

What is the best strategy for preventing mass murders?

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Suppose that [the mass murder in Newtown, Connecticut](#), had been done by a 10-year-old. What would people be saying?

People would be asking how a 10-year-old got a hold of the firearms, and they would hold the owner of those firearms liable for allowing a 10-year-old to get them.

So why aren't people asking how a 20-year-old mentally ill man got a hold of the firearms, and why aren't they holding the owner of those firearms liable? In fact, the owner of the firearms was the man's own mother, and she was the first person whom he murdered, evidently because she was seeking to have him committed to an institution for the mentally ill.

I'm puzzled by the lack of attention to the above consideration.

Thus far, I've seen discussion of the following considerations:

- ◆ Restricting access in commerce to semi-automatic firearms or high-capacity clips
- ◆ Restricting access in commerce to media that portray violence, especially video games
- ◆ Improving the diagnosis and treatment of mentally ill people, including the possibility of involuntary commitment to an institution, as well as restricting their access in commerce to firearms
- ◆ Employing armed security guards

I wish to add the following:

- ◆ Holding gun owners liable for whom they allow to use their firearms

The concept *allow*, in the above sentence, refers to a security continuum, ranging from high security to low security. The more dangerous a firearm is, the higher its security should be. In addition, security pertains to four facets of firearm use: getting possession of the firearm, getting possession of its ammo, loading the ammo, and firing. I think that serious attention should be devoted to advancing security methods.

The NRA proposes that the focus of attention should be on armed security guards in all schools. While there is merit in such a proposal, it is deficient in a number of respects.

First, a security person is limited in where they can be at any given time. Hence, every access door to a school building would have to be an alarm door except for a guarded door, and every building would have to have a security person. This, in turn, implies that playgrounds and playfields would have to be enclosed by security walls and be guarded. This would not only entail a substantial financial cost, it would also entail a substantial social cost by reducing the freedom of staff, students, and parents at school activities and by degrading the ambiance of school campuses. Must we secure every school the way that we secure a military base?

Second, the proposal implies that armed security guards should be everywhere since there is no guarantee that mass murders will be limited to schools. The next mass murder may be in a park. This will entail a substantial cost to be born in the prices of goods, services, and public facilities, as well as the social cost of pervasive surveillance and the proliferation of security points for firearm checks.

I conclude that a wise approach to the problem is to address all factors in order to obtain the best solution in terms of both financial and social cost. I am particularly interested in considering the idea of owner liability because it addresses the problem at its root and because I haven't seen the idea discussed elsewhere.

Liability program for firearm owners

The right to bear arms

Amendment 2 of the United States constitution states the following:

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.

The bill of rights — amendments 1-10 — were originally understood to limit the federal government, not the state governments. At the time, the concern was to limit the power of the newly created federal government, for it was assumed that the people of each state were in adequate control of their own, longstanding, state government. It wasn't until after the Civil War, in amendment 14 of 1868, that it was considered necessary to use federal constitutional power to prevent states from encroaching on the rights of their citizens.

In this context, it is notable that amendment 2 qualifies the right to bear arms by establishing a purpose for the right, namely, to serve in a state militia. It is also notable that this purpose for the right has become obsolete since a state militia is now equipped by the respective state. As a result, the meaning of amendment 2 has evolved to refer, not to serving in state militias, but to protecting yourself, your family, and your property.

Now, we can readily deduce that the right to keep and bear arms doesn't refer to arbitrarily destructive arms. Today, we can think of nuclear weapons as an extreme example of highly destructive arms that the government regulates for two reasons: to prevent accidents and to prevent ill use.

Given the continuum that ranges from basic firearms to semi-automatic firearms to fully automatic firearms to arms of yet greater destructiveness, debate will necessarily arise about where to draw the line as to which arms fall under the protection of amendment 2 and which arms do not.

But aside from where the line is drawn, it is obviously true that the greater the destructiveness of a given firearm, the greater the responsibility of the owner to keep the firearm from people who may put it to ill use. This brings us to the topic of owner liability.

Liability program

I conceive of an owner liability program to cover the most destructive privately owned firearms, if not all privately owned firearms. Under this program, the following will hold for the respective firearms.

The firearm has a serial number, and a central database registers the owner of the firearm accordingly.

The owner of such a firearm is liable in two respects:

- ◆ Use of the firearm
- ◆ Subsequent ownership of the firearm — a potential new owner must pass a background check

This program places responsibility on the owner of a firearm as to its use and its subsequent ownership.

The mass murders of concern in this discussion have not been committed by professional criminals and terrorists, but by mentally ill men, and I submit that the proposed liability program should greatly reduce

the probability of mentally ill men getting possession of the respective firearms. The program should also reduce the probability of criminals getting possession of the respective firearms. As a result, the program should reduce the probability of murder committed by using the respective weapons.

The overall strategy of the program is that of a self-regulating system of decentralized responsibility, the same strategy that brings us the prosperity of the free market. Because the program is self-regulating, it should engender a spirit of mutual respect among firearm owners, who will seek to jealously guard their reputation for being responsible protectors of a free society.

