

GUNS AND PROPERTY PREFERENCE:  
TESTING THE IMPACT OF GILLES AND CYNICISM  
CONJECTURES USING SURVEY DATA

*Ian Ayres, Pranjali Drall, Spurthi Jonnalagadda, Fredrick Vars\**

I. INTRODUCTION

In most states, a guest may carry a firearm onto a landowner's property unless the landowner expressly objects.<sup>1</sup> We have argued that it would be better to flip this "right-to-carry default" to require any gun carrier to seek the explicit permission of the landowner before bringing a firearm onto their property ("no-carry default").<sup>2</sup> In response, Stephen Gilles suggested that there might be a stronger case to be made for flipping the defaults in shall issue or constitutional carry jurisdictions than in may issue jurisdictions, where it is more difficult to obtain a concealed carry permit. In constitutional carry jurisdictions, any gun owner of age who does not fall into federal or state prohibited classes may openly or concealed carry a weapon. There are currently fifteen constitutional carry jurisdictions.<sup>3</sup> Shall issue jurisdictions require that licensing officials accept any application for a concealed carry permit so long as the individual does not meet any of the disqualifying criteria. This means that anyone who wishes to concealed carry will be able to attain a permit so long as they are not precluded by federal and state regulation. There are currently thirteen no discretion shall issue jurisdictions.<sup>4</sup> In may issue

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\* Ayres is the Townsend Professor at Yale Law School; Drall is a Research Fellow at Yale Law School; Jonnalagadda is a law student at Yale Law School; Vars is Pruitt, Sr. Professor at the University of Alabama School of Law.

<sup>1</sup> IAN AYRES & FREDRICK E. VARS, WEAPON OF CHOICE: FIGHTING GUN VIOLENCE WHILE RESPECTING GUN RIGHTS 84 (2020).

<sup>2</sup> *Id.* at 84–93.

<sup>3</sup> *Guns in Public Concealed Carry*, GIFFORDS L. CTR. (last visited Apr. 23, 2021), <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/#:~:text=Summary%20of%20State%20Law,concealed%20weapons%20in%20some%20form.&text=14%20%E2%80%9Cshall%20issue%E2%80%9D%20states%20provide,discretion%20to%20the%20issuing%20authority.>

<sup>4</sup> *Id.*

jurisdictions, the licensing agent may choose to reject a permit application for failure to show good cause to require a concealed carry permit.<sup>5</sup>

Given the heightened scrutiny placed on an applicant to demonstrate good cause for requiring a permit in may issue states, Gilles argued there is a stronger case for retaining the right-to-carry default in those jurisdictions. After all, if someone has a permit to concealed carry in a may-issue state, they have a demonstrable need that would justify them carrying in public. As Gilles memorably put it during his panel,

...If we're in New Jersey and the dishwasher repair person has a permit to carry a gun. . . [t]hat person has probably been robbed three times otherwise, they wouldn't have a permit to carry whereas if we're in [Texas]...the dishwasher repair person could have done a lot of things you don't want to know about. So...why would we think that the right default rule necessarily is the same for every state.<sup>6</sup>

In our original piece, we argued that there are strong majoritarian and policy justifications for flipping the right-to-carry default to a no-carry default.<sup>7</sup> Using the same representative survey results from the piece, we tested to see whether preferences for gun carry default rules are consistent with the hypothesis that people are more likely to prefer no-carry defaults in constitutional carry and shall issue jurisdictions. We also explored individuals' knowledge about the default rules in their states.

## II. RESULTS & DISCUSSION

Table 1 reports respondents' preference for a carry default by type of permitting regime in their home state. Contrary to what we will call the Gilles hypothesis, individuals in constitutional and shall carry states are 7.5% more likely to support a carry-default ( $p < 0.001$ ).

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<sup>5</sup> *Id.*

<sup>6</sup> To access the transcript, see *School of Law, Guns and Freedom Symposium*, QU, <https://www.qu.edu/schools/law/academic-resources/guns-and-freedom-symposium/> (last visited Apr. 23, 2021) (linking transcripts from each panel).

