self-defense. [79]

Thus, in the overwhelming majority of cases in which a gun is used in self-defense, *the gun is never fired*. The point of this is not that training is not necessary because most of the time brandishing or displaying the gun serves as a magic talisman to ward off evil. The real significance of that number is that people using guns for self-defense are not "trigger-happy."

In other words, we do not need to develop a course of both physical and moral training based on the assumption that the law-abiding citizens who seek permits to carry guns are Rambo or Dirty Harry wannabes who view violent crimes as opportunities to put notches on their gun handles. The statistical information strongly suggests that we are dealing with decent people who are loath to kill and who truly view killing as an act of last resort. Possibly, that is because they are acutely aware, from media coverage

of the Bernhard Goetz case, the intense scrutiny of questionable police shootings, and the national attention given to mistaken shootings like that involving the Japanese exchange student in Louisiana, that at a minimum, if they shoot they are in for a world of legal trouble. Possibly, to take an approach that does not reduce all human activity to quanta of pleasure and pain for the purpose of utilitarian cost/benefit calculations, they actually value life and are constrained by religious beliefs from precipitously taking the life of another.

It may be that, because of the infrequency of actual shootings by permit holders, any deficiencies in the statutory training requirements will take considerable time to become manifest. [80] So far, 10 years' of evidence from the states with shall-issue licensing systems indicate that the fears of the results of "loose" training requirements on the part of opponents have not materialized. While all licensing statutes should require express instruction in safe gun handling and that applicants learn the law governing the justifiable or excusable use of deadly force, and it would be desirable for licensing laws to specify a reasonable proficiency standard, there seems little reason to drastically expand the general training requirements provided in the statutes. Some critics of shall-issue licensing laws have reevaluated their stance on the insufficiency of these requirements and are content with them in their current form: "The \$150 they charge will get you a damn good course," [District Attorney for Harris County, Texas, John] Holmes says. "You're gonna know more about what is permissible conduct. I was so opposed to the law that I took the instructors course, and I was pleasantly surprised--it was very heavy on the law and how guns can get you into more trouble than they can get you out of." [81]

Finally, it is important to recognize that the critics of the training standards are somewhat disingenuous. Their purpose in deploring the statutory training standards does not appear to reflect a willingness to work with legislators or gun owners to develop realistic criteria. Rather, by suggesting that it takes much time and effort to attain sufficient proficiency (18 weeks), they call into question the very idea of licensing ordinary citizens to carry firearms. That is, the objections are presented as objections to the very adoption of licensing systems, not as proposals to refine their operation. Note that while critics of these laws decry the low or vague training standards put in place by the licensing statutes, one does not find them simultaneously decrying the generally complete absence of any requirements for training or the vague standards in the statutes creating or governing the nation's police forces. Obviously, many, but by no means all, of the nation's police receive some form of formal training, but they do so in accordance with self-defined and self-imposed training standards promulgated by internal regulations by police administrators. It is thus revealing that, while the critics appear content to trust the police to define and live up to their own standards, they are not prepared to trust their fellow citizens in that regard.

The Inadequacy of Guns for Protection

Opponents of shall-issue licensing laws occasionally argue, or suggest, that guns are not very useful for self-defense, or that they do not guarantee perfect protection. For example, they argue, guns do not appear to be useful in preventing or defending against crime, given that they are only used in defense about 65,000 to 80,000 times a year. [82]

One might not be able to get to the weapon in time, being surprised by the criminal before having time to respond. Even if armed, the best course of action might be to do nothing. Even if armed, there is no guarantee that one will not be killed anyway. The argument presented above was that it requires great,

developed judgment to know the circumstances in which guns are the right tool for the job. The argument here is different: that the circumstances in which guns are really useful are so rare or infrequent that they are not worth bothering about.

The number of defensive gun uses is a hotly contested issue. At least two carefully crafted surveys suggest that guns may be used for defensive purposes as many as 2 million to 3.6 million times a year. [83] A recent paper presented at the American Society of Criminology meetings in Chicago, Illinois, adduces numerous reasons to suspect that the latter figure is too, or even impossibly, high, however. [84] Assuming, arguendo, that the true number is in fact closer to 65,000, the argument regarding the limited utility of firearms is nonetheless not an argument against shall-issue carry laws. The fact that guns are only rarely useful does not render them any less useful or necessary in those circumstances in which they are precisely the right tool for the job. The fact that firearms cannot handle all problems of personal security does not mean they can handle no such problems.

The fallacies are easy to recognize if one simply makes the same sort of arguments about another, less emotion-laden tool. For example, the fact that flat tires occur only rarely does not mean one ought not carry a car jack and spare tire. Similarly, the fact that car jacks and spare tires are useless in dealing with numerous other forms of auto breakdown does not mean that car jacks are not useful devices to have at hand. Or again, the fact that a house fire may gain too strong a foothold before one can deal with it does not mean that there is no point in having a fire extinguisher in one's home. So even if firearms are only rarely useful for self-defense or cannot handle all problems of personal security, that is not an argument against firearms, or having them at hand when needed. If the fear is that people will not recognize firearms' limitations or will try to use guns inappropriately, the answer is education, not prohibition.

