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The Frontier Torts Project

In the fall of 2013, the 83 students in Harvard Law School’s 1L Section 6 participated in an experimental group project in their first-year torts class. The project required students to research, discuss, and write about a current policy problem for which tort law (or some form of civil liability) could provide a partial solution.

Based on their expressed preferences, students were assigned to one of three policy groups:

1. Predatory lending
2. Gun manufacturer liability
3. Casino liability for addicted gamblers

Each of the three policy groups consisted of roughly 27 students. Each policy group was further divided into the following nine specialty groups consisting of three students each:

1. Project Steering Committee
2. Tort Doctrinalists
3. Historians
4. External Situationists – or Contextualists
5. Internal Situationists – or Mind Scientists
6. Economists
7. Policy Wonks
8. Public Choice Experts
9. Media Analysts

The name and role of each specialty group was purposefully vague, and the role could vary based on the nature of the policy issue itself and the interests and particular focus of students working in the given specialty group.

Each policy group drafted a white paper and gave a presentation to the class about their policy problem and possible solutions to that problem. Experts working on each issue visited the class to speak about the topic and their work. At the conclusion of the class presentations, each group led a class discussion and a class vote to select the best policy options. (Videos are available of the class various class presentations.)

Each policy group then submitted a final draft of its white paper, informed by research, class presentations, discussions, and votes, and by written feedback from the class and teaching staff.

The course was taught and supervised by Professor Jon Hanson and teaching fellows Sam Caravello, Deena Greenberg, and Oded Oren. For more information, contact Jon Hanson at hanson@law.harvard.edu or visit our website: http://learning.law.harvard.edu/frontiertorts/.
Frontier Torts Terminology

**Dispositionism** is an attributional approach that explains human behavior and outcomes as primarily the result of individuals’ thoughts, preferences, and will. Dispositionism presumes that a person’s behavior reflects decisions and choices that reflect that person’s beliefs, attitudes, preferences, personality, thoughts, and intentions, the details of which he is generally conscious. The dispositionist model assumes a person’s preferences are revealed through his choices, since the actor has the will to choose his actions.

**Naïve psychology** is a model of human thinking and behavior that posits that people are aware of, and able to explicate, the forces motivating their decisions and behaviors. The dominant naïve psychology model, particularly in western cultures, is dispositionism. That naïve psychology model is also at the foundation of law and in many of the most influential legal theories, including law and economics.

**Situationism** is an attributional approach that explains behavior, outcomes, and events by looking at situational influences—that is, non-salient internal and external forces operating within and around individuals. Situationism is informed by social science—particularly social psychology, social cognition, cognitive neuroscience and related fields—and the discoveries of market actors devoted to influencing consumer behavior, such as marketers and public relations experts. Situationism is premised on the social scientific insight that the naïve psychology—that is, the highly simplified, affirming, dispositionist model for understanding human thinking and behavior—on which our laws and institutions are based is largely wrong. In explaining human behavior, situationism looks to nonconscious psychological forces and non-obvious contextual behavioral constraints that might shape people’s behavior.
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EXECUTIVE SUMMARY

Over the last fifty years, crime in the United States has dramatically increased, with firearm homicides progressively becoming commonplace. Urban environments in particular have suffered from this phenomenon, as large quantities of guns have found their way into the hands of gang members and other perpetrators of violence. While this troubling scenario is multidimensional, with gun manufacturers, firearm dealers, interest groups, media sources, and individuals living in urban areas all playing a role, the public has predominantly focused on the notion that criminals are largely—if not wholly—responsible for this increase in urban gun crime.

While this conclusion is attractive because of its simplicity and palatability to the mass public, further analysis of the issue shows that the roots of urban gun violence are much more complex. At the individual level, psychological, economic, and social factors have been found to pressure those living within urban centers to turn to gangs and criminal activity. Furthermore, the media’s skewed depiction of gun violence with regard to race and location, along with the gun manufacturers’ stake in perpetuating a fairly unregulated gun market, also share a substantial portion of the blame. This demonstrates not only that the analysis cannot end by simply attributing blame to individual dispositions, but also that a set of policy solutions premised on such a concept will fail to address the issue of urban gun violence adequately.

In order to resolve the current predicament, the full range of those culpable for the current levels of gun violence should be made to bear its costs. Gun manufacturers obvious candidates because they are the starting point from which guns are dispersed; hence, they are in the best position to control the flow of guns to persons using them for unsavory purposes. Under the current structure, gun manufacturers are able to sell guns freely without having to internalize the costs imposed on society by illegitimate gun use. Traditionally, gun manufacturers have not only avoided efforts to track where their guns end up and to implement safety features, but have joined with groups such as the NRA to actively oppose such measures. Ultimately, increased negligence liability should be attached to gun manufacturers. Such liability would serve not only to give recourse to those who suffer from gun violence, but also to compel gun manufacturers to pay increased attention to how and where their guns are distributed and give them an incentive to produce those guns with more up-to-date safety features.
INTRODUCTION

Gun violence in America’s cities is a problem of monumental proportions. About 60% of firearm homicides take place in America’s fifty largest metropolitan areas. From 2006 to 2007, over 17,000 people died as a result of gun violence in major metropolitan areas. Furthermore, the United States has twice as many gun deaths per capita as the closest developed country, and over forty times as many as the United Kingdom. These statistics and others like them give a powerful impression of the sheer scale of urban gun violence. The costs of this violence, particularly to the poor urban communities of color where it is most prevalent, are staggering. This white paper is devoted to an examination of the causes and potential solutions to this problem.

This paper is divided into two parts. Part I focuses on identifying the problem. It seeks to provide a holistic account of the evolution of urban gun violence and the situational factors that helped create it. The first section begins with a brief overview of the history and scale of urban gun violence. The second section examines the external situational factors that drive this violence. It focuses on gangs, and investigates the macroeconomic and societal situations, as well as the micro family life and socialization of members of the poor urban communities where most gangs operate. The third section employs a number of social and behavioral psychological theories, together referred to as “internal situationism,” to help explain the internal motivations of both gang members and the decision-makers who influence the manufacture and distribution of guns. The fourth section analyzes how media frames the discussion of urban gun violence. It highlights the media’s tendency to focus on mass shootings and suburban deaths to the exclusion of reporting on urban shootings, and how the media’s portrayal of the latter (when publicized) might reinforce a dispositionist view of the perpetrators that ignores the situational factors at play.

Part II focuses on solutions. The first section provides a brief overview of various cases in which parties attempted to hold gun manufacturers liable using tort law. The next section focuses squarely on the particular legal theories utilized in this line of cases and on the difficulties of using tort law to facilitate gun manufacturer accountability in light of the Protection of Lawful Commerce in Arms Act (PLCAA). The third section identifies and examines the activities and agendas of various groups working at the national, local, and community levels to affect perspectives on and formulate solutions to urban gun violence. The fourth section utilizes statistical analysis to evaluate the efficiency of holding gun manufacturers accountable through strict liability for crimes committed with their guns.

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The fifth section outlines potential policy solutions, and the final section provides conclusions.

PART I: IDENTIFYING THE PROBLEM

THE RISE OF AMERICAN GUN VIOLENCE

Famous tales of inner city mob violence belie the fact that the 20th century’s great crime wave came long after Prohibition’s demise. Crime—particularly violent crime—began to skyrocket in the 1950s and ’60s. This general increase in crime continued through the mid-1990s. During this period, the amount of gun crimes increased substantially (see figure below for aggravated assault rates committed with firearms).


Rising murder rates in cities represent one of the more devastating parts of this crime wave. For example, murder rates per 100,000 people multiplied twentyfold in Boston between 1950 and 1990. While gun violence does not entirely explain this trend, guns were overwhelmingly the weapons of choice for homicide during this period.


Many theories seek to explain the causes of the mid-century crime wave and its disproportionate impact on cities. Explanations range from population increases to the rising use of drugs—most notably crack cocaine—to the increased amount of lead in the environment. Regardless of the cause, gun crime became an increasingly large problem in cities during this period.

Federal and state lawmakers attempted to address rising crime rates in a number of ways. First and most famously, President Nixon helped popularize what would become the ubiquitous political platform of being “tough on crime.” Consequently, America put more people in jail, and incarceration rates increased by more
than five times from the early 1970s to today. A significant amount of this increase can be attributed to the drug war. Second, Congress passed the Gun Control Act of 1968 to better regulate guns. The Act banned felons from owning firearms and mandated that only officially licensed firearms dealers can sell guns. Third, President Nixon initiated the War on Drugs. Society severely punished both dealers and users, yet violence increased and the crime wave continued.

As the problem of gun violence grew more severe and drew more attention, it paradoxically helped spawn a burgeoning gun rights movement, led by the National Rifle Association (NRA). Founded in 1871 for the purpose of improving soldiers’ marksmanship, the NRA was at the forefront in advocating for gun control during the first three quarters of the twentieth century. In the late 1970s, the NRA shifted its focus from resisting gun control to actively lobbying for the rights of gun owners. As violence increased during the next decade, the NRA became an increasingly powerful political player in preventing further gun regulations.

Despite predictions that gun violence would increase as Baby Boomers’ children came of age, starting in the mid-1990s, violence (including gun violence) began to drop precipitously across the board. Urban gun violence, in particular, declined substantially during this period. Explanations for this sudden drop in violence range from causes as disparate as mass incarceration to the legalization of abortion.

Although it has diminished in the past few decades, urban gun violence remains a significant problem. About 60% of firearm homicides take place in America’s fifty largest metropolitan areas. From 2006 to 2007, over 17,000 people died as a result of gun violence in major metropolitan areas. Compared to the rest of the world, American cities rank with some of the most dangerous countries on the subject of gun violence. The map below compares the murder rates per 100,000 people in major American cities with the same rate in other countries. The results are astounding. If one were to compare the murder rate in New Orleans to every other country in the world, it would rank second highest. Admittedly, this is a
comparison of cities to countries, with all the population disparities therein. Yet the population level in these cities and countries is comparable. For example, Detroit and El Salvador have a similar gun homicide rate, and population levels of 5.3 million and 6 million, respectively.

To put all of this in perspective, the death rate by firearms in the United States was 10.2 per 100,000 people in 2009. The closest a developed country came to matching that was Finland, with a 4.47 per 100,000 people gun homicide rate. The United States thus has twice as many gun deaths per capita as the closest developed country, and over forty times as many as the United Kingdom.