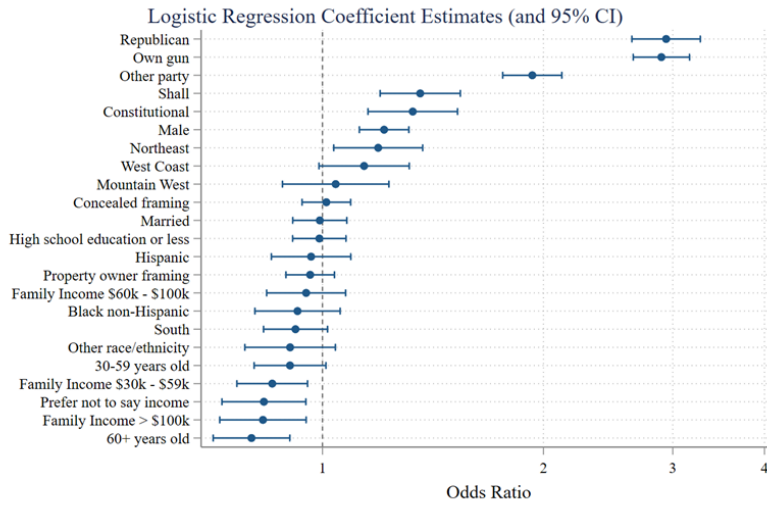
<sup>7</sup> Ian Ayres & Spurthi Jonnalagadda, *Guests with Guns: Public Support for 'No Carry' Defaults on Private Land*, 48 J. L., MED. & ETHICS 183, 183–84 (2020).

**TABLE 1: PREFERENCE OF RESPONDENTS FOR CARRY DEFAULT**

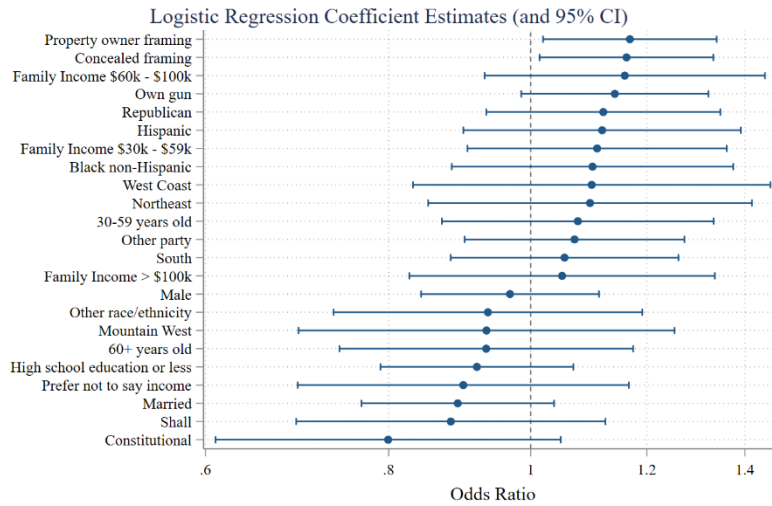
Carry Type	% Supporting Carry Default	Sample Size
May Issue	40.98%	539
Constitutional Carry	49.51%	403
Shall Issue	48.18%	1058
Weighted Average	46.77%	2000

To further examine this apparent association between permitting regime and preferences for carry defaults, we regressed answers to support questions including fixed effects and separately controlled for respondent demographic variables. Figure 1 summarizes the results from the logistic regression. Contrary to the Gilles hypothesis, we find that individuals in constitutional carry or shall issue jurisdictions are more likely to prefer a carry default. We found the same results, though statistically insignificant, when we tested for whether people in these jurisdictions were more likely to believe the law permitted a carry default, summarized in Figure 2. These results held when we combined shall issue and constitutional carry states into one category as demonstrated by Figure 3.

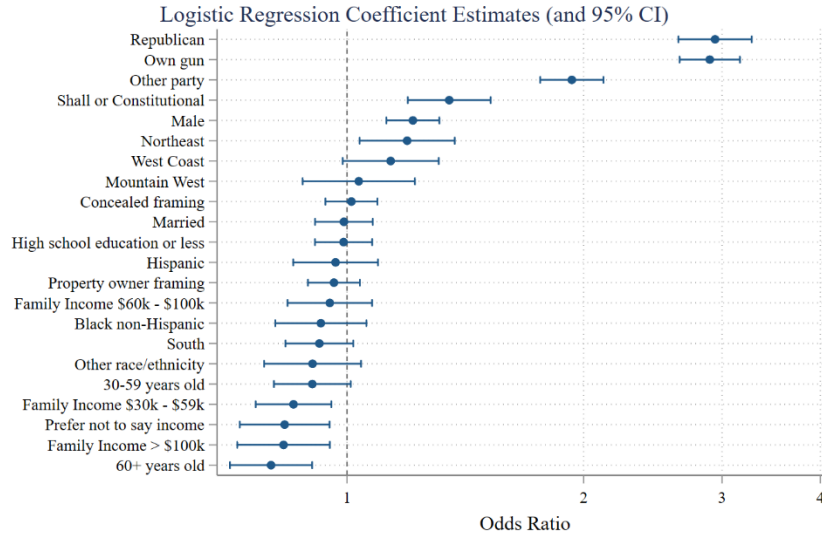
**FIGURE 1: LOGISTIC REGRESSION COEFFICIENTS OF “WHAT THE LAW SHOULD BE” BY DEMOGRAPHICS (HIGHER ODDS RATIO INDICATES PREFERENCE FOR RIGHT-TO-CARRY DEFAULT)**