It is interesting that this objection is never employed against police officers. After all, the very same type of arguments apply: the police may not be there when needed; the attack may occur so fast that you don't have time to call them; they may not be able to get to you in time; the fact that they exist or that you call them does not mean that you won't be killed anyway; and relying on them as if they were a talisman that magically wards off evil could create a false sense of security. Apparently, while some opponents of concealed-carry are concerned with preventing citizens from acting mistakenly on the basis of false ideas of utility that result in self-reliance, they are unconcerned about false ideas of utility that result in dependence on government.

Finally, however large or small may be the frequency with which guns are used in self-defense, there are some facts that have not, to date at least, been controverted by criminologists. National Institute of Justice statistics show that persons who resist crime with a firearm are less likely to be injured, or are likely to be injured less severely, than persons who either cooperate (do not resist at all) or resist by any other means. Amazingly, that remains true even if the assailant is armed with a gun. While opponents of concealed-carry laws disparage the idea that ordinary citizens can successfully defend themselves, the statistical evidence shows that, if a victim does have time to deploy a firearm, he has enhanced his chances for survival and lessened his chances for serious injury. [85]

More Guns Cause More Violence

In addition to arguing that the permit holders will kill or injure others or themselves if they are permitted to carry firearms, opponents of shall-issue licensing systems make general arguments against any "loosening" of the laws restricting firearms ownership or use based on the general social harm caused by misuse of firearms. Often, the argument may be as simple as claiming that more guns on city streets can only result in more deaths, more injuries, and more accidents. The argument, in its simplest form, assumes a straightforward linear correlation between the number of guns and the number of violent crimes committed with guns.

However intuitively true it seems that more guns must inevitably result in more violence or gun crime, it is well established, criminologically, that more guns do not mean more homicides:

In 1973, the American firearm stock totalled 122 million, the handgun stock was 36.9 million, and the homicide rate was 9.4 per 100,000 people. At the end of 1992, twenty years later, the firearm stock had risen to 221.9 million, the handgun stock had risen to 77.6 million, but the homicide rate was 8.5--or 9.5 percent lower than it had been in 1973. The percentage of murders committed with firearms decreased as well. In 1973, 68.5 percent of murders were committed with guns. Fifteen years later, after Americans had purchased almost as many new firearms as they had in the preceding seventy-three years, 62.8 percent of homicides were committed with guns. . . . In sum, over a twenty year period of unparalleled increase in guns, homicide rates were erratic, unpatterned, and completely inconsistent with the shibboleth that doubling the number of guns, especially handguns, would increase homicide rates. [86]

In short, it is not the number of guns but their distribution--that is, the people who have the guns and what they are using them for--that matters. The available evidence clearly indicates that firearms in the hands of permit holders are not a law enforcement problem, are not a source of social harm, and that irresponsible use of firearms by permit holders is the very rare exception.

A more sophisticated approach is to build a general case that the total social harm related to firearms far outweighs any social benefits associated with their ownership and use. The numbers tell a decidedly grim story: In 1994, for example, there were approximately 1.3 million gun crimes. A few more than 22,000 people were murdered with firearms, an approximately equal number committed suicide with firearms, and about 100,000 people were treated in hospitals or emergency rooms for nonfatal gunshot wounds (including self-inflicted wounds from suicide attempts and accidents). [87] On the other hand, firearms are used defensively (it is argued) only about 65,000 to 80,000 times a year. The result is that the societal costs associated with firearm misuse far exceed the societal benefits from their use.

Because of the critical importance in utilitarian analyses, such as that outlined above, of the number of defensive gun uses, a number of investigations have been made to determine what that number is. [88] Two reputable surveys specifically designed to determine the number of defensive gun uses have found that the number is orders of magnitude above the 65,00 to 80,000 reported by other researchers and that the number is in the range of 2 million to 3.6 million a year. [89] If that number is valid, guns are used far more often to defend against crime than to perpetrate crime. Further, according to both surveys, 45-46 percent of the gun users believed that they or someone else might have been killed had they not used the gun in self-defense. Even if someone's life was saved in only 5 percent of such cases, however, the

surveys imply that 100,000 (5 percent of 2 million) lives would be saved each year by the defensive use of firearms, far surpassing the number of lives lost to gun violence and suicide.

Criminologists Philip J. Cook and Jens Ludwig suggest that there is reason to believe that the numbers obtained from these surveys are high, possibly impossibly high, and have made some arguments why the survey results might generate other false results. They point out, for example, that some of the numbers implied by the survey results do not accord with other statistics generally regarded as accurate. For example, they point out that the survey results imply that the number of women who have used a gun to defend themselves against rape is higher than the total number of rapes reported by the National Crime Victimization Survey (NCVS) conducted by the Census Bureau for the U.S. Bureau of Justice Statistics and that comparing the numbers of criminals wounded or shot by civilian defenders with the total number treated for gunshot wounds in hospitals and emergency rooms and those killed in assaults suggests that large numbers of criminals who are shot never receive emergency room treatment or become known to law enforcement, a result Cook and Ludwig find hard to believe.

