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TWO GUNS, FOUR GUNS, SIX GUNS, MORE GUNS: DOES ARMING THE PUBLIC REDUCE CRIME?

ALBERT W. ALSCHULER*

I. INTRODUCTION

The book *Fist, Stick, Knife, Gun* by Geoffrey Canada¹ begins:

It was a bad summer, the summer of 1993 in New York City. Late August saw a sixteen-year-old mother accidentally shot by a thirteen-year-old boy. He was trying to shoot a sixteen-year-old boy. The young mother was trying to save her baby, who was playing a few yards away. She was climbing a small fence that surrounded the playground. The bullet entered her head, killing her instantly, leaving her draped on the fence. . . .

Then, on August 29, a ten-year-old boy was shot. . . . By the time they shot [him] in the head . . . sixty other innocent bystanders under sixteen had been shot that year in New York City. There would be more. It really is getting worse. Too many guns, too much crack, too few jobs, so little hope.

. . . .

. . . Violence has always been around The difference is that we never had so many guns in our inner cities. The nature of the violent act has changed from the fist, stick, and knife to the gun.²

During the decade from the end of 1983 through the end of 1993, the rate of homicides committed by people seventeen and younger nearly tripled.³ In

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1. GEOFFREY CANADA, *FIST, STICK, KNIFE, GUN* (1995).

2. *Id.* at ix-xi.

3. From 6.4 per 100,000 in 1984 to 18.9 per 100,000 in 1993. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, 1994 SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 342 tbl.3.121 (1995). During the same period, the homicide rate among people age 18 to 24 increased from 15.2 per 100,000 to 25.9 per 100,000, and the homicide rate among people over 25 declined from 6.5 per 100,000 to 5.2 per 100,000. *Id.* See also HOWARD N. SNYDER ET AL., U.S. DEP'T

the troubling social circumstances evidenced by this statistic and by Geoffrey Canada's narrative, America is abandoning its concealed weapon laws by offering concealed weapons permits to nearly every adult who wants one. Today thirty-one state legislatures have endorsed this policy by enacting what legislators call "right-to-carry" or "shall issue" laws.⁴

The irony is that these states have come close to repealing their concealed weapons laws at the moment that they are gaining the ability to enforce them. Within a few years, gun-detection technology apparently will enable us to disarm gang-bangers and keep guns from our streets.⁵ But we are busily arming everyone. Because our gun-detection technology cannot distinguish gun-carriers with permits from gun-carriers without permits, right-to-carry laws coupled with well-established Fourth Amendment restraints will limit the ability of the new technology to discover even the concealed weapons that remain unlawful.⁶ The choice between abandoning and enforcing our concealed weapons laws has never been posed in starker terms.

II. BACK TO DODGE CITY: THE FINDINGS OF LOTT AND MUSTARD

A highly publicized study by John Lott and David Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*,⁷ reports that right-to-carry laws reduce crime dramatically. This study concludes that if the states without right-to-carry laws had enacted them before 1992, the number of murders in the United States would have declined that year by 1414. This number would have dwarfed any conceivable increase in the number of

OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1996 UPDATE ON VIOLENCE 22 (1996).

4. See John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. LEGAL STUD. 1, 4 (1997). For an abridgment of this work, see John R. Lott, Jr., *Does Allowing Law-Abiding Citizens to Carry Concealed Handguns Save Lives?*, 31 VAL. U. L. REV. 355 (1997).

5. See Erik Milstone, *New Devices Let Frisks Go Undercover*, A.B.A. J., Aug. 1996, at 32; David A. Harris, *Superman's X-Ray Vision and the Fourth Amendment: The New Gun Detection Technology*, 69 TEMP. L. REV. 1 (1996). Although David Harris argues that the Fourth Amendment would preclude the random use of portable gun-detectors on the streets, he acknowledges powerful arguments to the contrary. See *id.* at 43 n.240 (describing letters from Wayne R. LaFave and Christopher Slobogin); Arnold H. Loewy, *The Fourth Amendment as a Device for Protecting the Innocent*, 81 MICH. L. REV. 1229, 1246 (1983) ("[I]f a device could be invented that accurately detected weapons and did not disrupt the normal movement of people, there could be no fourth amendment objection to its use.").