**FIGURE 2: LOGISTIC REGRESSION COEFFICIENTS OF “WHAT THE LAW IS” BY DEMOGRAPHICS**



**FIGURE 3: LOGISTIC REGRESSION COEFFICIENTS OF “WHAT THE LAW SHOULD BE” BY DEMOGRAPHICS (SHALL AND CONSTITUTIONAL REGIMES COMBINED)**



We next ran a series of accuracy regressions to test how respondents' perceptions of what the law is were associated with their preference for a carry default. A response was considered accurate if the respondent correctly identified the default rule in their state. We hypothesized that in carry default states, respondents who indicated a preference for a carry default (gun rights advocates) were more likely to be incorrect than respondents with a preference for a carry default in non-carry default states. This hypothesis is borne out of a cynicism toward government as individuals may wrongly think their preferences are majoritarian and consequently believe that government is not capturing their beliefs. Survey evidence has consistently shown public trust in government is at an all-time low.<sup>8</sup> There is also significant evidence linking this decline in public trust to cynicism toward representative government.<sup>9</sup>

<sup>8</sup> See *Trust in Government Index 1958–2016*, AM. NAT'L ELECTION STUD. (last accessed Jan. 27, 2021), <https://electionstudies.org/resources/anes-guide/top-tables/?id=116>; *Public Trust in Government: 1958-2019*, PEW RES. CTR. (Apr. 11, 2019), <https://www.pewresearch.org/politics/2019/04/11/public-trust-in-government-1958-2019>.

<sup>9</sup> Jack Citrin & Laura Stoker, *Political Trust in a Cynical Age*, 21 ANN. REV. POL. SCI. 49 (Jan. 31, 2018).

The first set of regressions for this hypothesis tested each context in our survey to see whether preference for a carry default was associated with a respondents' likelihood of inaccurately identifying the law in their state. Table 2 summarizes the prevalence of inaccuracy across the various contexts.

**TABLE 2: PREVALENCE OF RESPONDENTS BEING UNINFORMED AND MISINFORMED ABOUT THE LAW**

	Carry Default		No Carry Default	
	Wrong about law	Don't know law	Wrong about law	Don't know law
Law concerning whether contractors can concealed carry without explicit consent	13.3%	76.8%	12.3%	76.7%
Law concerning whether customers can concealed carry without explicit consent	13.9%	65.6%	-	-
Law concerning whether employee can concealed carry without explicit consent	11.8%	68.8%	-	-
Law concerning whether employee must be able to store gun in car	12.7%	72.7%	9.0%	77.4%
Law concerning whether friends can concealed carry without explicit consent	18.0%	72.1%	12.3%	67.1%
Law concerning whether hunting is allowed without explicit consent	22.7%	65.6%	10.6%	68.6%
Law concerning whether tenant can concealed carry without explicit consent	23.4%	69.4%	-	-

Table 3 summarizes our results for states with no-carry defaults. Note that there are only four contexts in which we were able to test this hypothesis because no jurisdiction has a no-carry default for retail establishments, places of employment, or rental units. We find that people who express a carry-default preference for service providers were 43.2% more likely to be incorrect about the law in their state ( $p < 0.01$ ). Table 4 summarizes our results for states with carry defaults in each of the tested contexts. We generally find that respondents who express a preference for a carry default in right-to-carry jurisdictions are less likely to be incorrect. As provided in Table 5, we find that across all contexts, people who express a preference for a carry default are more likely to be incorrect about what the law is, regardless of whether they are in a no-carry jurisdiction (1.25%, insignificant) or a right-to-carry jurisdiction (0.30%,  $p < 0.01$ ).