There may be good explanations for some of the perceived discrepancies, and the discrepancies are not necessarily indicative that the total number of defensive gun uses is grossly in error. For example, it is known that rape is one of the most underreported of crimes; researchers Colin Loftin and Ellen Mackenzie reported that rapes might be 33 times as frequent as the NCVS numbers indicate. [90] Thus, it is quite possible that the number of defensive uses of guns to avert a rape might approximate those reported in the NCVS. Similarly, it would not be surprising if those firing their guns in self-defense overestimated wounding the criminal. If the criminal flees or escapes and is never apprehended by the police, there is no way to confirm whether one succeeded in hitting the criminal. Respondents' subjective impressions might easily be in error, or respondents might be exaggerating their shooting skills.

More serious are Cook and Ludwig's arguments concerning the possibility for survey errors due to (a) "telescoping," that is, a survey respondent's recalling a defensive gun use that occurred outside of the period asked about (for example, the last five years) as happening during the period being asked about or (b) a desire to appear heroic by claiming conspicuous acts of self-defense. Because survey results are based on statistical projections from a fairly small number of positive responses, a small number of false positives can make a large difference in the outcome.

Cook and Ludwig argue that surveys are thus a flawed method of learning about the frequency with which innocent victims of crime use a gun to defend themselves. That conclusion seems premature, for the bulk of their paper raises questions by making observations and raising possible reasons why survey results might be overstated, since they are based on respondents' answers regarding number of criminals shot and number of lives saved—highly subjective matters. The fact that respondents' subjective impressions might be highly erroneous is not, nonetheless, necessarily good evidence that they did not actually use a gun for defense. The fact that a person tells a "fish story" exaggerating the size of the fish, does not mean that he did not actually catch a fish. Thus, the number of defensive gun uses reported by surveys may be approximately correct.

Beyond that, in addition to the Kleck and Gertz survey and the 1994 National Survey of Private Ownership of Fire-arms in the United States discussed by Cook and Ludwig, 10 commercial surveys from

1976 to 1994 have included questions about defensive gun use. Although those surveys were not specifically designed to gather detailed information about defensive gun use, Kleck and Gertz report that they nonetheless indicate 770,000 to 2 million defensive gun uses per year. One such survey of particularly high quality, a 1981 survey by Hart Research Associates, indicates 1.8 million defensive gun uses per year. Thus, there is a remarkable degree of consistency in the results of well-designed surveys. If respondents are lying or exaggerating the truth, they are doing so in highly consistent ways.

While Cook and Ludwig's observations thus deserve serious attention and investigation, it is premature to dismiss out of hand the survey results indicating high numbers of defensive gun uses. Were Cook and Ludwig correct, however, that survey results are indeterminately unreliable, the result would be that the true number of defensive gun uses would be indeterminate. The fact that survey information may be overstated, albeit indeterminately so, does not prove that the NCVS numbers are not understated. In this case it would appear difficult if not impossible to determine the amount of societal benefit derived from ownership and use of firearms, with the result that it could also not be asserted either that the costs outweighed those benefits or that the benefits outweighed the costs. [91]

The end result is that if one believes the survey information regarding the number of defensive gun uses, and further believes that that number represents a reasonable proxy for the societal benefit associated with firearms, then guns are used far more often to prevent crime than to commit crime, and probably save more lives than are lost to homicide or suicide with guns. If one disbelieves the survey results but cannot specify to what extent they are wrong, or if one doubts that the number of defensive gun uses is a useful measure of societal benefit, then it appears that one cannot make a case either way. One must have some trustworthy way of specifying the amount of the benefit before one can measure the direction of the inequality. Only if one believes that survey results should be completely disregarded and that NCVS estimates of 65,000 to 80,000 defensive gun uses per year is the best evidence, is the general utilitarian case made against guns. In that case, one must face the question of whether an individual's right of self-defense trumps social cost/benefit calculations, an answer to which requires an evaluation of the ethical limits of utilitarianism, which is beyond the scope of this study.

Blood Will Run in the Streets

The most powerful rhetorical argument that is generally made by those who oppose shall-issue licensing laws is that permitting law-abiding citizens to carry handguns outside their homes will transform the streets of America into "Dodge City." The "blood will run in the streets," it is claimed, as law-abiding citizens take to settling disputes and answering slights to their dignity by shooting it out. The argument is asserted over and over again despite the fact that it has most decidedly not been borne out by 10 years of experience in 25 states with permit holders' carrying firearms for defense. Nevertheless, there will, in all probability, be a clear and egregious case of a permit holder misusing his firearm sometime in the future. And because the climate surrounding gun issues is so highly charged, a well-publicized tragedy could obliterate all prior experience with concealed-carry permits--at least in the minds of politicians who favor gun control.