6. See Harris, *supra* note 5, at 56-60.

7. Lott & Mustard, *supra* note 4. For a small portion of the news stories generated by this study, see Dennis Cauchon, *Study: Weapons Laws Deter Crime: Fewer Rapes, Murders Found Where Concealed Guns Legal*, USA TODAY, Aug. 2, 1996, at A3; Ian Katz, "Gun Law" Cuts Crime Rate, U.S. Study Finds, THE GUARDIAN, Aug. 3, 1996, at 1; Alex Rodriguez, *Gun Debate Flares; Study: Concealed Weapons Deter Crime*, CHI. SUN-TIMES, Aug. 9, 1996, at 1; *Concealed Weapons Laws Deter Violent Crimes, Study Concludes*, WASH. POST, Aug. 9, 1996, at A4.

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accidental deaths by firearm that right-to-carry laws might have generated. Moreover, rapes would have declined by 4177, aggravated assaults by 60,363, and robberies by 11,898. Property crime would have increased substantially, for many criminals, fearful of their newly armed victims, would have switched from crimes of violence to crimes of stealth. The net economic savings generated by enacting right-to-carry laws throughout America would have been \$5.47 billion.⁸

Although I am not qualified to offer technical criticism of Lott and Mustard's econometric work, I can offer a lawyer's reaction to this work. Like other readers without Ph.D.'s who try to be intelligent consumers of empirical research, I sometimes find myself frustrated as social scientists talk of "feasible generalized least squares," "two-stage least squares," "ordinary least squares," and "differences-in-differences-in-differences." When, unlike the natural scientists whose papers also baffle me, the social scientists never (or almost never) reach consensus among themselves, I wonder whether responsible citizens and policymakers can do more than throw up their hands. I believe, however, that people like me are not helpless. I may not be knowledgeable enough to criticize Lott and Mustard's methodology, but I can explain why I find their conclusions difficult to follow and difficult to swallow.

Lott and Mustard base their findings on a regression analysis of large aggregate data sets, notably the FBI's collection of crime statistics by county. Although regressions on such large data sets are the bread-and-butter of econometricians, these regressions have become less fashionable among political scientists and sociologists than they were a decade or two ago. I do not know why, even in the hands of experts like Lott and Mustard, these large-scale regressions often yield quirky results, but I have read enough social science to know that they do. I suspect that the problems of multicollinearity and omitted variables often prove insurmountable despite the best efforts of statisticians to overcome them.

Whatever the reason, the regression that generates Lott and Mustard's stunning crime-reduction figures yields other results that might raise one's eyebrows. For example, Lott and Mustard examine two variables that seem to distinguish urban from rural counties—total population and population density. Both variables, however, are *negatively* correlated with murder, rape, and burglary rates.⁹ Perhaps, other things being equal, one is safer from murder, rape, and burglary in Chicago than in Valparaiso. More probably, however, in

8. This figure depends upon valuing each of our lives at \$3 million. If your life is worth \$4 million as mine is—just ask my mother—the \$5.47 billion figure is too low.

9. Lott & Mustard, *supra* note 4, at 20-21 tbl.3.

the words of O.J. Simpson's forensic expert Dr. Henry Lee, "Something's *wrong*."¹⁰

Similarly, the Lott and Mustard paper reports that, as one would expect, the proportion of a county's population that is black, male, and between the ages of ten and nineteen is strongly (and positively) correlated with the rate of property crime.¹¹ When one turns to Lott and Mustard's tables, however, one learns more interesting things. Contrary to ordinary expectations, the proportion of a county's population that is black, male, and just a bit older is *negatively* correlated with the rate of property crime.¹² Moreover, the proportion of the population that is black, male, and between ten and nineteen is less significantly correlated with the murder rate than is the proportion that is black, female, and *over sixty-five*.¹³ At the same time, the proportions of these two high-risk groups (teenage black males and elderly black females) are less powerful predictors of the homicide rate than the proportion of black women between forty and forty-nine.¹⁴ Jens Ludwig, noting similar anomalies in other crime categories, observes that either middle-age and retirement-age black women play a greater role in murder, assault, and auto theft than most of us have suspected or Lott and Mustard's models are misspecified.¹⁵ Once more, Dr. Henry Lee's immortal words might ring in one's ears: "Something's *wrong*."

Is Lott and Mustard's conclusion that right-to-carry laws deter violent crime another finding that should cause Henry Lee's eyes to widen and his jaw to drop? Consider the sorts of crime that right-to-carry laws might inhibit. Concealed-weapon permits authorize people to carry firearms on their persons, in their purses, and in their automobiles. Even in states without these laws, storekeepers may keep guns under their counters, and all of us may keep guns beside our beds. Accordingly, right-to-carry laws are most likely to affect the rate of street crime between strangers¹⁶ and least likely to affect rate of intramural violence between family members. Of course if street crime does

10. See ALAN M. DERSHOWITZ, REASONABLE DOUBTS: THE O. J. SIMPSON CASE AND THE CRIMINAL JUSTICE SYSTEM 91 (1996).

11. Lott & Mustard, *supra* note 4, at 25.

12. *Id.* at tbl.3. Indeed, the proportion of black males between 20 and 29 in a county's population is negatively correlated with crime rates in half of Lott's and Mustard's crime categories.