Gun control advocates in the 1980s and 90s tried to hold gun manufacturers accountable by filing various lawsuits. But in 2005, Congress made litigation much more difficult by passing the Protection of Lawful Commerce in Arms Act (PLCAA). The legislation, which was the NRA’s top legislative priority, makes gun manufacturers immune from liability when crimes are committed using their products. With a deeply polarized Congress and the PLCAA shielding manufacturers, it will take an innovative approach to finally address this ongoing national crisis.

**EXTERNAL SITUATION**

While urban gun violence is multi-faceted, analyzing the role of gangs is important in explaining gun crimes in urban America. Unlike accidental shootings, domestic violence, and other forms of urban homicide, where the underlying situations are individualized, commonalities in the situations driving individuals to join gangs and participate in violence can be seen in communities across the nation. Gangs drive crime in cities. A 2011 FBI study estimated that gangs are responsible for 48% of violent crimes and up to 90% in particular jurisdictions. An examination of the macroeconomic and societal situations, as well as the micro family life and socialization, of the poor urban communities where most gangs operate illustrates why members of these communities join gangs. Furthermore, looking at the roles played by enforcement officials and gun distribution networks can illuminate ways that gang violence can be exacerbated or mitigated in urban environments.

**Economic and Social Situations Contributing to Gang Membership and Urban Gun Crime**

Suffering economies, racial and socio-economic marginalization and ghettoization, and the degradation of social institutions are all strong situational factors that contribute to crime in American urban centers. It is
impossible to isolate the effects of these factors, since each is closely related, being both a cause and result of the others.

Weak urban job markets and “the disappearance of work” are situational factors pushing inner city youths towards gangs and crime.\textsuperscript{25} As manufacturing has decreased in the United States and increasingly moved out of urban centers, industry no longer draws upon the inner city as a cheap pool of labor.\textsuperscript{26} The drug trade helps to fill the vacuum left by manufacturing as, “in many sectors of the ghetto, [it is] the only expanding economic sector and the main employer of jobless youths.”\textsuperscript{27} Low wages, which are often attached to entry-level service jobs, also increase crime rates.\textsuperscript{28} A 1997 study demonstrated that economic improvement decreases violence, with per capita income and the proportion of the population employed being the only two factors significantly related to a neighborhood’s level of violence.\textsuperscript{29} Legitimate economic opportunities are particularly closed to the urban African-American community because of racial and socio-economic marginalization.\textsuperscript{30}

Urban poverty in the United States has long been race-based, with African-American and Latino communities primarily occupying the least desirable inner city neighborhoods with the highest crime rates and the majority of gang members.\textsuperscript{31} America’s fraught racial relations continue to inform interactions inside and outside of these communities and further exacerbate problems brought on by suffering economies. Violence is inordinately high in cities with both suffering economies and high levels of racial and social marginalization and segregation, such as Chicago, Detroit, and New Orleans.\textsuperscript{32}

Suffering economies and persistent social marginalization both result from and exacerbate the collapse of social support institutions in inner city communities. The disintegration of schooling, governmental support, and other social institutions coincides with the withdrawal of the welfare state, inordinately burdened the urban poor.\textsuperscript{33} Without active governmental support for inner city communities, their long-standing stigmatized and marginalized status overwhelmed any infrastructure that could enable effective social support systems.\textsuperscript{34} The withdrawal of governmental support has coincided with the collapsing tax base of inner city communities due to racial segregation.\textsuperscript{35} This collapse in public institutions—particularly schools—undermines these communities’ ability to exert social control,\textsuperscript{36} creating a gap where at-risk youth can fall into situations of socialized violence and become more likely to join gangs.

\textbf{Perpetuating Urban Violence: Socialization of Violence}

The socialization of violence
begins at an early age. Factors such as exposure to violence inside and outside of the home and lack of parental figures relate to this socialization. Cultural transmission theory hypothesizes that crime and delinquency are learned in interactions with intimate primary groups such as families, peer groups, or gangs. In inner city neighborhoods, where gang culture is prominent and children are less likely to have consistent parental supervision, socialization of violence can create a self-perpetuating cycle of gang membership, and ultimately, gun violence.

Lack of parental figures and parental supervision at home increases exposure to gang culture, which in turn socializes children to violence. Long working hours, major crisis events, and single-parent households lead to a parental supervision deficit and minimal presence in the lives of children in poor neighborhoods. Single mothers’ annual income is approximately $24,000, as compared with $80,000 for a married couple, which leads to higher rates of single-parent families in poorer neighborhoods. Tragically, a majority of African-Americans grow up without a father in the home. Many male gang members interviewed by a study conducted by the City of Los Angeles cite “the absence of their fathers and lack of attention from positive father figures and role models as a central deficit in their lives.”

Without a strong social system at home—and particularly the lack of fathers for young men—adolescents are more likely to join a gang especially when a gang is a dominant part of the neighborhood culture. These gangs take the place of socialization in the family. The gang teaches a totally different set of norms, customs, and ideologies. As one youth on probation in Los Angeles put it, “Gangs are my family. They are part of the neighborhood. That’s all there is.” Because many gangs are routinely engaged in violent activities, the initiation into a gang further perpetuates the cycle of violence.

Exposure to violence has both internal and external effects on children. Domestic violence and childhood abuse are highly correlated with feelings of hopelessness, depression, and anxiety (internal effects). Children incorporate violence into their behavior as a way to cope with the turmoil surrounding them. This leads to more violent behavior in adolescence and adulthood (external effects). Not surprisingly, high proportions of incarcerated felons have a history of violence in their families. In multiple studies, childhood experiences of witnessing violence and being victimized have been highly correlated with gang membership.
Situational Forces Shaping Gun Trafficking, Enforcement, and Manufacturing

Understanding the external forces contributing to gun violence in urban areas not only requires examining the situation of gang organizations and members, but also requires an understanding of the supply-side actors and enforcement agencies that interact with gangs and gun traffickers. Researchers attribute an increase in violent gang activity to the increased availability of firearms generally, so curbing the market may lead to a reduction in gun violence.49

Many felons and all juveniles cannot legally buy guns, so where do gang members get their guns? Five out of every six firearms used in crime were illegally obtained, though nearly every gun used in crime started out in the legal market.50 Furthermore, licensed firearm dealers play a significant role in diverting guns into illegal markets, which becomes apparent when dealers make certain changes to their selling practices, such as refusing to sell particularly cheap handguns favored by criminals.51 Illegal gun markets consist of both systematic gun trafficking by “point sources” and scattered acquisitions through theft and sales,52 with the proportion of each depending in part on state regulations of guns.53

Municipalities face pressure to address gun trafficking and gun violence generally due to rising costs from medical care, damage to public property, police resources, security, coroner expenses, disability benefits, prisons, and the like, which some cities have estimated at hundreds of millions of dollars per year.54 These municipalities have multiple avenues of enforcement to reduce gun violence, but the options are not equal: while some strategies may be politically viable, such as gun buyback programs, many nevertheless fail to reduce gun violence significantly over the long-term.

Previous enforcement efforts to address gun violence include both demand-side efforts, such as swift responses to gun crimes as a form of deterrence, and supply-side efforts, such as targeted prosecution of gun traffickers.55 Demand-side enforcement has included various policing strategies such as gun buyback programs and “order-maintenance policing” (including stop and frisk).56 Though local authorities tout gun buyback programs’ success in reducing crime and guns on the streets,57 empirical studies show these methods are ineffective.58 Some studies show that stop and frisk, or “hot spot” policing, effectively reduces crime in specific neighborhoods,59 but some criticize these methods as highly prejudicial because they result in stops of people who look like they carry guns, rather than those who actually carry weapons illegally.60 On the supply-side, the success of targeting traffickers is still debated, especially given the

Five out of every six firearms used in crime were illegally obtained, though nearly every gun used in crime started out in the legal market.
numerous sources of gun trafficking.\textsuperscript{61}

In the late 1990s and early 2000s, municipalities attempted to address rising costs of gun violence by targeting gun manufacturers directly in lawsuits,\textsuperscript{62} often claiming negligent distribution.\textsuperscript{63} Though these claims created enormous pressure on some manufacturers to comply with government demands,\textsuperscript{64} courts threw out most—if not all—of these claims.\textsuperscript{65} Since then, state immunity laws and federal legislation,\textsuperscript{66} often supported by the Nation Rifle Association and its lobbyist army, have significantly reduced cities’ ability to sue.\textsuperscript{67} In 2012 alone, it is estimated that the NRA spent over $13 million against Democrats in outside advertising and campaigning to further manipulate the legislatures, who could expand gun liability.\textsuperscript{68} Furthermore, even when national events, such as mass shootings, call for government proponents of gun control to create new laws to address the issue of gun violence, the gun lobby frames such responses as “inappropriate” in the wake of tragedy.\textsuperscript{69}

Like any business, sales influence gun manufacturers.\textsuperscript{70} Moreover, competition within the industry for a dwindling civilian market has increased the “militarization” of guns created and marketed in the United States, resulting in a proliferation of highly dangerous products, such as high capacity semiautomatic handguns.\textsuperscript{71} The market for traditional sporting guns has declined significantly over the last several decades due to economic forces, development of rural areas, and an aging consumer base. Consequently, manufacturers have responded by creating new products, often designed and marketed to create emotional or covetous responses to patriotic and militaristic images.\textsuperscript{72}

When manufacturers have responded to government pressure to change business tactics in contravention of industry strategy, they have faced extreme negative external pressure within the industry and their customers. For example, in 2000, Smith & Wesson agreed to voluntarily implement “smart-gun” technology to make guns and sales safer in response to numerous lawsuits from cities. Consequently, “the company was vilified by its customers, retailers and…the National Rifle Association,”\textsuperscript{73} resulting in massive layoffs, wholesalers canceling contracts, law firms dropping the company as a client, and an anti-trust investigation against rival manufacturers who severely pressured the company not to deal with the government.\textsuperscript{74} The British owner of Smith & Wesson sold the company after sales dropped dramatically.\textsuperscript{75}

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INTERNAL SITUATION

Internal Situation of Gang Members

Social identification theory claims that membership in a group is desirable because it improves self-esteem by giving members a sense of belonging.

This is particularly the case in groups with obvious identifiers (such as race or class) and groups that are marginalized. As one proponent of the theory said “[i]t would seem that for disadvantaged groups, feeling close to the group is . . . a way of compensating psychologically for a lack of power in society.” Gang membership, therefore, may be a way to create a positive self-image.