The fact that the "blood will run in the streets" argument seems immune to challenge by the facts suggests that it persists because it resonates deeply with many people's understanding of, and beliefs about,

fundamental human nature. That is the way, in other words, those to whom this argument has great appeal *expect* that people will behave, if you let them. It is a most unflattering view.

Given the qualifications required of permit holders, proponents of the "Dodge City" argument can only believe that common, ordinary law-abiding citizens are seething cauldrons of homicidal rage, ready to kill to avenge any slight to their dignity, eager to seek out and summarily execute the lawless. Only lack of immediate access to a gun restrains them and prevents the blood from flowing in the streets. They are so morally and mentally deficient that they will readily mistake their permit to carry a weapon in self-defense as a state-sanctioned license to kill at will. Thus are men and women creatures of unrestrained impulse, appetite, and whim. People are basically accidents or crimes waiting to happen. The law-abiding are only accidentally law-abiding, for they remain law-abiding only because they lack the means to immediately act on their fleeting and dark impulses. It is too much to ask people like that (that is, most people), and too risky to expect people like that (that is, most people), to exercise self-control and behave responsibly.

Supporters of shall-issue licensing laws make arguments that reflect a decidedly different view of their fellow citizens--namely, that they are not creatures driven by impulse and desire but are entitled to the trust properly accorded a moral and rational being capable of exercising judgment and self-control. Supporters of shall-issue licensing laws implicitly believe that a person's character and actions do not fundamentally change merely because he has a tool at hand with which he can more perfectly and readily act on his fleeting impulses and desires. People who have demonstrated self-control and responsible behavior in the past, as evidenced by the absence of criminal, mental health, and drug histories, will, in all likelihood, continue to act responsibly. The act of permitting them to carry a firearm (which they already have the *de facto* ability to do) will not change their character or fundamental nature or their actions. It is not too much to expect such people--our fellow citizens--to act responsibly; it is not too risky to trust such people.

While criminologists wage mighty battles to determine whether firearms have social utility or not, with the results always promised in the next conclusive study, the reality is that those findings are used as tools in a battle between views of human nature. It is beyond the scope of this study to decide the nature of man, but it is, at bottom, the warring views on that subject that are actually driving the concealed-carry debate.

Conclusion

Since 1987, 24 states have enacted laws requiring licensing authorities (usually, the chief of police or county sheriff) to issue permits to carry concealed weapons to adult state residents who have not been convicted of any felony; who have no history of drug or alcohol abuse and no history of mental illness; and, in most states, who have taken a firearms training course. In nearly all cases, applicants' fingerprints are taken and the applicants are subject to a background check. The permits generally have a life of from two to five years and must be renewed.

In most cases, the new shall-issue licensing laws replaced concealed-weapon licensing statutes, dating from the 1930s and 1940s, that granted the licensing authority (usually the police) broad, undefined discretion to issue permits to "suitable persons" or to persons of "good moral character" who had "proper

cause" or a "justifiable need" to carry a weapon. As written, those laws suggest that only certain people, in "special" circumstances, are entitled to defend themselves from deadly violence with lethal force, and that those who face only the "ordinary" risk of criminal violence do not deserve the right to carry the means with which to defend themselves. The implicit suggestion that some people's lives are more worth protecting than are the lives of others is morally repugnant and insupportable. The frustration of the common, law-abiding citizen's desire to protect himself (and increasingly, herself) from violent crime has led to vociferous demands for the replacement of those laws with licensing regimes based on satisfaction of nondiscretionary, objectively verifiable and enumerated criteria.

According to Department of Justice statistics, approximately 87 percent of violent crime occurs outside the home. Despite the fact that Americans possess approximately 70 million handguns, one is not armed if one does not have a weapon at hand when needed. Perversely, the discretionary licensing laws and prohibitions against the carrying of weapons succeed only in disarming those who respect the law. Perversely, by ensuring that those who abide by the law will not carry weapons outside the home, the law aids and abets criminals by assuring them that they will find unarmed, easy victims. Shall-issue concealed-carry laws, by contrast, deprive criminals of that peace of mind.

Shall-issue licensing systems are based on the right of self-defense, that is, the right to use lethal force to repel a criminal assault that threatens imminent danger of death or grievous bodily injury. Every state recognizes a right of its citizens to use lethal force in self-defense. Self-defense, so defined, is not lawlessness; it is in accord with the law. It is, in fact, in accord with the same law the police rely on in using lethal force. The right to self-defense belongs to each person, not merely those who the police or other licensing authorities believe "deserve" to have that right.

Opponents of the new licensing laws argue that more guns on city streets can only lead to more violence and deaths; that the laws will transform the streets of America into "Dodge City," as previously law-abiding citizens take to settling hot-headed arguments over fender benders and slights to their dignity with guns; that the carrying of weapons by ordinary citizens jeopardizes the safety of the police; that citizens' lack of training will lead to false confidence in or unrealistic expectations about the usefulness of firearms, with the possible result that license holders will take foolish risks; that due to insufficient training, license holders will lack good judgment in determining when it is appropriate to shoot, resulting in wrongful shootings and wrongful brandishing of firearms; or that insufficient proficiency with their weapons will result in the shooting of innocent bystanders or loved ones.