**TABLE 3: IMPACT OF CARRY PREFERENCE IN NO-CARRY JURISDICTIONS ON BELIEFS ABOUT THE LAW**

	No Carry Jurisdiction (no controls)	No Carry Jurisdiction (with controls)
Repair person should be allowed to carry	-0.336**	-0.432***

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Friends and family should be allowed to carry	-0.124	-0.186
Employees should be allowed to leave firearm in parking lot	0.0670**	0.0805***
Hunters should be allowed to carry	0.0737*	0.0796*

**TABLE 4: IMPACT OF CARRY PREFERENCE IN CARRY JURISDICTIONS ON BELIEFS ABOUT THE LAW**

	Carry Jurisdiction (no controls)	Carry Jurisdiction (with controls)
Repair person should be allowed to carry	-0.0459***	-0.0369**
Friends and family should be allowed to carry	-0.0141	0.00179
Customers should be allowed to carry	-0.195***	-0.161***
Employees should be allowed to carry	0.0726*	0.0913*
Employees should be allowed to leave firearm in parking lot	-0.0848***	-0.0504**
Tenants should be allowed to carry	0.0648	0.0127
Hunters should be allowed to carry	-0.215***	-0.194***

**TABLE 5: IMPACT OF CARRY PREFERENCE IN CARRY AND NO-CARRY JURISDICTIONS (AGGREGATE)**

	Carry preference aggregated
Carry (No controls)	-0.00305***
Carry (With controls)	-0.00295***
No-carry (no controls)	-0.0123
No-carry (With controls)	-0.0125

We further hypothesized that gun rights advocates are more likely to be cynical about the government accurately capturing their preferences in law, and therefore individuals who express a right-to-carry default preference living in a right-to-carry default state are more likely to be incorrect than those living in a no-carry default state. Conversely, we predicted that gun control advocates are more likely to believe that the government will accurately capture their preferences and therefore would be more likely to accurately identify the law in their state. We find results somewhat consistent with our hypothesis. As given in Table 6, in the context of private residences, people who prefer carry and are in carry

jurisdictions are 45.6% more likely to incorrectly identify the law in their state regarding service people carrying into their homes (p. <0.01) and 21.1% more likely to be wrong about the law regarding friends and family carrying into their homes. However, the results for employees leaving their guns in the parking lot of their employer and for hunting on rural land do not align with our hypothesis. We find that individuals who express a carry preference in these contexts are 45.2% (p. <0.01) and 60.4% (p <0.01) more likely to accurately identify the law in their state, respectively.

**TABLE 6: INACCURACY OF BELIEFS IN VARIOUS CONTEXTS**

	No Controls	With Controls
<b>Service person context</b>		
Preference for carry	0.432*	0.428**
Actual law is carry	0.338**	0.376**
Pref. carry x actual law is carry	-0.464**	-0.456**
<b>Friends context</b>		
Preference for carry	0.0792	0.106
Actual law is carry	0.396**	0.428**
Pref. carry x actual law is carry	-0.213	-0.211
<b>Employee car context</b>		
Should carry	-0.137**	-0.143*
Actual law is carry	-0.0676	-0.0737
Should carry x actual law is carry	0.452***	0.453***
<b>Hunting context</b>		
Should carry	-0.284***	-0.302***
Actual law is carry	-0.208*	-0.242**
Pref. carry x actual law is carry	0.604***	0.633***

As we found in our initial piece, most people are uninformed or misinformed about the default rules in their state, as most jurisdictions, in most contexts, have right-to-carry defaults. It is possible that individuals are more likely to think the government would regulate carrying a gun into the home of another than they are to regulate private hunting lands. It could also flow from a fundamental distinction between residences, which are inherently private in nature, and parking lots and undeveloped rural land which may be viewed as more communal, and thus more likely to be open to public carry.



### III. CONCLUSION

In our book, we recommended that all states flip the carry default for private residences, retail establishments, rental units, and rural hunting grounds. In response to the suggestion that there might be a stronger case to be made for flipping these defaults in shall issue and constitutional carry states, our results find that public opinion is to the contrary. People in shall issue and constitutional carry states are more likely to prefer the current carry defaults. It seems likely that underlying gun rights attitudes are driving both the concealed carry standards and attitudes toward the carry defaults. Outside of majoritarian justifications, there might be a self-defense policy rationale for allowing may-issue states to maintain their carry defaults. As discussed above, in order to obtain a permit to carry in a may-issue state, the petitioner must demonstrate good cause, usually meaning a credible risk to their safety. However, there is a similar defense and property rights rationale for allowing individuals to know what is happening on their land. If a dishwasher repairman enters a private residence with a gun, even in a may-issue state, it should be with the knowledge and consent of the property owner.