Strong social identification among group members may also encourage cruelty or violence toward other groups. Identifying with a group improves self-esteem and promotes members to perpetuate the group’s norms, which can lead to self-reinforcing violent norms. Furthermore, because group members feel positively about their own group, they are likely to feel negatively about other groups in comparison, creating or strengthening bias against those groups. We might expect this ill will to make violent action towards other groups easier.

In addition to social forces that encourage gang membership, urban youth are also susceptible to the internal process of desensitization toward violence. In psychiatry, desensitization is the “attenuation or elimination of cognitive, emotional, and, ultimately, behavioral responses to a stimulus.” In this case, violence is the stimulus, and thus desensitization subtly, but strongly, precipitates a higher threshold for censure against displays of violent action. Emotional desensitization is an increasingly apathetic response to the observation of both real and simulated acts of aggression. Cognitive desensitization, by contrast, is when the perception of violent events as “uncommon and unlikely” becomes the belief that such occurrences are commonplace or even expected in society. The process itself is thought to result from repeated exposure to external factors, and it can be especially detrimental in the years of such mutable adolescent development.

While often cited in discussions proposing to censure video games, desensitization theory also illustrates the internal processes associated with both community and media exposure to gun violence by urban youths. For instance, a 1991 survey of 1,035 African-American elementary and high school students in Chicago’s South Side concluded that about 70% of all participants had personally witnessed at least one robbery, stabbing, or shooting. In addition to this real-life exposure to aggressive activity, violence in the media can foster desensitization in urban youths from a young age. Children have been shown to lack the
cognitive ability to connect actions with effects and thus focus mainly on the concrete events set before them. Such incapacity renders them particularly vulnerable to the glorification of violence in television, movies, and other media, as they are unable to appreciate the context and extenuating circumstances of the violent situations depicted. As youths from low-income families represent the largest population of adolescent television viewers, it is arguably those children who are the most susceptible to the media’s glamorization of aggressive behavior.

**Internal Situation of Gun Manufacturers and Spokespeople**

Major decision-makers influence the manufacture and distribution of guns. Among these major players are the NRA, other pro-gun trade groups, gun manufacturers, and the judges and politicians who oppose gun reform. These decision-makers view themselves as part of a situation—just players in a larger market for guns—and pass the responsibility for what happens to guns after the point of sale onto gang members, who are in turn viewed as dispositionist actors “choosing” to use their guns for illegal and violent ends.

This dichotomy, famously embodied in the NRA slogan “guns don’t kill people; people kill people,” is pervasive. It is a perspective that clearly blames dispositions (gang members) instead of the situation (a semi-legal market saturated with guns), for which these decision-makers are all in part responsible. The dispositionist blaming of gang members, as opposed to seeking ways that the decision-makers could reduce gun violence by altering the situation, plays a key role in gun marketing and in other decisions related to the gun industry. It frames public statements made by gun manufacturers, court opinions dismissing civil suits against gun manufacturers, and congressional debates on key gun legislation, such as the PLCAA.

What explains this perspective? The Fundamental Attribution Error (FAE) is the psychological tendency to overestimate the influence of disposition and underestimate the influence of situation when analyzing the actions of other people. In other words, we are often psychologically blind to the extent to which external forces influence our behavior. We think people act using free will, instead of seeing all of the external forces that may substantially influence their behavior. FAE is certainly at play in the famous NRA slogan, and examples of how it crops up in legislation, civil cases, and other moments of influence can be seen by closely examining the language decision-makers use in such contexts.

“I am a great believer in personal responsibility,” argued Representative Brad Carson (D, OK) in favor of
PLCAA in 2003. “Imposing liability on an entire industry for harm caused solely by the unlawful actions of others is an abuse of the United States legal system.”

“I think we believe that the guns don’t pose any risk at all. It’s the people that are using them that pose the risk,” explained the president of gun manufacturer Taurus in a 2001 deposition.

To further understand why industry actors blame gang members rather than themselves, it is helpful to apply the Just World Hypothesis, which posits that people have a need to believe that their environment is a “just and orderly place where people usually get what they deserve.” This need is closely related to cognitive dissonance, which is the discomfort of simultaneously holding two opposing emotions or beliefs. For the gun industry actors, cognitive dissonance can occur when their products result in negative outcomes. The psychological response is to rationalize the outcome—the people who were involved deserved the negative outcome—rather than to take action to fix the external, physical reality. This interplay shows how cognitive dissonance motivates the Just World Hypothesis, and the Just World Hypothesis in turn can motivate FAE. Just as the easiest way to rationalize a good person suffering a bad outcome is to believe that the person is bad, the easiest way to convince us that someone else is bad is to attribute bad characteristics or decisions to him or her.

By viewing out-group members as dispositionist actors who choose their fate, industry actors quiet any cognitive dissonance or perceived injustice that may arise from supplying products used for violent ends.

Social psychologists have another theory that attempts to explain industry inaction in the face of gun violence. System Justification Theory proposes that we are motivated to defend and justify the status quo, even when it may be disadvantageous to certain classes of people. In particular, this psychological need to maintain stability and order in our lives becomes a particularly strong psychological impulse during periods where the status quo is at risk or threatened. Threats from out-group members—in this case, the growing minority of people seeking to change the gun status quo—promote dispositionist thinking and also increase the backlash against out-group members and their ideas.

In turn, the increase in dispositionist thinking encourages attributions such as those evident in the NRA slogan (that situationist “guns,” don’t kill people; dispositionist “people” do) and in other dispositionist rhetoric that accompanies potentially threatening, adversarial moments in gun policy, such as legislative debates and liability cases.
Perceived threats to the status quo can also manifest within the industry, in the expulsion of gun manufacturers who agree to accept some personal responsibility for gun crimes. In this circumstance, former in-group members suddenly become threatening out-group members, heightening System Justification. When gun manufacturer Smith & Wesson “voluntarily adopted a set of safeguards, including requirements that its dealers limit multiple sales of firearms, it was ostracized and boycotted, forcing it to abandon the changes . . . [S]ales quickly plummeted amid an industry backlash.” Formerly accepted in-group members thus became dispositionist threats that needed to be eliminated; a letter from an executive at Kimber America, a gun maker, to a firearms trade group urged them to confer with the NRA and to “boycott Smith now and forever. Run them out of the country.”

Media representation

Modern mass media shapes our perceptions of everything from politics to health care to gun control and urban violence. Although scholars disagree somewhat on the extent and nature of media influence, the general consensus is that media subtly, yet directly, influence public attitudes and behaviors. The media are also gatekeepers and interpreters that frame the information the public receives—the time the media allocate to an issue, the angle from which it’s approached, and even its limited or complete lack of coverage all affect public discourse and understanding of that particular issue. For example, frequent crime drama viewers support looser gun control laws, perhaps because these shows portray guns as used equally by “bad” and “good” guys, and their prominence desensitizes viewers. However, people who get their news primarily from print media tend to support stricter laws, possibly because journalists are subtly biased and tend to frame the issue accordingly.

Media have a unique power to both reinforce and change public opinion, depending on the situation and how the viewer gets his or her news. Local broadcast news stations, for example, tend to devote approximately 25% of airtime to stories on violent crime, which often involve racial minorities. The prominence of such stories and portrayal of the actors may be reinforcing and exacerbating viewers’ implicit biases that minorities, particularly African-Americans, are more violent. Thus, the media’s tendency to focus on mass shootings and suburban deaths from guns at the exclusion of reporting on urban gun violence, and the implication of choice in those portrayals of urban shootings that are publicized, may be both reflecting and further motivating a dispositionist view of urban violence actors in public discussions and limiting true evaluation of possible solutions for the national problem of urban gun violence.
The Prevalence of Media Coverage

Sandy Hook. Washington Navy Yard. Virginia Tech. Columbine. Mention any of these at a cocktail party and chances are most people will know exactly what you’re referring to. But what if you were to mention Heaven Sutton or Blair Holt? Any reactions? Probably not. Seven-year-old Heaven Sutton was selling candy in front of her house when she was shot and killed. Blair Holt was riding a bus back from school when he threw himself in front of a friend and was shot after a shooter got on the bus. These stories are no less tragic than Sandy Hook or Columbine, yet they often go untold.

The news media highly publicize mass shootings. A flurry of news reports, TV coverage, and public outpouring of grief and sympathy followed Sandy Hook. Yet, in the same week, there were at least a dozen gun homicides in Chicago, Detroit, Baltimore, and St. Louis alone that received little attention. There was more news coverage of Sandy Hook than for the 260 schoolchildren combined who were killed in Chicago between 2007-2010. While high reporting levels often follow mass shootings, there is rarely any reporting on the twenty-five gun murders that happen every day, mostly in large metropolitan areas, which “account for more than two-thirds of deaths by gun violence each year, with inner cities most affected. The majority of the victims are young, ranging in age from their early teens to mid-20s, and black.”

Critics believe that media ignore inner city gun shootings because the victims are often youths of color. However, other experts believe it is actually the spectacular nature of mass shootings that magnifies the media’s coverage of the issues. Yet, inner city shootings are often no less spectacular or gruesome than mass shootings. In fact, some suggest that people are now desensitized to inner city shootings because they are so common. This is in part because victims of inner city gun violence are seen in some ways as responsible for their victimization. Harvard professor Robert Sampson highlights that people understand that gun violence in American cities is rooted in poverty, racial segregation, and lack of economic opportunity. However, people often interpret this simplified explanation to mean that “the direct choice of inner city residents to remain either in poverty or in their segregated community that leads to their victimization.” Thus, while people view inner city gun violence as the result of the situational forces such as poverty and segregation, they also believe that the victims of inner city gun violence can choose to remove themselves from the situation, and in choosing to not do so, the victim is blameworthy. Because the individual is at fault for his or her own victimization, he or she is seen as less deserving of public sympathy and
attention, and therefore, less deserving of media attention. The attributional stereotypes that may drive the disproportionate levels of media coverage between mass shootings and inner city gun violence are also present in the nature of media coverage of the two issues.

The Nature of Media Coverage

In addition to the differences in the prevalence of media coverage, there is a stark contrast in the media’s portrayal of mass shootings and inner city gun violence. The portrayals of victims and perpetrators of gun violence alternate between an individual’s disposition and situation depending on the violent acts’ location.