While opponents of licensing laws are not wrong to point out that those adverse results are potential consequences of the widespread carrying of weapons, we need no longer speculate about what the effects of such laws might be. We now have at least 10 years of actual evidence from 25 different states with diverse rural and metropolitan populations, including the cities of Miami, Houston, Dallas, Pittsburgh, Philadelphia, Richmond, Atlanta, New Orleans, Seattle, and Portland, regarding perhaps as many as 1 million permit holders carrying their weapons for hundreds of millions of man-hours. The results are in, and they show unequivocally that (a) the number of persons currently in possession of permits to carry firearms ranges from 1 to 5 percent of the state's population; (b) criminals do not apply for permits; (c) permit holders do not take to settling their traffic disputes or arguments with guns, or "take the law into their own hands"; (d) shall-issue licensing states have almost no problems with violent criminality or

inappropriate brandishing of firearms by permit holders; and (e) some permit holders have used their guns to defend themselves and others. There appears to be no reported case of any permit holder adjudged to have wrongfully killed another in connection with carrying and using his weapon in public. As of this writing, shall-issue licensing laws are creating no reported law enforcement problem in any of the 25 states that have enacted them. Dodge City has not returned; the blood is *not* running in the streets.

With the publication this year of the Lott-Mustard study, "Crime, Deterrence and Right-to-Carry Concealed Handguns," finding that licensing laws deter violent crime and save lives, an intense criminological debate has begun over whether shall-issue licensing laws in fact deter violent crime. Notably, despite fears of opponents that the licensing laws will lead to increased crime and violence, the criminologists criticizing the Lott-Mustard study are arguing only that shall-issue licensing laws have no demonstrable effect on violent crime rates, that is, they neither decrease violent crime rates nor increase them. It remains to be seen whether Lott and Mustard's findings will withstand the scrutiny now being brought to bear on them, or whether the critics are correct. However, after intense scrutiny of 10 years of national data, there is no rigorous comprehensive economic analysis supporting the view that shall-issue licensing laws are a danger to public safety. In a free society, the burden of proof is borne by those who would restrict the liberty of others. Opponents of shall-issue licensing laws are lacking in hard criminological data and analyses condemning those laws and justifying opponents' desire to prevent persons who satisfy the licensing standards from carrying handguns for self-defense.

Shall-issue licensing systems are not, as is sometimes asserted by their opponents, another example of America's free-wheeling, hands-off approach to guns. The licensing systems are gun control. Applicants are registered and fingerprinted and their backgrounds are thoroughly checked, both at the state and at the national level through the FBI, for criminal histories, and histories of drug or alcohol abuse and mental illness. In addition, the great majority of states require that applicants have received training with firearms. On the basis of 10 years of experience in 25 states, we may conclude that shall-issue licensing systems work. They accomplish the twin goals of providing a mechanism by which law-abiding citizens can carry the means with which to defend themselves from a violent criminal assault that imminently threatens life or grievous bodily harm and provide the public reasonable assurance that those who receive permits are persons who will act responsibly.

Notes

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[1]. In addition to Florida, the following states have enacted "shall-issue" concealed-carry laws: Alaska, Arizona, Arkansas, Georgia, Idaho, Louisiana, Maine, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. Note that the state of Washington has had a

nondiscretionary licensing system in place since 1961. Note also that Vermont permits open- or concealed-carry for self-defense without a license or permit. Thus, 26 states permit lawabiding adult citizens to carry concealed arms for self-defense outside their home on a nondiscretionary basis.

[2]. See Clayton E. Cramer, *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (Westport, Conn.: Praeger, 1994), p. 94.

[3]. Ibid.

[4]. See Robert J. Cottrol and Raymond T. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," *Georgetown Law Journal* 80 (1991): 335-42.

[5]. See Cramer, p. 96. For a more detailed discussion of the efforts to deny arms to free blacks and slaves, see the discussion in chap. 6, pp. 71-96.

[6]. *State v. Chandler*, 5 La. An. 489, 490-91 (1850), cited in Cramer, p. 88.

[7]. The Sullivan Law survives as section 400.00 of the New York Penal Law.

[8]. See Don B. Kates, "Toward a History of Handgun Prohibition in the United States," in *Restricting Handguns--The Liberal Skeptics Speak Out* (Great Barrington, Mass.: North River, 1979), p. 15.

[9]. Ibid., p. 16.

[10]. Ibid., pp. 19-22; and Cramer, pp. 97-140.

[11]. *Watson v. Stone*, 4 So.2d 700, 703 (1941) (Buford, J., concurring).

[12]. See Edward F. Leddy, *Magnum Force Lobby: The National Rifle Association Fights Gun Control* (Lanham, Md.: University Press of America, 1987), pp. 86-87; and Don B. Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," *Michigan Law Review* 82 (1983): 209-10.

[13]. See Cramer, p. 165 (describing Montana legislative history).