13. The t statistics are 1.52 and 2.97 respectively.

14. The t statistic is 5.32. The possibility that these women are the principal victims of homicide seems only a little more plausible than the possibility that they are the principal perpetrators. Either hypothesis, however, would explain the correlation.

15. Jens Ludwig, Do Permissive Concealed-Carry Laws Reduce Violent Crime? 21 (Oct. 8, 1996) (unpublished draft, on file with author).

16. Right-to-carry laws also might influence the rate of crime in taverns and other places to which substantial numbers of people have access. The conventional wisdom of western movie saloonkeepers, however, is that fatalities are less likely when alcohol-consuming patrons are required to check their six-guns at the bar.

decline following the enactment of right-to-carry laws while domestic crime is unaffected, the *proportion* of street crime should fall while that of domestic crime should rise.

Lott and Mustard offer data on the character of victims in homicide cases. They report (astonishingly) that the proportion of stranger killings *increases* following the enactment of right-to-carry laws while the proportion of intra-family killings *declines*.¹⁷ That right-to-carry laws deter intra-family homicides more than they deter stranger homicides is inconceivable, but perhaps an economist could offer the following spin: *When a right-to-carry law persuades Polly to procure a pistol to put in her purse to pulverize predators in the park, Polly may still have the pistol when her pernicious paramour Peter Piper proposes to punch her in the parlor.* In that way, right-to-carry laws might deter domestic violence. More probably, however, "Something's *wrong*."

The proportion of homicides in which the victim is known to the offender and is *not* a family member does increase following the enactment of right-to-carry laws. Lott and Mustard write, "This raises the question whether concealed handguns cause criminals to substitute into crimes against those whom they know and presumably are also more likely to know whether they carry concealed handguns."¹⁸ As Lott and Mustard envision the criminal mind, it might calculate the costs and benefits and then conclude: "I won't kill a stranger, for the stranger might have a gun. I'll just kill old Charley."

The most common street crime is robbery, and although many robberies do occur off the streets, it is surprising that Lott and Mustard report only a weak deterrent effect for robbery, weaker than for any of the other violent crimes they consider.¹⁹ Might something be *wrong*?

Right-to-carry laws offer concealed weapons permits only to adults. They should not significantly deter the crimes committed against juveniles whose rate of weapon-carrying is not affected by these laws. Ludwig, however, presents a regression like Lott and Mustard's, adding data on the age of homicide victims. He reports that right-to-carry laws appear to *reduce* slightly the rate of killing of permit-deprived juveniles and to *increase* slightly the rate of killing

17. Lott & Mustard, *supra* note 4, at 50 tbl.13. To be sure, the statistical relationship is not strong, and in many cases the relationship between the killer and his victim is not known. Moreover, the change in the proportion of homicides in which the victim is known to the offender but is *not* a family member is in the expected direction. Nevertheless, the fact that right-to-carry laws appear to deter stranger killings *no more* than they deter domestic killings makes it doubtful that they have any effect on the homicide rate at all.

18. *Id.* at 49-51.

19. See Ludwig, *supra* note 15, at 18.

of permit-permitted adults.²⁰ Perhaps the drop in the killing of juveniles occurs because adults with concealed weapons rush to their aid, and perhaps the increased killing of adults occurs because aging good Samaritans, after saving some juveniles, meet an unhappy end themselves. More probably, however, in some words that ought to find their way into *Bartlett's Familiar Quotations*, "something's wrong."

In another critique of the Lott-Mustard study, Dan Black and Daniel Nagin disaggregate the Lott and Mustard sample geographically and examine the effect of right-to-carry laws state-by-state. They report that in all but one of Lott and Mustard's seven crime categories, right-to-carry laws have a *positive* and statistically significant effect on crime in some states and a *negative* and statistically significant effect in others.²¹ It is as though, after testing a new drug in several states, the drug appeared to save many lives in Illinois and Iowa and to kill almost as many people in Indiana and Michigan. In this situation, you probably would not lump all the numbers together and, if they proved statistically significant, pronounce the drug a success. Because the drug ought to have about the same effect in every state, you might say with Dr. Lee, "Something's wrong."