Reports on mass shootings in suburbia heavily focus on the idea that “it wasn’t supposed to occur in this neighborhood.” This view highlights situational factors. It looks at residents’ socio-economic status, race, and education levels in the community. The sudden outburst of violence is marked as a drastic deviation from what typically occurs. Thus, it becomes a national travesty that the media heavily covers in a sympathetic light. Furthermore, mass shootings typically initiate the on-again off-again media gun control debate.

Conversely, daily gun violence in urban areas throughout the nation does not spark the same amount of attention—even though it ultimately results in a higher number of victims. Violence is deemed normal in these communities, so when it occurs it is viewed as a normal part of life. Residents are depicted in a dispositionist light, as choosing to live under the conditions ascribed to their communities; in reality, they have very few alternative living options. Many of the urban poor, specifically African-Americans, find themselves trapped in social arrangements rooted in longstanding oppression and prejudice.

Media outlets highlight different aspects of a violent perpetrator’s background depending on whether the act was a mass shooting or an instance of inner city gun violence. Perpetrators of mass violence in suburban areas are viewed in the full context of their situation. Psychologists immediately search the offender’s background for mental illness or family disarray. Additionally, the perpetrator’s personal life is inspected to find possible motives for his or her actions. There are numerous examples of this search-for-answers approach in the Newtown, Aurora, Columbine, and Virginia Tech shootings. However, the media does not take the same approach when a shooting occurs in disadvantaged, inner city communities. Instead of asking questions about the culprit’s background or what led him or her to commit the crime, the media looks for dispositional cues such as crime history and negative associations. An inner city youth’s
decision to obtain a weapon, and even perpetrate violence, can sometimes be attributed to a larger societal situation that foments this behavior. Nevertheless, the situations of those in the inner city are often disregarded and their dispositions highlighted.

The Media's Coverage of Gun Control

Like the media’s coverage of gun violence in general, the coverage of gun control is also imbued with dispositionist and situationist biases that can influence how the public views the issue. Broadly speaking, anti-gun control news coverage betrays a dispositionist perspective, while the pro-gun control news coverage takes a slightly more situationist view. However, much of the pro-gun control news coverage ultimately rests on dispositionist assumptions.

The extreme dispositionist perspective on the issue of gun control can be distilled down to the oft-quoted phrase “guns don’t kill people, people kill people.” While this phrase may be well known, the news media’s coverage of gun control tends to downplay this dispositionist critique of gun control. In a nine-year (1988-1996) study of major network TV news coverage of the Brady Bill and the Assault Weapons Ban, the study authors found that only 17% of all newscasts framed their coverage in “NRA-friendly” ways. Of this 17%, only 2.3% opposed gun control as violation of individual freedoms and constitutional rights, and effectively no news coverage adopted the “guns don’t kill people” theme.

In contrast, the same study found that a significant portion of the coverage examined adopted a pro-gun control frame. Over 47% of the coverage used the “Guns and the Culture of Violence package” in order to frame the need for greater gun control. This “package” framed society as “under siege” from gun violence and tapped into public support for gun control by focusing on widespread fear of crime. While this frame potentially gives greater attention to the situational factors behind gun violence, it often falls short. For example, the “culture of violence” theme was often paired with a focus on “youth/gang violence and Black crime in urban neighborhoods.” Of the 38% of newscasts in which a crime scene was depicted, 56% portrayed a Black crime scene (Blacks as perpetrators of crime or as the victims) and were accompanied by evocative visual images (e.g., Black criminals being handcuffed, Black gunshot victims, police cruisers with flashing lights). By relying on existing attributional stereotypes about race and crime in order to convey their message, these pro-gun control newscasts may have actually hardened the public’s existing attributions of blame for the problem of gun violence and discouraged the public from embracing policies that attempt to
resolve the problem at a broader situational level.

While this study only represents a small segment of the media’s treatment of gun control in a particular time period, it provides some useful insights on the ways in which the media’s coverage of the issue can be influenced by attributional stereotypes. Although the media’s coverage of gun control generally seems to resist the dispositionist urge to simply blame gun violence on the willful actions of bad actors, it often succumbs to the use of attributional stereotypes that may ultimately impede attempts to take a broader situational view of the problem of gun violence.

PART II: SEARCHING FOR SOLUTIONS

A BRIEF HISTORY OF LEGAL REMEDIES

Prior to the late 1990s, attempts by individuals to sue gun manufacturers were ineffective. Hamilton v. Accu-tek, a 1999 case in which a group of shooting victims sued twenty-five handgun-manufacturing companies, enjoyed some early success. However, the case was ultimately decided in 2001 with the New York Court of Appeals holding that gun manufacturers did not owe a duty of reasonable care in the marketing and distribution of their products, and that they could not be held liable for negligent entrustment.

By the time of Hamilton, a new litigation strategy against gun manufacturers had already begun. With claims individual plaintiffs’ claims failing, a group of plaintiffs’ lawyers with experience litigating against big tobacco decided to pursue a new idea—bringing actions against gun manufacturers on behalf of municipalities. In 1998, New Orleans became the first city to sue. Chicago followed less than two weeks later. In early 1999, Bridgeport, Connecticut and Miami filed suit. Eventually, the list grew to include Atlanta, Cleveland, Cincinnati, Newark, New York City, Wilmington, San Francisco, and Los Angeles. In 2000, New York became the first state to sue the industry.

The suits against manufacturers garnered a lot of public attention, but they did not achieve much success in the courtroom. Some of the claims brought by plaintiffs’ lawyers as mass torts cases were abandoned as litigation costs increased and the chances of winning dwindled. The rise in municipal lawsuits also led in part to the passage of the PLCAA in 2005. In 2009, the United States Court of Appeals for the Second Circuit dismissed New York City’s claim, holding that federal law barred suit.

TORT DOCTRINE

In the twentieth century, tort law became an important source of protection for American consumers.
From cars to cigarettes to toys, product liability compelled manufacturers to make their products safer. The gun industry is no exception, as victims of gun violence have sought to hold gun manufacturers liable.

When in the late 1990s plaintiffs began to file an increasingly large number of suits against gun manufacturers, they tended to make allegations based on either strict product liability or negligence. Strict product liability focuses on the performance of the product, while negligence applies to the manufacturer’s or seller’s conduct.

Product liability is the legal liability a manufacturer or seller incurs for producing or selling a faulty product. The plaintiff must prove four factors in a strict product liability claim. First, the plaintiff must show the defendant was in the business of manufacturing and selling the product. An occasional sale or a second-hand sale would not subject that seller to strict liability. Second, the plaintiff must show the product is defective and unreasonably dangerous. There are three types of defects: manufacturing defects, design defects, and information defects. A product has a manufacturing defect if it differs from all other products of its kind, and it fails to meet the reasonable expectations of the consumer. A product has a design defect when there is an alternative design that is safer, more cost-effective, and more practical than the version marketed. Failure to conform to appropriate government regulation can be considered a defective design. Finally, a product has an information defect when the manufacturer fails to warn consumers about inherent risks in a product of which they might not be aware, and that cannot be designed out. The third element of strict liability is the existence of the defect. A plaintiff has to show the product was not altered after it left the defendant’s control or that the defect existed at the time it departed the manufacturer. The product must have been expected to and actually have reached the user with no substantial changes in its condition. Finally, the plaintiff must show that the product was used in a foreseeable manner.

In negligence allegations, plaintiffs have focused on distribution and claimed that manufacturers fail to exercise reasonable care in selling handguns, which results in easy access to criminals and juveniles that in turn increases gun violence and crime. Another theory of negligence involves marketing. Plaintiffs have alleged that manufacturers engage in false advertising and misrepresentation, which misleads the public and results in looser government regulation.

Interestingly, many of the municipal gun lawsuits were based on claims of a third kind: nuisance. In *City of New York v. Beretta U.S.A. Corp.*, New York City argued that manufacturers violated public nuisance law by creating a “condition...
that negatively affects public health or safety.” Chicago’s suit was a nuisance claim as well. New Orleans, in contrast, sued under strict product liability, claiming that the manufacturers failed to incorporate sufficient safety device that made the guns unreasonably dangerous. Individual plaintiffs also have attempted to make nuisance claims. For example, in *Ileto v. Glock*, private plaintiffs sued the gun industry for violating a public nuisance statute, among other claims.

The PLCAA’s passage created significant hurdles for any attempt to hold gun manufacturers liable. Congress wrote the Act to apply broadly in both scope and application. It bars any civil action against a gun manufacturer (“qualified civil liability action”) from being brought in “any Federal or State Court,” including pending lawsuits, when the lawsuits result “from the criminal or unlawful misuse of a qualified product by person or a third party.” Scholars have noted that the use of the word “unlawful,” as an add-on to “criminal,” significantly broadens the scope of liability protection. For instance, lawsuits that focus on gun manufacturers’ failure to provide safety devices to protect children are precluded by the PLCAA because a child’s obtaining a firearm is typically unlawful.

The legislative history is further evidence of the Act’s broad scope.

Despite the formidable limitations of the Act, the PLCAA offers six exceptions for holding members of the gun industry liable. Four of them provide potential avenues for holding gun manufacturers liable for harms from inner city gun violence. The first exception allows action to be brought against a “transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted.” This exception allows a civil action to be taken against a person who provides a firearm knowing that it will be used in a violent or drug trafficking crime, and that person is convicted of such a crime. Although the exception directly applies to gun owners, it could arguably be extended to include manufacturers who design and manufacture guns whose only clear purpose is criminal, such as “Saturday night specials.” By creating guns that cannot function in a legitimate capacity, manufacturers effectively violate the enumerated statute, and theoretically can be liable if a person is convicted of a violent or drug trafficking crime with the
manufacturer’s gun. However, it would be extremely difficult to prove that the manufacturer “knowingly” provided the gun due to the distance between the manufacturer and the customer who commits the crime.

The second exception in the PLCAA permits action against a seller for “negligent entrustment” or “negligence per se.” A seller commits negligent entrustment by giving someone a gun “when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.”

Although a seller is defined as a dealer or an importer, a dealer could theoretically include a manufacturer. A dealer is defined as someone “engaged in the business [of selling firearms] . . . and who is licensed to engage in business as such a dealer.”