[14]. Lee B. Kennett and James L. Anderson, *The Gun in America: The Origins of a National Dilemma* (Westport, Conn.: Greenwood, 1975), pp. 192-97, 210, 212; Leddy, pp. 86-87; and Kates, "Toward a History of Handgun Prohibition in the United States," pp. 29-30.

[15]. One example that warrants analysis is the contemporary notion that the use and ownership of firearms should be confined to "sporting purposes." Without accusing anyone who recommends this standard of having illicit or secret racist or class-based motivations, the fact nonetheless is that hunting, target shooting, and other sporting uses of firearms tend to be an activity engaged in predominantly if not almost exclusively by whites, particularly rural and suburban whites, and not the inhabitants of the inner city. In addition, "sporting use" implicitly singles out those who have sufficient leisure and discretionary

income to pursue recreation with firearms. Ownership of firearms is clearly associated with levels of discretionary income. See Gary Kleck, *Point Blank: Guns and Violence in America* (Hawthorne, N.Y.: Aldine de Gruyter, 1991). It is thus a noteworthy coincidence that the selection of the criterion, "sporting use," happens to largely leave out those who are associated in the public mind with the source of much of the crime problem, both racially and by class. To be sure, no laws, no genetic disposition prevents persons of any and all races, ethnic backgrounds, and classes from pursuing the recreational use of firearms; it is only a historical accident. Nonetheless, it is an interesting thought experiment by which one may check one's intellectual honesty to inquire whether the "sporting use" standard would find as much favor if there were a preexisting and widespread tradition of handgun and shotgun hunting among urban African-Americans and Hispanics.

[16]. California Penal Code, sec. 12050 et seq.

[17]. Colorado Revised Statutes, sec. 18-12-105.1.

[18]. New York Penal Law, sec. 400.00.

[19]. North Dakota Statutes, sec. 62.1-04-03.

[20]. Rhode Island Statutes, secs. 11-47-11, 11-47-18.

[21]. Charles Krauthammer, "Disarm the Citizenry," *Washington Post*, April 5, 1996.

[22]. "Who Is Entitled to Carry Concealed Weapons," *American Law Reports* 51 (3d ed., 1973): 506.

[23]. See Steve Garnass, "Cops Get Tougher on Gun Permits," *Denver Post*, April 24, 1988, p. A1.

[24]. Quoted in *ibid.*

[25]. See Clayton E. Cramer and David B. Kopel, "'Shall Issue': The New Wave of Concealed Handgun Permit Laws," *Tennessee Law Review* 62 (1995): 683.

[26]. See John R. Lott Jr. and David B. Mustard, "Crime, Deterrence, and Right-to-Carry Concealed Handguns," *Journal of Legal Studies* 26 (1997): 8n 29.

[27]. See Don B. Kates, "Concealed Weapons Permits in California," an unpublished research paper.

[28]. See "Elite in NYC are Packing Heat," *Boston Globe*, January 8, 1993, p. 3; William Bastone, "Born to Gun; 65 Big Shots with Licenses to Carry," *Village Voice*, September 29, 1987. Summarized in Cramer and Kopel, p. 684. See also Don B. Kates, "The Battle over Gun Control," *Public Interest* 84 (1986): 45.

[29]. Cramer and Kopel, p. 685.

[30]. *Hickman v. County of Los Angeles*, cited and discussed in Cramer and Kopel, p. 685.

[31]. See "Gun-Licensing Boss Suspended by NYPD," *New York Post*, January 23, 1996, p. 26.

[32]. My thanks to Preston Covey of the Department of Applied Ethics at Carnegie Mellon University for pointing this out.

[33]. As was pointed out in the Lott-Mustard study, the main effect of shall-issue licensing systems has been to enable persons living in counties with a population exceeding 100,000 persons to obtain permits to carry firearms. As a general rule (which nonetheless has significant exceptions), it has been possible for those who desired them to obtain permits under discretionary systems in rural areas. The real impact of shall-issue licensing systems thus occurs in the granting of permits to the inhabitants of large cities and densely populated suburban counties. Thus, shall-issue systems do "liberalize" the granting of permits in metropolitan areas.

[34]. See 18 U.S.C. sec. 922(g).

[35]. See, for example, the licensing laws of Alaska, Arizona, Mississippi, Nevada, Oklahoma, Oregon, Virginia, Washington, and Wyoming.

[36]. See, for example, the licensing laws of Alaska, Arkansas, Georgia, Louisiana, Mississippi, Nevada, North Carolina, Oklahoma, Texas, Utah, and Wyoming.

[37]. I do not speak here of whether, criminologically speaking, the presence or absence of training requirements, or the differences in types of training requirements, has any criminologically measurable effect on the safety record of licensees. Here, I evaluate the requirements only from the perspective of whether the purported purpose of training requirements, to assure the public that those carrying firearms have safe gun-handling skills, minimum proficiency, and knowledge of when they may and may not shoot in self-defense, is clearly satisfied by an analysis of the statutory requirements.

[38]. Some states require citizens to retreat, if possible, before using lethal force in self-defense. That is essentially a refinement of the concept of the "imminence" of the danger. If it is possible to safely retreat and avoid using deadly force, the danger has not yet become fully imminent.

