

# Guns and Schools: Can the Market do Better?

There is no epidemic of gun violence in America; quite the opposite in fact. But last week's shooting at a high school in Florida was a grim and jarring reminder of deep cultural problems lurking just beneath the veneer of our materially comfortable society. Those problems are beyond the scope of libertarianism *per se*, but again we see that greater liberty will require a renaissance in civil society: nihilism and hopelessness among any segment of the population is far more dangerous than "assault rifles." The less we are governed internally, the more we invite external governance from the state.[1](#)

Millions of guns already exist everywhere in American households, so enacting laws "like Europe" won't work. Voluntary turnovers of guns to police won't even scratch the surface, much less entice criminals. Involuntary confiscation is both a political and practical nonstarter.

There are no top-down political solutions available from Washington. Gun control doesn't actually prevent crime, but it does provide the political class and media with another diversionary bitter cultural debate. Americans are deeply divided on guns, just as they are deeply divided on abortion and climate change and scores of other issues. And why should we expect otherwise, in a far-flung country of 320 million people with wildly diverse geographies, economies, and cultures?

Real federalism, long abandoned by progressives and conservatives alike, is one approach with the potential to reduce political conflicts over guns. Manhattan and Montana might have different perspectives here, and both can manage things without Congress. Contrary to popular belief, the

Second Amendment neither “federalized” gun laws nor created a right to private ownership of firearms. It simply enshrined the notion that “the people” need to be armed to defend themselves potentially against the state itself.

We don’t need a constitution to recognize all humans have an innate and pre-existing right to self-defense. To make that right effective (especially for weaker members of society) tools must be employed. Guns are simply those tools, inanimate objects that cannot be imbued with innate qualities of good or evil. The right to own guns flows naturally from self-ownership of our bodies.

The libertarian response to mass shootings, in particular school shootings, is to allow teachers and other personnel to carry weapons on campus. In fact, the broader libertarian program is to have most people armed, or at least potentially armed, to create a safer (not to mention more polite) society. If we cannot snap our fingers and produce crime-free cities and neighborhoods where nobody *needs* to carry a gun, then at least we allow everyone the ability to dissuade or defend against criminal shooters.

This is all well and good, but ignores the market impulse to outsource services to specialists. This is why neighborhoods hire private security patrols, and why celebrities hire professional bodyguards. Not everyone wants to carry a gun or train themselves in gun proficiency. And there is the issue of scale, where individuals might find themselves arrayed against organized criminal gangs.

Rather than endlessly debate the fraught political process of crafting illiberal gun control laws, we ought to think about private-market solutions that focus on controlling crime. We should think in terms of market economics, where private property and correct incentives give us what government and laws cannot: a mechanism to determine possible harms and the cost of protecting against or preventing those harms. People

want safe neighborhoods and schools, which is just another way to say there is a market for them.

Generally speaking, the US legal system imposes premises liability on property owners whose negligence (or willful conduct) results in someone getting injured on that property. This arose conceptually through common law courts and juries applying general negligence concepts,

We accord different degrees of legal responsibility (“duty”) to landowners based on the identity of the injured party: a trespasser, for example, has less recourse to sue for injury than a business invitee (i.e., a customer). The law considers whether the injured party had a legitimate purpose being there, and in some cases whether they contributed to their injury through their own negligence.

The duty to make one’s property safe from a particular harm relates to, and in a sense hinges on, the foreseeability of that harm. Leaving spilled milk in a grocery aisle too long could well subject the owner to paying damages for a shopper who suffers a fall – a fall that was quite predictable and clearly caused by the wet floor. But intentional criminal acts by a third party, much like acts of God, generally absolve the property owner of liability. After all, no shooter ever entered the grocery before, so why must the owner guard against this most unlikely event?

But should a public school district have a higher duty to keep students safe than the grocer has for shoppers? Arguably yes, in that society values children’s lives, well-being, and innocence perhaps more than adults. And we force children into school attendance via truancy laws and meddling protective services agencies.

Furthermore, are school shootings now foreseeable even though they remain exceedingly rare? Does the media attention and notoriety given to such shootings change the calculus? At some

point, perhaps today, school shootings could become foreseeable in the eyes of a jury.

We can't necessarily draw conclusions here, but the question is whether the owners of public schools – generally municipal or county school districts – should be immune from lawsuits for school shootings simply because they are political subdivisions of states? Should sovereign immunity apply to them, or should they be forced to consider security measures just as private owners must? After all, it seems clear that a mass shooting at a prestigious private school would result in litigation.

It seems clear that imposing tort liability on school owners and operators, even government owners, would both improve security and provide a ready source of compensation for the families of victims. Private security agencies, which have a market reputation to develop or protect, almost certainly would provide more efficient service than government police – for the simple reason that more crime punishes their bottom line, while it often creates calls for *increased* police budgets. And [private security models](#) like Disneyland benefit from wanting to create a peaceful and happy environment, where security forces have every incentive *not* to escalate situations or incur liability.

Furthermore, private insurance models could help schools rationally allocate funds relative to the risks involved. Since school shootings are rare, premiums to cover such an event should be constrained. But other lesser types of crime in schools could be insured against as well, helping administrators better understand what they're up against. And insurance companies would bend over backward to offer advice on avoiding shootings, since they would bear the cost of liability payments.

Admittedly, public schools using taxpayer funds to hire private security and pay insurance premiums muddies the

waters. But at least it moves all of the parties involved – school districts, administrators, teachers, security providers, and parents – toward a market-based approach to safer schools. Tort liability, however imperfectly administered by government courts, offers one way to align the interests of parents and school owners in preventing further horrific events.

A rational system of private security and criminal control would focus on market solutions that actually reduce crime generally and provide meaningful compensation to victims. In other words, it would focus on prevention and restitution. The marketplace can provide both far better than the state, with its amorphous and broken system of criminal justice and mass incarceration – paid for by the taxpayers it claims to represent as “the people” in criminal cases.

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1. Surprisingly, the late Murray Rothbard did not write as copiously on guns or gun culture as he did on many subjects. In *For a New Liberty* he [attacks](#) gun control both conceptually and empirically, characterizing it as a snobbish impulse for those fortunate enough to live in safe areas and wealthy enough not to worry much about the loss of property (such as losing their wallet in a mugging or having their car stolen). And in *Making Economic Sense* he [decries](#) a Clinton-era proposal to radically increase federal permit fees for gun dealers.

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