Accordingly, a manufacturer, who sells guns wholesale, could qualify as a seller if it holds a dealer’s license. However, manufacturers without dealers’ licenses cannot be held liable under PLCAA. This definitional manipulation would only hold a small number of manufacturers liable because not all federal regulations require manufacturers to obtain dealers’ licenses, and federal law preempts state laws that would require a manufacturer to have a license when federal law does not.

Nonetheless, a subset of manufacturers could theoretically be held liable if it could be proven that a manufacturer sold the gun to a distributor who it knew, or reasonably should have known, would use the gun for criminal activity. This exception offers a slim opportunity for holding manufacturers liable, but the possibility does exist.

Some cases have tried to employ the third exception—the “predicate” exception—to hold gun manufacturers liable for inner city gun violence. Under this exception, action can be brought when a “manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.”

New York City attempted to maintain its suit against gun manufacturers after the passage of the PLCAA under this predicate exception, arguing that the manufacturers had violated the public nuisance statute by enabling the widespread presence of illegal guns in the city. The court held, however, that the exception did not apply to the nuisance law. Rulings about the predicate exception, however, have been inconsistent. Smith & Wesson Corp. v. City of Gary, suggests that the predicate exception might nonetheless offer a viable avenue for manufacturer liability. The City of Gary, Indiana sued gun manufacturers, distributors, and retailers alleging a violation of a state public nuisance statute. Prior to the PLCAA, the trial court refused a motion to dismiss on the basis that the City had proved that the defendants

The bill effectively “eliminates product liability lawsuits involving firearms.”
violated the statute. After the PLCAA, the Court of Appeals of Indiana affirmed, holding that the statute fell within the PLCAA predicate exception. Although courts have ruled divergently on the applicability of public nuisance laws to the PLCAA predicate exception, this exception remains the most fruitful with respect to holding gun manufacturers liable.

The fifth exception outlined in the PLCAA offers one more approach to holding gun manufacturers liable. It allows action to be brought when “death, physical injuries or property damage result[s] directly from a defect in design or manufacture [of a gun] when used as intended or in a reasonably foreseeable manner” except when doing so constitutes a criminal act. This exception is the clearest way to hold manufacturers liable, but it is a very limited approach because the gun itself must be flawed. An argument exists that the very design of the gun could render it defective if it is negligently marketed or if the design itself is such that its level of dangerousness is not readily apparent. In Thompson v. Package Machinery Co., the California Court of Appeals held that “a manufacturer may be held liable when the alteration of the machine or its misuse by the customer was reasonably foreseeable, even though the danger of the machine was readily apparent.” This theory has yet to be applied to guns.

Beyond the exceptions embedded in the PLCAA, at least one attempt has been made to challenge the constitutionality of the PLCAA. The estate of a victim of gun violence argued that the Act violated the Tenth Amendment and the separation of powers. However, the court thwarted these arguments, holding that the PLCAA does not violate the separation of powers because it does not require categorical dismissal of certain cases; the Act simply preempts state law. Furthermore, the court held that the Act does not violate the Tenth Amendment because it does not compel the legislature to enact specific laws. Thus, the court affirmed the Act’s constitutionality and barred the plaintiffs from further pursuing a claim against a gun dealer who failed to prevent a disturbed man from obtaining a gun he then used in a murder.

The exceptions to the PLCAA’s immunity clause are fairly narrow. This should not be a surprise given the powerful interests that shaped the legislation.

**MAJOR STAKEHOLDERS**

There are countless groups working at the national, local, and community levels to affect perspectives on inner city gun violence.

**The National Level**

The NRA casts the perpetrators of urban gun violence as dispositional
actors. Meanwhile, the group casts gun owners and sellers as victims of their situation, buying and selling guns only to protect themselves and their families. The NRA argues that gun law offenders would simply avoid following new regulations because urban areas are home to some of the strictest gun control laws in the country, yet have high violent crime rates. Instead of stricter laws, the NRA advocates for stronger prosecution and enforcement of existing laws, which it believes would deter potential criminal offenders. In 1990, the NRA established the NRA Foundation to raise money to fund gun safety and educational projects.

The NRA asserts that it has no formal affiliation with gun manufacturers. However, according to the Violence Policy Center, financial contributions to the NRA from gun manufacturers are substantial. The Violence Policy Center questions how the NRA can impartially represent gun owners when gun manufacturers fund its activities. The NRA spent $18.2 million in independent expenditures in the 2012 election cycle, $2.2 million in direct lobbying of Congress, and $1.1 million in campaign contributions (89% of which went to Republican candidates)—figures that dwarf spending by gun control groups.

The Brady Campaign, a major pro-gun control lobby, sees gun sellers and manufacturers as responsible for inner city violence. Adopting the narrative that suppliers are an enabling influence, the group pushes for stricter regulation, such as background checks, permit-to-purchase requirements, limited handgun purchases, and retention of sales records. In placing more focus on distributors, the Brady Campaign seeks to broaden liability beyond individual offenders.

The Congressional Black Caucus (CBC) takes a different perspective, framing inner city gun violence as a result of situational factors, most notably economic inequalities. Recognizing the need for a solution that both the violence and its root causes, the CBC advocates for summer jobs, mentoring programs, education, and increased parental involvement as a means of decreasing gun violence by investing in youth.

These national groups look at inner city gun violence from broadly contrasting perspectives, leading to a range of policy approaches reflected at both the local and community levels.

The Local Level

Budget constraints limit local politicians’ and other officials’ abilities to shape the policies and debates surrounding inner city gun violence. Chicago and Detroit, cities with some of the worst gun violence in the country, suffer from serious financial problems. Furthermore, Chicago is mired in a protracted and presumably expensive legal battle
with the NRA.\textsuperscript{190} It is perhaps not surprising, then, that one of the most important players at the local level—Mayors Against Illegal Guns—relies on private money (that of its co-founder, outgoing New York City Mayor Michael Bloomberg).\textsuperscript{191} The organization’s efforts include local initiatives\textsuperscript{192} and partnerships with retailers to promote “responsible firearms policies.”\textsuperscript{193} However, not all local officials are working to promote gun control. Many states have sought to loosen gun laws in recent years.\textsuperscript{194}

Local officials employ at least two (arguably competing) narratives when framing the problem of inner city gun violence. The first is that criminals are dangerous and deserve punishment—a narrative sometimes accompanied by appeals for harsher sentencing laws and more prisons.\textsuperscript{195} The other narrative is that external factors such as poverty, lack of economic opportunity, and the availability of guns are to blame, not criminals themselves.\textsuperscript{196} There is some support for the view that officials employ these narratives selectively, depending on whether or not they serve their interests. For example, officials running for election (or reelection) might adopt a tough-on-crime, criminals-are-dangerous stance to appease corporate campaign contributors—a phenomenon observed, for example, in judicial campaigns.\textsuperscript{197} Similarly, officials in urban areas, where gun violence is more prevalent, might advocate tougher gun control laws than those in rural areas, given the sympathies of their constituents.\textsuperscript{198} Finally, contrasting political incentives may explain why some state governors veto or circumvent gun control laws driven by urban interests.\textsuperscript{199}

Recent mass shootings in suburban areas influence the inner city gun violence debate, as well. Local politicians may be more likely to see gun violence as a public safety problem when it affects white suburban communities.\textsuperscript{200} To the extent that violence in suburban communities galvanizes political support for gun control legislation, inner city communities might experience a spillover effect.\textsuperscript{201}

\textbf{The Community}

Poor communities with younger demographics are likely to have less social stability and higher rates of gun homicide.\textsuperscript{202} In addition, the prevalence of drugs such as crack cocaine encourage dealers and their peers to acquire guns, leading to an increased likelihood of gun violence.\textsuperscript{203} The pervasiveness of gun ownership in society disproportionately affects Black communities. In 2010, the rate of firearm homicide for blacks was 14.6 per 100,000, compared to 2.7 for American Indians and Native Alaskans, 1.9 for whites, and 1.0 for Asian and Pacific Islanders.\textsuperscript{204}
Because inner city communities are so disproportionately affected by gun violence, community members have a substantial interest in reducing and preventing gun homicides. This problem is difficult to tackle in part because gun ownership has often been integrated into inner city culture, and the factors that lead to the socialization of gun violence are circular and reinforcing. A 1993 study showed that violence in Chicago’s South Side negatively affected the African-American children living in that community by leading to “feelings of victimization, growing uneasiness . . . increased aggression . . . and a strong belief that the black community itself was being threatened.” As children reach adolescence, they may resort to gun violence as a strategic way to gain social control, material acquisition, and a favorable identity and reputation. The feelings of safety and power that teenagers in particular gain through the possession of a firearm leads to a “developmental ‘ecology of violence,’” in which an individual’s views about guns and the dangers of the surrounding environment may be internalized at a young age and serve to shape that person’s cognitive frameworks. A 1994 study of inner city Philadelphia led the author to conclude that the causes of inner city violence are functions of structure and situation—a lack of jobs that pay a living wage, racial stereotypes, fallout from drug use and trafficking, and “the resulting alienation and lack of hope for the future.”

Even though members of inner city communities (and members of cities at large) agree that inner city gun violence demands a solution, not all members agree that high gun homicide rates are strictly a function of situational factors. Clergy members such as Pastor Michael McBride, director of PICO National Network’s Lifelines to Healing Campaign, advocate for solutions that are framed by a dispositionist schema. Pastor McBride describes the nation as being “held hostage” by individuals whose behavior must be corrected, and advocates a public health approach that challenges community members to “address their own habits of violence” and replace “hopelessness with a sense of responsibility.”

**ECONOMIC ANALYSIS**

From an economic standpoint, holding gun manufacturers strictly liable for violent crimes committed with their guns would result in the most efficient outcome. Under strict liability, gun manufacturers would be liable for all injuries proximately caused by their products. Two factors support the application of strict liability to gun manufacturers. First, they are best positioned to access the necessary information to prevent crimes. Second, their position in the supply chain is so pivotal that a change in their behavior will greatly influence the behavior of all other actors in the chain—from distributors to buyers. By forcing manufacturers
to internalize the costs of crimes committed with their guns, strict liability will give them an incentive to obtain the necessary information and use it to prevent gun crime.212

Several parties could potentially be held accountable—the perpetrator of the violence, the dealer, or the manufacturer who made and sold the gun. The question of which party to choose should be answered based on who is in a position to obtain the most valuable information (such as records logging which gun was used in which crime) at the least cost. This is for two reasons. First, it is unfair to hold a party responsible for a crime when they are not in a position to obtain the information necessary to prevent that crime. Second, the party with the best information is in a position to employ the best solutions.