[39]. See *Sourcebook of Criminal Justice Statistics* (Washington: U.S. Department of Justice, 1992), Table 3.10, "Estimated Percent Distribution of Personal and Household Incidents," p. 264.

[40]. See *ibid.*, Table 3.16, "Estimated Percent Police Response Time for Personal and Household Victimitizations," p. 271.

[41]. See the discussion of this point and legal authority cited by Cramer and Kopel, pp. 730-31, where they recount some particularly egregious examples of police failures to respond to pleas for help.

[42]. The principal thrust of this argument is to deny government the moral authority to require someone to give up his ability to defend himself when government does not agree to provide protection in return. That is, it suggests that laws prohibiting citizens from using arms to defend themselves are immoral because there is in fact no social contract. The argument is, however, faulty to the extent that it suggests that, if government did assume an obligation to protect each individual, it could rightfully require its citizens to abandon their right to self-protection. Social contract theorists like Hobbes and Locke held the

right to life to be irreducible and inalienable; government could not require men to trade or abandon the right to defend themselves. As Hobbes said, "A covenant not to defend my selfe from force, by force, is alwayes voyd." See Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991), p. 98. The absurdity of such a "trade" is apparent if one merely follows it through. Suppose government did assume an obligation to protect me and then asked me for my arms, so that I could not adequately defend myself. If government then failed in its duty so that I was killed by a criminal, the result would be that my estate would have a lawsuit for monetary damages against the government. I would hardly believe that in trading my life (i.e., my right to continue my life by defending it) for money damages for my heirs I had made an equal exchange. The more radical argument, based on the right to life, is that government has no right to deprive its citizens of the means with which to defend themselves regardless of whether or not it assumes an obligation to protect each separate individual.

[43]. Lott and Mustard, p. 1.

[44]. *Ibid.*, p. 65.

[45]. Robert Spitzer, *The Politics of Gun Control* (Chatham, N.J.: Chatham House Publishing, 1995), pp. 181-97.

[46]. Lott and Mustard, p. 48.

[47]. The same problem would make it extremely difficult or impossible to prove that shall-issue licensing laws *increased* violent crime. In either case, the researcher requires a way to verify that more people are in fact carrying guns postenactment.

[48]. Lott and Mustard, p. 7 n. 26.

[49]. My thanks to Daniel Polsby of the Northwestern University School of Law for pointing this out to me.

[50]. Dan A. Black and Daniel S. Nagin, "Do 'Right to Carry' Laws Deter Violent Crime?" *Journal of Legal Studies* 27 (forthcoming, 1998).

[51]. John R. Lott Jr., "The Concealed Handgun Debate," unpublished paper, September 17, 1997, p. 15.

[52]. *Ibid.*, p. 9.

[53]. *Ibid.*

[54]. *Ibid.*, p. 12.

[55]. A fairly detailed account of judicial interpretations of the Second Amendment and state constitutional guarantees of the right to keep and bear arms can be found in Cramer, pp. 221-67.

[56]. See, for example, Spitzer, pp. 25-48.

[57]. For a careful examination of the implications of adopting a "states' rights" view of the Second Amendment, and explication of the restrictions on federal gun control that might nevertheless follow from the "states' rights" interpretation, see Glenn Harlan Reynolds and Don B. Kates, "The Second Amendment and States' Rights: A Thought Experiment," *William and Mary Law Review* 36 (1995): 1737.

[58]. See, for example, Don B. Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," p. 204; Sanford Levinson, "The Embarrassing Second Amendment," *Yale Law Journal* 99 (1989): 637; William Van Alstyne, "The Second Amendment and the Personal Right to Arms," *Duke Law Journal* 43 (1994): 1236. A collection of citations to other recent articles on the Second Amendment can be found in Glenn Harlan Reynolds, "A Critical Guide to the Second Amendment," *Tennessee Law Review* 62 (1995): 465 n. 18.

[59]. See Joyce Lee Malcolm, *To Keep and Bear Arms--The Origins of an Anglo-American Right* (Cambridge, Mass.: Harvard University Press, 1994), pp. 162-63.

[60]. See Don B. Kates, "The Second Amendment: A Dialogue," *Law and Contemporary Problems* 49 (1986): 143; Cramer, pp. 122-31.

[61]. *Dred Scott v. Sanford*, 60 U.S. 393, 417 (1857).

[62]. *Ibid.*

[63]. 14 Stat. 176-177 (1866).

[64]. Cong. Globe, 39th Cong., 1st sess., 2764-65 (1866).

[65]. The author is aware of no study indicating the frequency with which permit holders generally carry their weapons.

[66]. The licensing statute requires the issuance of a permit within 90 days, regardless of whether the background check is finished at that time. Thus, some permits are issued only to be revoked when the background search results are received.

[67]. Cramer and Kopel, p. 692.

[68]. *Ibid.*, pp. 692-93.

