

Fall 1995

Daniel D. Polsby Replies

Daniel D. Polsby

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Daniel D. Polsby, Daniel D. Polsby Replies, 86 J. Crim. L. & Criminology 227 (1995-1996)

This Symposium is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

DANIEL D. POLSBY REPLIES†

DANIEL D. POLSBY

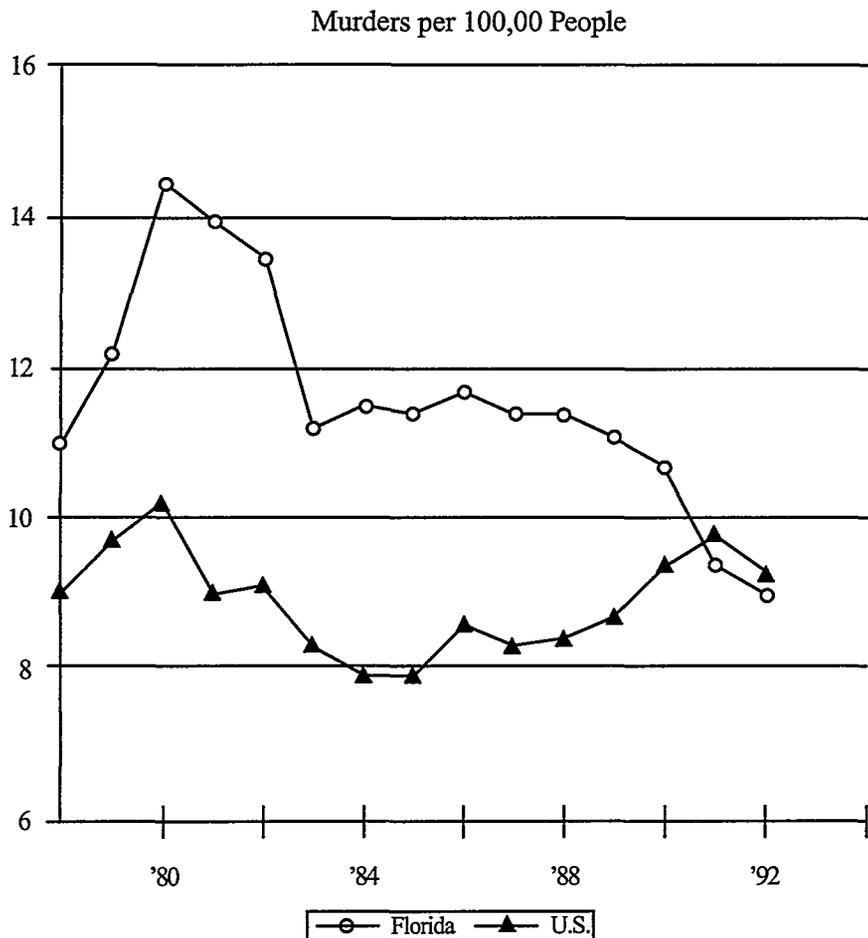
McDowall, Loftin, and Wiersema hypothesize that illegal carriage of guns by criminals may be a response to legal concealed carriage, both by civilians and police officers. The implication is that this might be a mechanism through which Florida's "shall issue" carry permit law drives up the rate of lethal violence. The further implication is that less legal concealed carriage, whether by civilians or by police officers, should ease the rate of lethal violence. The notion that disarming police officers should lead to lower levels of criminal violence, whether by firearms or by other instrumentalities, is a bold conjecture indeed, and while it may be true, it will take a good more propounding than these authors have given it. But what is more important, the authors' distinction between firearms homicides and other homicides is seriously misleading. They claim to have found that, in some parts of Florida at least, *firearms* homicides increased after the concealed carry gun law was relaxed. But the state's *overall* rate of homicide *decreased*. This experience supports the argument of "shall issue" proponents, whose theory was simply that increased gun carrying would deter violent criminals, not that it would set up some sort of *selective* deterrent force that would affect only predators armed with guns. Readers who are interested in what the recent Florida homicide experience has been may consult the accompanying graph, which presents F.B.I. statistics through the most recent year for which data are available.

No one can reasonably contest the fact that feral teenagers and young men do have a penchant, which has been increasing, for using guns to facilitate economic crimes and to redress narcissistic injuries.¹ The social danger, however, does not lie with the number of guns in circulation, but with how they are distributed in the population.²

† Author requested rebuttal [eds].