In this case, manufacturers are in the best position to have an effect on rates of violent crime, because they can find out which dealers sell guns that are used for violent ends.213 When a manufacturer’s gun is used in a crime, that manufacturer has the records to determine to which dealer that gun was sold.214 For example, if a manufacturer sells to Dealers A, B, C, and D, and a disproportionate number of guns sold to Dealer B are involved in violent crimes, the manufacturer is in the best position to know and respond. Thus, liability has the greatest impact when placed on the gun manufacturer, because forcing the manufacturer to internalize the costs of violent gun crimes makes it less likely to sell to dealers who allow their products to be used for criminal purposes. In contrast, placing liability on individuals or specific dealers forces procedure on an individualized basis. For instance, holding a specific dealer liable ostracizes only that dealer—the manufacturer will move on to another, and will consequently have no incentive to ensure that the next dealer is any more scrupulous than the last. Placing liability higher up the supply chain allows for broader and more systematic accountability. When manufacturers have an incentive to stop doing business with unreliable dealers, it will be more difficult for those seeking guns for criminal ends to obtain them.215

Forcing manufacturers to internalize costs through strict liability might also have other systematic effects. Currently, many of the costs of guns and gun violence are externalized and borne by third parties who were not part of the contract between buyer and seller. These costs include insurance, increased taxes, and greater spending on law enforcement. Imposing strict liability would increase economic pressures on gun manufacturers, as they would have to pay for injuries inflicted by the use of their products. Manufacturers would therefore have a diminished incentive to sell to distributors in markets prone to high levels of gun violence.216 The cost of manufacturer liability would also most likely be passed on to consumers in the form of higher prices, which may decrease public demand. Shifting the costs of gun-related homicide from the public to manufacturers may thus be an efficient way to reduce deaths by
firearms. Imposing liability could also affect how guns are marketed, whether manufacturers opt to include safety features, and whether manufacturers target disproportionately groups who are likely to use guns during criminal activities.

This argument relies on assumptions about the overall market for weapons and the likelihood that gun violence will decrease. The following model reflects assumptions that would support the efficiency of a strict liability approach: (a) gun sales will drop heavily, and (b) criminals will not resort to other ways to obtain deadly weapons. In the diagram below, the first number in each parenthesis indicates cost to the public, while the second represents the earnings of or cost to the gun manufacturers. Assumptions about annual gun sales and homicides are grounded in current statistics on gun deaths from the Centers for Disease Control and Prevention, as well as estimated gun sales reported by Forbes.\(^{217}\) The model also assumes a median figure for the value of a human life.\(^{218}\)

**Figure 4.** Efficient Strict Liability Scenario.

The model shows that reductions in new gun sales will result in fewer homicides. However, this may not be the case, as criminals could demand more used guns and may use other lethal weapons. In either of these cases, costs to manufacturers might continue to go up (liability for guns already sold) without a corresponding reduction in gun violence. This would be less efficient than the current system. The following model illustrates the potential consequences of these outside factors.

**Figure 5.** Inefficient Strict Liability Scenario.

Arguments against strict liability also face questions of efficiency based on underlying assumptions. Those against such liability may note that increasing costs to manufacturers, especially assuming a large number of gun deaths and high economic costs of lost lives, may be too much to bear for gun manufacturers. High costs may force manufacturers to close, reducing the market for lawful guns and purchases made for deterrence only.

The assumptions in the argument against strict liability might be challenged if manufacturers can use their knowledge of gun markets and violence to refocus sales in less crime-prone areas. By incorporating

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By forcing manufacturers to internalize the costs of crimes committed with their guns, strict liability will give them an incentive to obtain the necessary information and use it to prevent gun crime.
other safety mechanisms into the guns they sell, manufacturers can also reduce incidents involving guns that were stolen or otherwise illegally obtained. The efficiency of these mechanisms, and other ways of reducing gun violence, can be analyzed further using existing data.

**Empirical Analysis**

Determining which policy levers would most effectively decrease inner city gun violence is an empirical matter that can be analyzed using a regression analysis that discriminates against ineffective or irrelevant variables. Any statistical model would take the number of inner city gun homicides as a dependent variable and include all possible gun control measures as independent variables, using economic and population data to control for state-to-state variations.

To construct a robust and precise regression model, Least Angle Regression (LARS) can be applied to select the variables with the most explanatory power, and then a multiple linear regression model can be employed to determine the coefficients and relative statistical significance of each variable. Finally, microeconomic analysis can help show the relative effect of statistically significant variables on the market.

**Least-Angle Regression**

Due to the vast array of gun control measures and the untested notion of strict liability, the relative efficacy of each possible alternative should be ranked to determine which will be most effective at controlling the variation of inner city gun deaths. LARS can be used to properly rank the variables and exclude those measures which are irrelevant from subsequent analysis. LARS ranks all the variables from the most to the least explanatory, and it will also exclude any extraneous variables. By applying a statistical penalty on each variable added to the regression, it helps to limit the scope of the model to only those variables that give explanatory power and eliminate any measures that have little or no bearing on the variation of inner city gun violence. Applying LARS before using a standard multiple linear regression can make analysis much more precise, because it will only concentrate on those variables which are statistically relevant. Table 1 shows the results of the LARS analysis of inner city gun deaths, displaying the rank of the variables from most to least effective and excluding those variables that lack explanatory power.

High costs may force manufacturers to close, reducing the market for lawful guns and purchases made for deterrence only.
<table>
<thead>
<tr>
<th>Rank by Cp Statistic</th>
<th>Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Firearms Registered under the NFA</td>
</tr>
<tr>
<td>2</td>
<td>Number of Dealers</td>
</tr>
<tr>
<td>3</td>
<td>Background Check Laws</td>
</tr>
<tr>
<td>4</td>
<td>Death Rate (Control Variable)</td>
</tr>
<tr>
<td>5</td>
<td>Population Density (Control Variable)</td>
</tr>
<tr>
<td>6</td>
<td>Poverty Rate (% Under the Poverty Line)</td>
</tr>
<tr>
<td>7</td>
<td>Real State Growth (% Economic Growth)</td>
</tr>
</tbody>
</table>

**Table 1.** LARS Results Ranked by Cp Statistic.

The most powerful variables are those that contribute most to explaining the variation in inner city gun deaths. The results of the LARS analysis show that the poverty rate, real state economic growth (see Figure 6), background checks, the total number of dealers (see Figure 7), and the total number of Firearms Act-registered weapons are the most powerful variables in the model. (Population density can be used as a control variable).

**Figure 6.** Urban Gun Violence and Real State Growth.

**Figure 7.** Urban Gun Violence vs Number of Gun Dealers.

**Multiple Linear Regression**

Multiple linear regression can be used to take the variables identified by LARS and determine their precise relationship to the variation in inner city gun violence. When regression is contained to the variables highlighted by LARS, it explains 86.34% of the variation in inner city gun homicides. Furthermore, Table 2 shows that the number of firearms registered under the National Firearms Act (NFA) is more significant (p-value is equal to 0, which means that it is not the result of chance alone) in explaining urban gun violence than any other variable. In fact, the model suggests that for every one thousand guns registered under the NFA, the number of inner city gun deaths increases by five to ten fatalities. The 95% confidence-interval estimates the 7.94 coefficient, which indicates inner city gun deaths vary by 7.94 deaths for each change of one thousand guns registered under the NFA assuming all other variables remain fixed, is reliable in all but 5% of observations within the range of 5.07 to 10.81 fatalities. While the old adage may be...
true—"Guns don't kill people, people do"—empirical analysis indicates that cities with more guns kill more. 

**Table 2.** Multi linear regression result for Total Number of Firearms Registered Under NFA Variable.

| Variable                                      | Coefficient | P>|t| | 95% Conf. Interval |
|-----------------------------------------------|-------------|-----|-------------------|
| Total Number of Firearms Registered Under NFA | 7.94        | 0.00 | 5.07 - 10.81      |

**Figure 8.** Inner City Gun Violence vs. Number of Firearms.

**Micro-Economic Analysis**

The conclusion that more guns lead to more deaths is supported by a recent report from the Harvard Injury Control Research Center:

Our review of the academic literature found that a broad array of evidence indicates that gun availability is a risk factor for homicide, both in the United States and across high-income countries. Case-control studies, ecological time-series and cross-sectional studies indicate that in homes, cities, states and regions in the US [sic], where there are more guns, both men and women are at higher risk for homicide, particularly firearm homicide.\(^{226}\)

One can assume that imposing strict liability will increase the costs of production and shift the supply curve to the left, which represents decreased supply. Figure 9 shows the supply curve shifting to the left, from S to S1, as a result of the increasing costs of production (higher insurance premiums, cost of legal fees, research and development spending, etc.). Shifting the curve to the left causes the price to increase from P to P1, which in turn decreases quantity sold from Q to Q1. Even without the demand curve shifting due to consumers switching to alternative products like blades or explosives, which would cause a greater fall in quantity sold, the increase in price will cause the market equilibrium to settle at a lower quantity of guns sold (i.e. Q1). If holding gun manufacturers strictly liable helps lower the overall volume of guns on the market by raising gun prices and forcing manufacturers to internalize the public health cost of violence, the model suggests this will have a direct effect on the number of fatalities.
Were a jurisdiction to experiment with strict liability in the future, synthetic control or other conventional regression methods could be used to arrive at a more accurate prediction.

**POLICY SOLUTIONS**

Despite increased media coverage in the wake of mass shootings, Congress has not passed substantive gun legislation since the PLCAA in 2005. Deep polarization over the gun debate has blocked any federal progress on this issue. Proponents of stricter gun control laws argue for increased gun control and safety legislation, such as required criminal background checks for gun sales, passing a federal gun trafficking statute, and reinstating the assault weapons ban. By regulating general access to guns and restricting access to specific types of guns, proponents of such legislation believe that these changes can reduce the rate of annual firearm fatalities, which reached 32,163 in 2011. Opponents of stricter regulations argue that such restrictions will do little to prevent mass shootings and violent crime. They also argue that gun control legislation infringes upon the Second Amendment.