[69]. See "Handgun Law's First Year Belies Fears of 'Blood in the Streets,'" *Texas Lawyer*, December 9, 1996, p. 2.

[70]. See "Traffic Argument in Texas Raises Questions on New Freedom to Carry Guns," *New York Times*, February 23, 1996, p. A1.

[71]. See "Handgun Law's First Year Belies Fears of 'Blood in the Streets,'" *Texas Lawyer*, December 9, 1996, p. 2.

[72]. See Arthur L. Kellerman and Donald T. Reay, "Protection or Peril? An Analysis of Firearms-Related Deaths in the Home," *New England Journal of Medicine*, June 12, 1986, pp. 1557-60, quoted in "Carrying Concealed Weapons--Questions and Answers," Handgun Control Inc., Washington, n.d., p. 3.

[73]. Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," *Journal of Criminal Law and Criminology* 86 (1995): 173.

[74]. See Daniel D. Polsby, "Firearms Costs, Firearms Benefits and the Limits of Knowledge," *Journal of Law and Criminology* 86 (1995): 211. The footnote to this claim reads as follows: "Chicago Police Department reports show that the percentage of Chicago homicide victims with police records has been as high as 65% in recent individual years. . . . In the early 1970s, the corresponding figures were 40%-45%."

[75]. "Carrying Concealed Weapons," p. 4. The FBI study cited is "A Study of Selected Felonious Killings of Law Enforcement Officers," September 1992.

[76]. *60 Minutes*, October 1, 1995, transcript, p. 1.

[77]. Lott and Mustard, p. 3 n. 8.

[78]. *Ibid.*

[79]. See Kleck and Gertz, p. 173.

[80]. My thanks to Preston Covey of Carnegie Mellon University for pointing this out to me.

[81]. Quoted in "Handgun Law's First Year Belies Fears of 'Blood in the Streets,'" p. 2.

[82]. See "Carrying Concealed Weapons," p. 3. The numbers are drawn from the U.S. Department of Justice, Bureau of Justice Statistics, "Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft," April, 1994 (reporting that about 62,200 victims of violent crime used guns to defend themselves) and from an analysis of the National Crime Victimization Survey for data between 1987 and 1990 by University of Maryland researchers, David McDowall and Brian Wiersema, "The Incidence of Civilian Defensive Firearms Use," December, 1994 (reporting about 65,000 such incidents a year). A 1991 study by Phillip Cook of Duke University estimated the number of defensive uses a year at 80,000 for the period 1979-87.

[83]. See Kleck and Gertz; and the 1994 National Survey of Private Ownership of Firearms in the United States, conducted for the Police Foundation under the sponsorship of the National Institute of Justice and discussed in Phillip J. Cook and Jens Ludwig "You Got Me: How Many Defensive Gun Uses Per Year?" Paper presented at the meeting of the American Society of Criminology, Chicago, November 20, 1996.

[84]. See *ibid.*

[85]. See Kleck and Gertz, pp. 151-52.

[86]. Don B. Kates et al., "Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda?" *Tennessee Law Review* 62 (1995): 572-73.

[87]. The numbers, except for suicides, are given by Cook and Ludwig. The number of gun crimes a year is contested. The figures are based on National Crime Victimization Survey information, which counts as a gun crime any crime in which the criminal had a firearm, even if the firearm was not used by the criminal. Since criminal gun possession is included, the number should not be taken as a count of total crimes of actual gun misuse. See the discussion of this point in Kleck and Gertz, at 169.

[88]. The number of defensive gun uses is not necessarily a perfect proxy for the social benefits of firearm ownership and use. On the one hand, the mere fact that someone claims to have used his firearm defensively does not, of course, mean that he did so justifiably in the eyes of the law. If we add the qualification that the use has to be adjudged lawful as well, (1) we are likely to be unable to determine how many such uses there are, due to the amount and quality of information required to make this determination, and (2) the number of "legitimate" defensive uses, so defined, will likely decline. On the other hand, the total positive value of firearms use would have to include the deterrent value of widespread ownership (i.e., the number of crimes that simply do not occur because of fear that victims or householders are armed). While there is evidence that strongly suggests that criminals avoid those who they believe are armed, there is no way to count the crimes that do not occur because of firearm ownership. The number of defensive gun uses thus appears to be one of the, admittedly imperfect, proxies for societal benefits.

[89]. See Kleck and Gertz; and the 1994 National Survey of Private Ownership of Firearms in the United States, conducted for the Police Foundation under the sponsorship of the National Institute of Justice and discussed in Cook and Ludwig.

[90]. Colin Loftin and Ellen J. MacKenzie, "Building National Estimates of Violent Victimization," unpublished paper prepared for the Symposium on the Understanding and Control of Violent Behavior, cited in Kleck and Gertz, p. 155 n. 27.

[91]. Similarly, if it were argued that the number of defensive gun uses is not a reasonable proxy for social benefit from gun use, the result would also be that one has nothing to weigh against the costs, quantified in terms of a body and injury count and number of gun crimes. Again, one would not be able to assert either that the costs outweighed the benefits or that the benefits outweighed the costs.