¹ It is becoming increasingly clear, furthermore, that murder is not an equal opportunity employer but rather a crime overwhelmingly committed by statistical outliers with life histories of violent behavior. See Don B. Kates & Henry Schaffer et al., *Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda*, 62 TENN. L. REV. 513, 579-84 (1995).

² Robert Taylor, *A Game Theoretic Model of Gun Control*, in 15 INTERNATIONAL REVIEW OF LAW AND ECONOMICS 265 (1995).



When violence breaks out in our society, we normally expect the situation to be taken in hand by men and women with guns—peace officers. We arm the police because we believe that it makes them safer from attack, and hence lowers the costs to themselves of intervening in trouble. There is no evident reason why the same logic should not be applicable to adequately proficient civilians as well. Though rising levels of civilian armament and rising homicide rates are compatible conditions, there is no longer any room for doubt that the converse proposition is true as well: liberalization of concealed carry laws can accompany, and in Florida has accompanied, falling rates of homicide. And while it is true that we cannot answer the question whether that liberalization has in fact led to appreciable increases in civilians

carrying concealed handguns in public,³ no one seems to doubt what common sense would suggest: that there has been a considerable increase in this behavior, which by now may plausibly be thought to represent hundreds of thousands of person-years of experience. In that case, where is the Zimring-Cook effect? Their hypothesis makes an unequivocal prediction about what will happen to the murder rate, *ceteris paribus*, when hundreds of thousands of person-years of additional gun-toting is added to a jurisdiction's experience over a given period of time. What is equally unequivocal is that the Zimring-Cook prediction has not been borne out, at least not in Florida over the relatively few years during which the "experiment" has been run.

McDowall, Loftin, and Wiersema seek to preempt this sort of observation by pointing out that in 1991, Florida adopted a "background check" law for handguns, whose good effects might have swamped out the ill-effects of increased gun carrying. With all due respect, this response looks like grasping at straws. Florida's background check statute applied prospectively to retail purchasers of handguns. We do not know how many handguns there were in Florida as of the effective date of the statute, but we do have somewhat reliable national numbers. If the number of handguns in Florida was merely proportional to the state's population in ratio to that of the nation, there were between three and four million handguns in Florida as of 1991, with an increase in the range of 2 or 3% per year.⁴ We know from the same Wright and Rossi interviews on which McDowall, Loftin, and Wiersema rely that only about 16% of "crime guns" were acquired in lawful retail transactions.⁵ Here, then, is the bidding: in order to believe that the enactment of the background check law was a genuinely confounding variable, one must believe that a law, that did no more than require a background check for the acquisition of about 1/2% of the state's handgun stock, "confounded" a decrease in the homicide rate as obvious as that depicted in the graph. To say the least, this is not a credible conjecture.

McDowall, Loftin, and Wiersema rightly caution against allowing emotionalism to carry the day in debates like these, and they deserve credit for setting forth their views with restraint and professionalism. They seem, however, to believe that only an attachment to the NRA or

³ It is possible, for example, that most current permit holders carried guns illegally before the concealed carry law was enacted.

⁴ In the 1990 census Florida had 5.3% of the U.S. population. Estimates of firearms stocks are taken from GARY KLECK, *POINT BLANK: GUNS AND VIOLENCE IN AMERICA*, Table 2.1 50, (1991).

⁵ JAMES WRIGHT & PETER ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* 16, Ch. 9 (1986).

like affiliation could explain misgivings about their result.⁶ They overlook an entirely different source of skepticism, namely, the common law's intuition that in general there is accord rather than antagonism between defense of oneself and the collective good of common security. As long ago as 1983, McDowall and Loftin embraced the contrary assumption that the "private provision of protection and justice is disruptive, causing high levels of personal violence and a state of war."⁷ It was a mistake then to model personal security as a "tragedy of the commons,"⁸ and it is a mistake now to fail to see that the liberalization of Florida's gun carry law has almost certainly had at least some marginal general deterrent effect on the commission of deadly predatory crimes in public places.

⁶ In my case, lest there be misunderstanding, there is no connection, let alone privity, between me and the NRA or any other firearms advocacy group.

⁷ David McDowall & Colin Lofton, *Collective Security and the Demand for Legal Handguns*, 88 AM. J. SOC. 1146, 1147-48 (1983).

⁸ Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).