Political division has defeated several recent gun control legislation attempts. The proposal backed by President Obama in the aftermath of the Newtown school shooting, which proposed expanded background checks on firearm sales and a ban on some semi-automatic weapons, was defeated in the Senate. Additionally, California Congressman Adam Schiff has introduced multiple bills aimed at penalizing “straw purchasers” who buy firearms in bulk to sell without background checks. Schiff has explained that “good gun companies don’t need special protection from the law, and bad companies don’t deserve it.” Despite Rep. Schiff’s attempts to roll back the protection that the PLCAA gives gun manufacturers, his efforts have not yet proved fully successful. The inability or unwillingness of Congress to pass gun control legislation has led many cities to adopt their own policies aimed at reducing gun violence. This white paper proposes four general policy solutions, drawing on existing regulations and tort doctrine.
**Enforcement**

The first solution this paper advances is stronger prosecution of individuals who use guns illegally and stricter enforcement of pre-existing criminal law. This solution has two components: prosecuting gun traffickers more often and severely than previously done and increasing police resources. In order to pursue the stronger prosecution course of action, federal restrictions like the Tiahrt Amendments must be repealed. The Tiahrt Amendments, originally sponsored by U.S. Representative Todd Tiahrt, are provisions to federal spending bills that limit the amount of information law enforcement officers can obtain on gun sales.\[^{234}\] The Tiahrt Amendments limit state and local authorities’ access to crime gun trace data, require FBI background checks on buyers to be destroyed in twenty-four hours, and prevent the Bureau of Alcohol, Tobacco, and Firearms from requiring gun dealers to report lost or stolen inventory.\[^{235}\] Increasing police officers’ ability to track data on firearm purchases would facilitate increased prosecution.

The latter aspect of the enforcement solution would allow police officers to pursue programs like stop and frisk. Stop and frisk programs—also known as Terry stops after *Terry v. Ohio*\[^{236}\]—are used nationwide, most famously (and controversially) in New York City.\[^{237}\] Stop and frisk is a practice in which police officers stop suspicious pedestrians and frisk them for weapons and other contraband. In 2012, the NYPD stopped 473,644 New Yorkers 532,911 times.\[^{238}\] Approximately .2% of stops yielded guns.\[^{239}\] Despite controversy over racial bias,\[^{240}\] New York City Mayor Michael Bloomberg and Police Commissioner Ray Kelly claim the practice saves lives.\[^{241}\] However, although violent crime rates have dropped dramatically in New York over the past twenty years, the vast majority of the crime drop occurred between 1990 and 2002, before Mayor Bloomberg took office and increased Terry stops by 600%.\[^{242}\] Moreover, preliminary data from two recent studies suggest that increasing the number of Terry stops in a particular area does not significantly reduce crime rates.\[^{243}\] One of those studies even found that “[t]housands of stops are required to achieve even small crime reductions,” and another found that increases in Terry stops might actually increase crime rather than decrease it.\[^{244}\] Terry stops promote a dispositionist view of gun violence and gun users. This program relies on the assumption that stopping someone with a concealed weapon will prevent him or her and others from engaging in gun violence in the future. Terry stops do not account for the situational factors that promote gun violence and limit other outlets for urban youth.

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**Increasing the number of Terry stops in a particular area does not significantly reduce crime rates.**

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\[^{244}\] Terry stops do not account for the situational factors that promote gun violence and limit other outlets for urban youth.
Safety

The second solution this white paper puts forward is the implementation of technology and programs that would make guns safer. Some of these “smart-gun” technologies include: personalized guns controlled by a radio frequency built into a wristwatch; a personal pin or code to activate the gun; mandatory trigger locks; and palm recognition to fire the gun. Congressman John Tierney of Massachusetts has recently introduced legislation—The Personalized Handgun Safety Act of 2013—that would fund more research for smart-guns and mandate their sales. Other safety measures include gun buyback programs and banning “Saturday night special” guns.

As mentioned in the Tort Doctrinalist section of this paper, “Saturday night specials” are “relatively low-quality, concealable handguns that are commonly used in crime.” Few states enforce a ban on these types of guns, but the states that do have been successful in reducing gun violence. A study conducted by the Johns Hopkins Bloomberg School of Public Health, published in 2002, indicates that firearm homicides in Maryland decreased 9% between 1990 and 1998 when the ban was enacted. Thus, making Saturday night specials less available to criminals could decrease gun violence in some cities.

The gun buyback programs, unlike the ban on Saturday night specials, have been tried in several U.S. cities with limited success. The Newtown shooting spurred a recent “gun-buyback boom.” Gun buyback programs encourage gun owners to exchange their firearms for some sort of incentive, usually cash. Despite their popularity, most studies conclude that the programs have little to no effect on gun violence. The guns exchanged in buyback programs are usually old, poor quality firearms that are no longer used, and criminals are unlikely to turn in guns employed in crimes.

The major problem with gun buybacks in America is their limited scale. To keep up with the annual increase in gun ownership, buybacks would have to collect two percent of the guns in a city. Most buyback programs collect less than one percent of guns, and only the three most successful programs collected over 1.5% of the local gunstock. In contrast, when Australia implemented a nation-wide buyback program in 1997, they collected about one-fifth of the country’s firearms and significantly reduced the number of firearm homicides and suicides.

In addition to smart-guns, a ban on Saturday night specials, and gun buyback programs, a ban on cop-killer bullets could also promote safety among gun users. In 2011 the California State Senate voted to pass the “Cop-Killer Bullet Ban Protection Act,” despite the gun lobby’s attempts to legalize cop-killer bullets. Senator Kevin de León endorsed this bill in an
attempt to “protect cops while maintaining access to legal ammunition for law-abiding citizens.”

At a Senate Public Safety Committee hearing in 2011, Los Angeles Police Department Sergeant John Mumma stated that cop-killer bullets do not belong in the hands of the public. He explained that these types of bullets are “for killing people, specifically police officers.” By restricting access to these killer bullets through the legislature, the amounts of gun-related deaths (specifically those of police officers) could decrease.

**Media**

This white paper advances a third solution to reducing urban gun violence—changing the way media portrays violence. Restricting and regulating violence in the media can address situational factors that influence urban violence. This solution is divided into two components: first, limiting access to violent video games and movies, and, second, changing media portrayals of mass shootings and inner city violence.

A study published by the American Academy of Pediatrics, “Gun Violence Trends in Movies,” purports that modern PG-13 movies are often more violent than R-rated films. Researchers found that violence in films has doubled since 1950, and that gun violence in PG-13 films has tripled since 1985.

According to an article in Aljazeera America, movies rated PG-13 earned $5.7 billion in box office revenue in 2012. The study by the American Academy of Pediatrics notes that the life of a child is filled with a series of social problems that must be solved, and youth observe others in order to understand how to solve these problems. The increase of gun violence in films not only increases aggression in youth, but also provides youth with a “script” for using guns.

In addition to decreasing the amount of violence in films available to youth, media regulations should focus on portrayals of mass shootings versus inner city violence. As noted in the discussion on internal situation, violence in the media desensitizes urban youths from a young age. However, while urban youth are desensitized to violence because of media and real life exposure to gun violence, national media coverage has a different effect on the public. As previously discussed in the media analysis, news media highly publicize mass shootings while often underreporting violence from inner city gun shootings. This policy solution encourages changing the conception of inner city gun violence as “normal” and a part of the disposition of urban youth. News stories of mass shootings focus on the psychological background of the shooter, looking for an external explanation as to why violence occurred. The limited media coverage of inner city gun violence lacks any discussion of situational factors and
instead presents this type of violence as normal. A media-focused policy solution would restrict the sale or rental of violent video games, films, music, and online television shows, and encourage an in-depth analysis of the backgrounds of violent offenders in the inner city as well as suburban mass shootings.

**Community**

The fourth policy solution this white paper proposes is a focus on increasing community approaches to stopping urban gun violence. Some urban areas have taken a holistic approach to gun violence. Boston has adopted the Operation Ceasefire program, which aims to combat gun violence by creating dialogue with violent gangs and integrating city programs with local communities and faith-groups that already have a presence in inner city areas with high crime rates.

In Los Angeles, the city government and the Los Angeles Police Department have worked closely with civil rights groups to apply a similar approach. The 2006 Advancement Project Report advocated a comprehensive and interagency approach of “prevention, intervention, and community development.” The report advocated the following recommendations: empower schools to identify and better support at-risk youth; increase gang intervention and interruption programs; increase private and public sector employment in inner city communities; create a local think-tank to come up with and enact policies to decrease violence; enlist the police department as partners; encourage juvenile justice reform; and create public campaigns against violence and youth access to guns. Many of these recommendations were adopted in the city’s Gang Reduction and Youth Development program. Both the Boston and Los Angeles programs appear to be effective—studies show that the decrease in violence after Project Ceasefire’s adoption was more pronounced than violence reduction in other cities. Los Angeles’ policies, particularly increased school resources to identify at-risk children, greater programs to keep children off the streets at night, and an emphasis on gang intervention workers have decreased the rate of gun crime. A holistic approach has also made the marginalized and segregated inner city communities of Los Angeles feel that they are included in a fairer justice system.

The holistic approaches to reducing gun violence are forward looking. Policies like the Gang Reduction and Youth Development Program in Los Angeles and Operation Ceasefire in Boston address the situational factors that encourage and enforce violence in inner city communities. By focusing on increasing employment, enlisting police departments as supportive (rather than antagonistic) partners, and decreasing youth access to guns, holistic approaches address the

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The decrease in violence after Project Ceasefire’s adoption was more pronounced than violence reduction in other cities.
individuals within their larger community. Policies like the holistic programs model successful ways to address youth gun violence in inner city communities.

**The Voting Procedure**

The vote on policy proposals took place at the conclusion of each group’s ninety-minute presentation and class discussion. Those presentations and discussions were informed by each group’s draft white paper, which all students were assigned to read, and by a one-hour talk delivered by a guest speaker who was expert on the underlying topic. Voting took place in an open forum, and students voted by raising their hands—with outcomes determined by majority rule. The policy proposals recommended in each of the Frontier Torts white papers reflect a class vote and not necessarily the views or recommendations of each white paper’s authors.

Following our presentation, our group proposed five general policies that could be enacted to reduce urban gun violence. These policies were (1) increasing enforcement through stronger prosecution and stricter enforcement of criminal laws; (2) increasing safety through required smart-gun technology and banning abnormally dangerous guns and bullets; (3) changing media portrayal of violence in video games and movies; (4) focusing on community outreach to give at-risk youths greater opportunities and support; and (5) using tort liability to transfer the costs of urban gun violence from victims, communities, and cities to manufacturers, distributors, and sellers. Each student could vote for two options. Tort liability was the most popular, followed by safety mechanisms and community outreach.