Black and Nagin also report that when right-to-carry laws appear to have negative effects on crime, these effects materialize only three or four years after the laws have been enacted.²² Moreover, eliminating a single state, Florida, from Lott and Mustard's most important regression leaves right-to-carry laws with no statistically significant effect in six of the authors' seven crime categories.²³

20. *Id.* at 11-12, 17. I am grateful to John Lott for calling my attention to the Ludwig study and for sharing it with me. Lott's willingness to share data, to explain his work, and to facilitate criticism of it provides a model of academic cooperation and graciousness.

21. Dan A. Black & Daniel S. Nagin, Do "Right-to-Carry" Laws Deter Violent Crime? 9-10, 18 tbl.4 (Oct. 16, 1996) (unpublished draft, on file with author).

22. *Id.* at 7.

23. *Id.* at 9, 17 tbl.3. The Florida data are problematic, Black and Nagin suggest, because the state's crime rates have been influenced by its volatile drug trade and by the Mariel boat lift and also because, after enacting its right-to-carry law, Florida enacted other measures requiring background checks of handgun buyers and imposing a waiting period for gun purchases. *Id.* at 9.

Black's and Nagin's finding that, without Florida, right-to-carry laws would not have had a significant effect in most of Lott's and Mustard's crime categories is based on a comparison of crime rates two years before and two years after the enactment of the right-to-carry laws. This comparison could be misleading. If crime rates were rising two years before the enactment of a right-to-carry law, if these rates continued to rise until the law was enacted, and if the rates then began to decline, these rates might have fallen two years later to precisely the point where they had been four years before. Although such a pattern would show no difference between crime rates two years before and two years after enactment of the law, it would be consistent with the hypothesis that the law's deterrent impact was substantial. A visual inspection of Black's and Nagin's Table 3, however,

The empirical studies of right-to-carry laws preceding Lott and Mustard's study may be flawed,²⁴ but if these studies have any value, they suggest that right-to-carry laws and high gun ownership levels either have no significant effect on crime or else increase it.²⁵ Both Ludwig and Black and Nagin conclude that no credible empirical evidence supports the judgment that right-to-carry laws deter crime. At this point, there is essentially no reason for an intelligent consumer of social science research to accept the Lott and Mustard findings. What we know mostly is: "Something's *wrong*."

III. A BETTER ALTERNATIVE: FIND ROOM ON THE BUS FOR US ALL

The most promising responses to youth violence focus less on the violence itself than on the conditions that breed it. If despair and hopelessness remain the all-but inescapable lot of millions of Americans, neither our police nor our prisons nor the firearms in our shoulder holsters are likely to save us.

These numbers bear repeating. Each year, one out of ten teenage women becomes pregnant (a rate at least double that of any other industrialized nation and twice that of the United States twenty years ago).²⁶ Almost one-third of the children born in the United States are born out of wedlock, and most fathers of these children assume no responsibility for their care or support.²⁷ Seventy

suggests that focusing on other time-series comparisons would have yielded very similar findings.

24. See Lott & Mustard, *supra* note 4, at 4-5.

25. See David McDowall et al., *Easing Concealed Firearms Laws: Effects on Homicide in Three States*, 86 J. CRIM. L. & CRIMINOLOGY 193, 202 (1995) (Although some jurisdictions departed from this pattern, "firearm homicides increased in the aftermath of shall issue laws. In contrast, homicides without guns remained steady."); Clayton E. Cramer & David B. Kopel, '*Shall Issue*': *The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679 (1995) (indicating that right-to-carry laws may have reduced homicide rates in Florida and increased homicide rates in Washington but that they had no evident effect on homicide rates in eight other states); Gary Kleck & E. Britt Patterson, *The Impact of Gun Control and Gun Ownership Levels on Violence Rates*, 9 J. QUANTITATIVE CRIMINOLOGY 249, 280-81 (1993) (reporting that gun ownership levels appear to have no net effect on robbery and homicide rates); Philip J. Cook, *The Technology of Personal Violence*, in 14 CRIME & JUST. 1 (Michael Tonry ed., 1991) ("[I]t is not true that jurisdictions with high gun ownership have lower robbery or burglary rates than others." *Id.* at 62. Indeed, "burglary rates tend to increase with gun ownership across large cities, other things equal . . ." *Id.* at 60.).

26. Charles M. Madigan, *Hard Times for Children in U.S.: Study Cites Three Decades of Family Decline*, CHI. TRIB., Jan. 3, 1992, at A1.