Liability insurance program

I cover the topic of a self-regulating system of commerce in my books: in *The Second American Revolution* (2012), p. 29-31, and in *Why? In Pursuit of the Ultimate Answer* (2008), p. 437-447.

When I developed the idea of a self-regulating system of commerce, I applied the concept of liability insurance as a means for obtaining credible ratings of businesses, goods, and services. This idea can also be applied to firearm ownership, as follows.

The owner of a firearm that is subject to the liability program is required to carry liability insurance for the firearm. The cost of such insurance, in turn, will produce a credible rating as to the liability risk for a given firearm owned by a given owner. The greater the risk, the greater the cost of such insurance, and, hence, the greater the motivation for an owner to reduce the risk by bolstering the security of the firearm and by completing relevant training. In addition, the greater the cost of such insurance, the greater the deterrent to ownership of the respective firearm by the respective party. Just the same, keep in mind that in a free market the cost of insurance will be driven to its lowest possible point through the competition of insurance companies.

The liability insurance program may seem excessively intrusive, but it could be applied, say, only to semi-automatic firearms and to those that are more destructive, even making it feasible to allow private ownership of firearms that are currently illegal for private ownership.

Response from Mark Elster

A minor quibble with one of the premises of the proposal:

"In this context, it is notable that amendment 2 qualifies the right to bear arms by establishing a purpose for the right, namely, to serve in a state militia."

At the time it was established, it was understood that the militia consisted of the people—all of the people ideally (being aware at the time that there will always be dissenters, pacifists and unprepared individuals). Recall that the first militia was in fact composed of ordinary untrained and unorganized citizens and is clearly the sort of militia they had in mind when writing it. The fact that subsequent decisions have created state-ordained and run militias, i.e.; State and National Guards, doesn't actually change the original intent: that of an armed populace as the final check to government run amok or foreign invasion that requires more than a standing army to defeat. The smallest form of such transgressions devolve into one individual sovereign taking action against another individual sovereign being, in the form of violence, to which every individual has the right of self-defense. Although not strictly spelled out, supplementary writings on the subject by EVERY one of the founders who contributed to the debate on the Bill of Rights expresses some form of this thesis or another. It is clear that they meant the 2nd amendment to apply broadly, that it was directed to the federal government to restrict and define the limits of its power, not the power or rights of individuals. To the Federal Government (and States), the militia was of importance, and its primary reason at the time to value the right at the federal level. This has been falsely interpreted to therefore define the right itself as being militia-related only. In fact, in the amendment's phrasing (which could be clearer with modern prose) "the right to keep and bear arms" states outright just what the right is,

without any qualification. The subsequent qualification is merely added to establish the federal government's particular interest in regulating and protecting the stated right.

It is also important to recall that the Bill of Rights established the state's obligation to defend universal (self-evident) pre-existing rights of all people, not a granting of those rights by the state. In this sense, it is clear that the State has no power to grant or take away a fundamental right (of self-defense or any other), only some form of reasonable regulation of the right with respect to how its orderly exercise impacts the rights of others. Those who oppose the 2nd amendment always try to move the argument as far away from these fundamental truths and focus on emotional distractions that only appear to be reasonable.

I think it is important to be clear about these premises so as to not unintentionally yield to the false narratives of those who would advocate increasing government control over these rights—which include the straw-man argument that militias no longer have any relevance in our modern world as a pretext to voiding the whole amendment.

The balance of the proposal is soundly presented and does an excellent job of establishing premises, consequences, acknowledged compromises to consider, and anticipates a spectrum of results, and counterarguments. It seems clear that if implemented (I see that this is a big if) it would have many positive impacts. Among the obvious negative impacts are State access to more personal data (this is certain to raise the ire of privacy advocates) and the potential for State interference and meddling with the rules and laws in order to favor new special interests and corpratists groups that would emerge and eventually capture the private solution Philip proposes. I take it that Philip would hope for a robust interest from the insurance and gun manufacturing industries so that they would defend the private self-regulation option in order to avoid State meddling (like the MPAA entertainment rating system, or Underwriters Laboratories, and other industries have done).

I think that the last suggestion, that only the more potentially destructive automatic, or possibly semi-auto weapons, be regulated with liability insurance is a good one that could be made better. I would modify it to include only fully automatic weapons and a threshold for magazines of 10+ cartridges (plus as is alluded by Philip, presumably even more destructive weaponry than contemplated directly here). By leaving semi-automatic weapons themselves out of it many complications are removed, chiefly the ubiquity of semi-automatic weapons and the difficulty in defining them. Recall that a simple .38 revolver is a semi-automatic weapon. Further, it would be important to drop any mention of the media creation, "assault weapons" as it is a stupid distraction device employed by the ignorant directed at the even more ignorant. Since all weapons are designed for assault, it opens the debate to silly pointless discussions of definitions that are irrelevant to the actual problem.

Thus a reasonable regulation is imposed, responsibility assigned by the marketplace to alert individuals of the potential cost of use and misuse of this right. Those with reasonable fears, but unreasonable expectations of State intervention, would be partially appeased and largely defanged in pushing their illegitimate tyrannical control schemes to infringe on natural rights of individuals. Those with unreasonable fears (and "solutions") would also be even more marginalized by implementation of such a proposal.