Our group then proposed five avenues for implementing tort liability. The first option was to work within the PLCAA by using the exceptions to target negligence and defects. The other four options were to hold gun manufacturers to strict product liability, negligence, default absolute manufacturer liability, or mandatory manufacturer liability, all of which would require repealing the PLCAA. Negligence was the most popular, followed by default absolute manufacturer liability and mandatory manufacturer liability.

**RECOMMENDATION**

Gun violence in America is a complex and deep-rooted problem that ideally should be addressed by a combination of several of the policies outlined in this paper. However, we recommend that the single most effective change would be to shift the cost of gun violence to gun manufacturers through tort liability. Currently, gun manufacturers have no incentive to increase the safety of their products or make efforts to keep their products away from straw purchasers. The economic analysis shows that gun manufacturers are in the best position to effect meaningful change, and tort liability will
bring their interests in line with the rest of society to decrease gun violence. Additionally, in implementing this tort, we recommend holding gun manufacturers to a standard of negligence. This would require the repeal of the PLCAA and would hold gun manufacturers to the same standard as any other product manufacturer in this country. A standard of negligence will incentivize gun manufacturers to make safer products and stop distributing to sellers with obvious ties to criminal activity, while balancing the needs of the industry to remain economically viable.

CONCLUSION

The effects of gun violence spread far beyond the few dozen people murdered in mass shootings each year. In the first decade of the new millennium, nearly one million people were the victims of gun violence. Gun violence directly impacts the lives of one in every 314 Americans. Beyond those who are directly killed and injured by guns, our communities absorb staggering economic and social costs. Some studies suggest gun violence costs the United States as much as $174 billion a year in work lost, medical care, insurance, criminal justice expenses, and pain and suffering. Moreover, economic losses can never completely capture the devastating psychological effects of gun violence on victims, perpetrators, and their friends and families, or the intangible losses of the community such as a sense of safety and stability.

Although the ideal solution to reducing gun violence would involve numerous and varied policies to combat the wide-ranging factors that cause it, we believe that the single most effective possible solution is tort liability. Gun violence is far too expensive for America’s urban communities, and tort liability can help shift those costs to the ones who can most efficiently reduce them—gun manufacturers. It is time to stop shielding gun manufacturers from the cost of the thousands of deaths and injuries caused each year by their reckless conduct and force them to take responsibility for the violence carried out with their products.
REFERENCES


5 *Id.*

6 *Id.* at 275.

7 NATIONAL RESEARCH COUNCIL: COMMITTEE TO IMPROVE RESEARCH INFORMATION AND DATA ON FIREARMS, *FIREARMS AND VIOLENCE: A CRITICAL REVIEW* 65 (Charles F. Wellford, John V. Pepper, and Carol V. Petrie eds., 2004).

8 STUNTZ, *supra* note 4, at 275.


10 STUNTZ, *supra* note 4, at 274.


12 STUNTZ, *supra* note 4, at 244.


14 *Id.*

15 *Id.* at 274.

16 *Id.*

17 COOPER & SMITH, *supra* note 9, at 29.


19 *Id.*

20 Centers for Disease Control and Prevention, *supra* note 2.


23 *Id.*


26 See Loïc Wacquant, *Decivilizing and Demoralizing*, in THE SOCIOLOGY OF NORBERT ELIAS 95, 103 (Steven Loyal & Stephen Quilley eds., 2004); Wilson, *supra* note 25 at 578.

27 Wilson, *supra* note 25 at 578.


30 See id.


33 Wacquant, *supra* note 26, at 100-101.

34 *Id.*


40 *Id.*


See Daniel W. Webster et al., *Effects of a Gun Dealer’s Change in Sales Practices on the Supply of Guns to Criminals*, 83 J. URB. HEALTH 778, 778 (2006); but see Kleck & Wang, supra note 49.


See Braga & Pierce, supra note 50, at 722-25.


More than 1,000 Guns Relinquished During City’s Gun Buyback Program, CBS LOS ANGELES (May 6, 2013), http://losangeles.cbslocal.com/2013/05/06/citys-gun-buyback-program-results-in-over-1000-guns-relinquished/.


Id. at 225.


Compare, e.g., Braga & Pierce, supra note 50, and Webster et al., supra note 51, with Kleck & Wang, supra note 49.

63 See Kleck & Wang, supra note 49, at 1235.

64 See the discussion of Smith & Wesson in the following paragraphs.


70 In 1993, a man walked into a San Francisco law firm and killed eight people in the building using a TEC-DC9 semiautomatic assault rifle. When the marketing director of the TEC-DC9 gun manufacturer, Navegar, was “questioned about findings of the Bureau of Alcohol, Tobacco, and Firearms (‘ATF’) that the TEC-DC9 has been the weapon of choice among criminals in recent years, he is alleged to have replied, ‘I’m kind of flattered. It just had that advertising tingle to it. Hey, it’s talked about, it’s read about, the media writes about it. That generates more sales for me. That may sound cold and cruel, but I am sales oriented.’” Joi Gardner Pearson, Make It, Market It, and You May Have to Pay for It: An Evaluation of Gun Manufacturer Liability for the Criminal Use of Uniquely Dangerous Firearms in Light of In re 101 California Street, 1997 B.Y.U. L. Rev. 131, 137 n.38 (1997).

71 VIOLENCE POLICY CENTER, THE MILITARIZATION OF THE U.S. CIVILIAN FIREARMS MARKET (June 2011), available at http://www.vpc.org/studies/militarization.pdf (finding that civil gun sales have been in decline for several decades, and that gun manufacturers have responded by developing and marketing products from the military inventory or based on military designs to appeal to “the soldier within”).

72 Id. at 7-10, 30-33 (finding that advertising focuses heavily on military and police contracts to promote authenticity of the manufacturer and emulation or idolatry of service members; advertisements and NRA pamphlets also use fear to drive gun stockpiling, citing the necessity of guns to “survive Y2K” and preserve freedom in the face of “towering waves” of gang violence, though the fear is driven by the gun ownership of others).


*Id.* at 227.

See Hogg, *supra* note 76, at 67, 69 (discussing the “prescription” and “prototypes” that result from group membership).

*Id.* at 67.


*Id.* at 24.


*Id.* at 429.


*Id.*

*Id.*


*Id.*; *See also* Miller & Lerner, *supra* note 94.
98 Id.
99 Id. at 890.
101 Id.
102 See ELIZABETH M. PERSE, MEDIA EFFECTS AND SOCIETY 1-3 (2001).
105 See Kenneth Dowler, Media Influence on Attitudes Toward Guns and Gun Control, 26 AM. J. OF CRIM. JUST. 235, 239-245 (2002).
106 See Callaghan & Schnell, supra note 104, at 185-189.
107 See Andina-Diaz, supra note 103, at 73.
109 See id. at 1551-52.
114 Gergi & Breland, supra note 111.
115 Id.
116 Id.
117 Id.
118 Id.
119 Id.
120 Id.


122 Id.


124 Gergi, *supra* note 121.

125 Id.


130 Id.

131 Id. at 194.

132 Id.

133 Id.

134 Id.


136 *Beretta I*, 750 N.E.2d at 1055.


138 Id. at 137-138.

139 Id.

140 Id. at 140.


When the case was first argued in 2003, the Ninth Circuit held that the plaintiffs had successfully demonstrated that the defendants had violated the California public nuisance statute. After the passage of the PLCAA, however, the court found that the public nuisance law did not fall within the predicate exception of the PLCAA. Ileto v. Glock, Inc., 565 F.3d 1126, 1138 (9th Cir. 2009).


MD. ANN. CODE, art. 27, § 36J(b) (1992); Jonathan E. Selkowitz, Guns, Public Nuisance, and the PLCAA: A Public Health-Inspired Legal Analysis of the Predicate Exception, 83 TEMP. L. REV. 793, 809 (2011) (Maryland banned small, inexpensive guns known as “Saturday night specials” because high rate of use in crimes).


The estate of a gun shooting victim sought to hold a gun store owner liable for the death on the basis that an employee negligently or illegally provided the shooter with a gun by not preventing the shooter from stealing the gun. The court invoked the doctrine of constitutional avoidance and upheld the constitutionality of the PLCAA. Furthermore, they held that firearm theft precludes a dealer’s liability under the PLCAA’s negligent entrustment exception. Estate of Kim ex rel. Alexander v. Coxe, 295 P.3d 380, 388 (Alaska 2013).

Id. at 390.

Id. at 389

Id. at 384.

For a discussion of attributional styles in the media, see *supra* Media Representation.


For a discussion of gun manufacturers’ enabling influence on inner city gun violence, see supra Situational Forces Shaping Gun Trafficking, Enforcement, and Manufacturing.


For a more complete discussion of external situational factors, see supra External Situation.


Id.


*See, e.g.*, Blocher, *supra* note 199.


*Id.* at 152.


*See supra* External Situation.


*Id.* at 107.

*Id.* at 134.


*Id.*

*See Bonney, supra* note 211, at 1458.

*Id.*


223 The Cp measure assesses a penalty for each additional regressor added to the model thereby only including variables that are statistically significant.


225 Current federal regulations explicitly forbid the registration of firearms as part of the national background system (National Instant Criminal Background Check System). There is, however, the National Firearms Act, which mandated the registration of numerous types of weapons but excluded pistols and revolvers. These figures can be used to investigate the effect of the overall availability of weapons on the level of inner city fatalities.


See, id.

Terry v. Ohio, 392 U.S. 1 (1968) (holding “stop and frisk” programs constitutional).


Eterno & Silverman, supra note 244.


Id.


Id.


Id.


Id.

Rosenfeld, *supra* note 255.

Rotenberg, *supra* note 256.


Id.


Kate Kipatrick, *supra* note 263.

Bushamn et al., *supra* note 264, at 1015.

Id.

Id.

Levin & Carlsson-Paige, *supra* note 84.

David Muhammad, *supra* note 112.

Erika Christakis, *supra* note 126.


See id.


See id.

Both the Urban Gun Violence group and the 2013 Torts class through a vote came to this same conclusion.

The 2013 Torts class came to this conclusion through a vote.


Id.