27. Roger Worthington, *Adding Father to the Family: Paternity Laws Take Aim at Poverty*, CHI. TRIB., Feb. 14, 1994, at A1. Two hundred forty-three thousand American children lived with a single, never married parent in 1963; 3.7 million did in 1983; and 6.3 million—27% of all children—did in 1993. Births to unmarried women increased more than 70% between 1983 and 1993. Thirty percent of all births in America and 68% of African American births are to unmarried women. In two-parent households, the median income is \$43,578. In one-parent households following divorce, it is \$17,014. In the one-parent households of never married parents, it is \$9272. *The Coming Apart of America*, CHI. TRIB., July 23, 1994, at A18.

percent of the residents of juvenile correctional institutions come from homes with severe parental deficits.²⁸

To the limited extent that anyone can measure this closeted phenomenon, child abuse has increased.²⁹ The number of children in foster care has grown by 50% within five years.³⁰ More than half of all high school seniors get drunk at least once a month.³¹ Within the past thirty years, the suicide rate of teenagers between fifteen and nineteen has tripled and more.³²

Americans barely talk about the sensible solutions. They apparently have accepted poverty as permanent. They apparently have accepted the crime associated with poverty as permanent. They see the criminal justice system as an ever-more prominent component—indeed the dominant component—of society's response to the "underclass." Our penology no longer considers the causes of crime or even the rehabilitation and reintegration of offenders. Its concern is risk management and the cost-effective control of dangerous groups.³³

Well-financed schools, after-school recreational programs, anti-truancy programs, anti-drop-out programs, tutoring programs, parenting classes, less bloody television programs, a peace officer corps,³⁴ job programs, drug and alcohol treatment programs, rent vouchers, neighborhood clean-up programs, the

28. See JEAN BETHKE ELSHTAIN, *DEMOCRACY ON TRIAL* 7 (1995).

29. See Victor R. Fuchs & Diane M. Reklis, *America's Children: Economic Perspectives and Policy Options*, 255 *SCI.* 41-42 (rates of reported child abuse tripled between 1976 and 1986).

30. From 274,000 in 1986 to 411,000 in 1991. Richard Whitmire, *1987: Was It the Year that Things Started Going Wrong in the U.S.?*, *DENVER POST*, Feb. 27, 1994, at A21.

31. Madigan, *supra* note 26, at 1.

32. *Id.*

Here are the results of two surveys a half-century apart reporting the "Top Problems in Public Schools According to Teachers":

1940	1990
Talking Out of Turn	Drug Abuse
Making Noise	Alcohol Abuse
Cutting in Line	Pregnancy
Littering	Suicide
Chewing Gum	Rape
Running in Halls	Robbery
Dress Code Infraction	Assault

3 RESPONSIVE COMMUNITY: RIGHTS AND RESPONSIBILITIES 56 (1993) (citing CONGRESSIONAL QUARTERLY RESEARCHER, Sept. 11, 1992).

33. See Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 *CRIMINOLOGY* 449 (1992); Malcolm Feeley & Jonathan Simon, *Actuarial Justice: The Emerging New Criminal Law*, in *THE FUTURES OF CRIMINOLOGY* 173 (David Nelkin ed., 1994).

34. See CANADA, *supra* note 1, at 160-61.

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renewal of families, the renewal of churches, and the extension of a spirit of hope and responsibility through inner city communities and through all of America³⁵ could offer us greater protection from violence than can capital punishment, three-strikes-and-you're-out, truth-in-sentencing, mandatory minimum crack sentences, impeaching all federal judges who care about civil liberties, and placing 100,000 new police officers on the streets.

As disheartening as our reliance on prison construction and mandatory minimum sentences surely is, the proliferation of right-to-carry laws is equally distressing. These laws reflect America's mistrust of government and a self-help siege mentality. Difficult though it is to believe, as late as 1964 76% of Americans thought that they could trust the government to do what is right most of the time. The figure is 19% today.³⁶ Right-to-carry laws indicate how our faith in the social contract has faded; they take us a step back toward Thomas Hobbes' state of nature.³⁷

Of course the right-to-carry cure for violence worked for the Hatfields and McCoys. It worked for Bernhard Goetz. It worked on the American frontier. It is being copied in Rwanda today. According to John Lott and David Mustard, right-to-carry can work for us too. But we had better not sit with our backs to the door. Someone might be coming for us soon.

35. For a moving entreaty in favor of this last prescription, see Spike Lee's *Get on the Bus*, a cinematic remake of the *Canterbury Tales* and celebration of the Million Man March.

36. Stephen Chapman, *The Disillusion With Government May be for Real This Time*, CHI. TRIB., Oct. 27, 1994, at A31.

37. See THOMAS HOBBS, *LEVIATHAN* 186 (C.B. Macpherson ed., Penguin Books 1986) (1651).

