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NEW APPROACHES TO DISARMING DOMESTIC ABUSERS

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ABSTRACT

Laws prohibiting perpetrators of intimate partner violence from possessing firearms have long been on the books. But the failure to enforce them, thus allowing abusers to keep their weapons, has led to deadly consequences. While the criminal justice system has in recent years increased efforts to disarm domestic abusers, they have yielded minimal success.

It should be unsurprising that threatening criminal consequences for illegally possessing firearms has not been an effective strategy. Perpetrators knew they were breaking the law when they assaulted their partners but did so anyway. And the calculated risk they take by not relinquishing guns often pays off due to a lack of coordination between the agencies tasked to verify compliance, as well as low prosecution rates.

Because criminal justice approaches have proven ineffective in dispossessing domestic violence offenders of firearms, alternative approaches are necessary. This Article, drawing from the fields of public health, international human rights, and anti-carceral feminism, explores such alternatives. It analyzes these theoretical areas to draw out commonalities—including a move away from exclusively carceral approaches, a focus on prevention, and an emphasis on community-based solutions—that can inform efforts to remove guns from the hands of domestic violence offenders.

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INTRODUCTION

DESPITE being prohibited from possessing firearms, domestic violence offenders continue to not only possess weapons, but use them to commit further harm. A 2021 investigative report found that over 100 people were fatally shot between 2017 and 2020 by men whose previously abusive behavior made them prohibited possessors.¹ The problem is not one that requires a legislative solution—federal law, and most states, prohibit those with felony and misdemeanor domestic violence convictions, and those subject to domestic violence protective orders, from possessing guns. People continue to die because the laws are not being enforced.

Criminal justice-based enforcement efforts have increased in recent years. In 2019, the Department of Justice convened a Domestic Violence Working Group, whose stated aim was to keep “guns out of the hands of convicted abusers, using the tools of federal firearm prosecutions to prevent domestic violence.”² The Chair of the group, the then-U.S. Attorney for the Northern District of Texas, held a press conference to declare to abusers: “we will prosecute you . . . [a]nd upon conviction, the penalties will be stiff, swift[,] and serious.”³ Such initiatives seek to deter unlawful possession by sending a message that violations will lead to punishment. But criminal justice-based efforts at deterrence alone have not been successful.⁴ We may not be able to arrest our way out of this problem.

A significant drawback of a carceral approach to enforcement of domestic violence gun prohibitions is that individuals who commit intimate partner violence “are not rule-followers.”⁵ They knew they were breaking

1. See Jennifer Gollan, *Armed and Abusive: How America’s Gun Laws are Failing Domestic Violence Victims*, REVEAL (Oct. 26, 2021), <https://revealnews.org/article/gun-laws-domestic-violence-victims/> [https://perma.cc/436A-KXUQ].

2. U.S. DEP’T OF JUST., U.S. ATTY’S OFF., *Attorney General William Barr Announces Domestic Violence Working Group Chaired by U.S. Attorney Erin Nealy Cox* (June 11, 2019), <https://www.justice.gov/usao-ndtx/pr/attorney-general-william-barr-announces-domestic-violence-working-group-chaired-us> [https://perma.cc/38D6-G9S5]. See also U.S. DEP’T OF JUST. ARCHIVES, *U.S. Attorneys Protect Victims of Domestic Violence by Enforcing Federal Gun Laws* (Dec. 8, 2020), <https://www.justice.gov/archives/ovw/blog/us-attorneys-protect-victims-domestic-violence-enforcing-federal-gun-laws> [https://perma.cc/4NVK-JJH9].

3. Sarah Sarder, ‘We Will Prosecute You’: U.S. Attorney Vows to Use Gun Laws to Fight Domestic Abuse in North Texas, DAL. MORNING NEWS (Feb. 6, 2019, 3:35 PM), <https://www.dallasnews.com/news/2019/02/06/we-will-prosecute-you-u-s-attorney-vows-to-use-gun-laws-to-fight-domestic-abuse-in-north-texas/> [https://perma.cc/2ZVM-TBYP].

4. See, e.g., Daniel W. Webster, Shannon Frattaroli, Jon S. Vernick, Chris O. Sullivan, Janice Roehl & Jacquelyn C. Campbell, *Women With Protective Orders Report Failure to Remove Firearms from their Abusive Partners: Results from an Exploratory Study*, 19 J. WOMEN’S HEALTH 93 (2010) (finding that despite state laws that either mandated or permitted judges to order surrender of firearms upon issuance of a protective order, only 26% of victims reported that judges used this authority, and 12% of victims reported that firearms were surrendered or seized).

5. Jane H. Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J.L. & PUB. POL’Y 139, 152 (2010).

the law when they engaged in the act of violence that led to their conviction or the issuance of a protective order, but they did it anyway. Why, therefore, is it reasonable to believe that telling them they are prohibited from possessing a firearm—and that they will be prosecuted if they are found with one—will cause them to relinquish it? As Jane Aiken and Katherine Goldwasser note, “[t]o think that men who are found to have physically, sexually, and/or psychologically abused their intimate partners . . . will just ‘cease and desist’ if ordered to do so by a court is simply unrealistic. Indeed, merely to articulate this idea is to show how ludicrous it is.”⁶

Another weakness of the carceral approach is the time and financial cost of criminal enforcement. In the nine hours a Santa Cruz, California task force worked to track down prohibited possessors, they were able to check six houses and ultimately recovered only two guns.⁷ A collaboration between the City of Seattle and King County, Washington led to the creation of the Regional Domestic Violence Firearms Enforcement Unit, an inter-agency group with membership from the King County Prosecutor’s Office, the Seattle City Attorney’s Office, the King County Sheriff’s Office, and the Seattle Police Department.⁸ The Unit was successful, collecting 141 guns in a three-month pilot period, which is more than all the guns seized in the jurisdiction in the previous calendar year.⁹ But this brief pilot program cost \$1 million, a steep cost that most cities, counties, or states are unlikely to be able to afford or sustain.¹⁰

Because dispossessing perpetrators of intimate partner violence of their firearms is a complex and challenging endeavor, legal, political, and financial interventions alone have proven to be insufficient to address the issue of underenforcement of domestic violence gun prohibitions. Moreover, mechanisms that rely either exclusively or primarily on law enforcement should be reevaluated in light of the current cultural and legal reckonings around race and policing. This Article suggests alternative approaches, drawn from the fields of public health, international human rights, and anti-carceral feminism.

Part I provides the necessary background on both the intersection of intimate partner violence and firearms and the legal framework of domestic violence gun prohibitions. Part II describes public health approaches to addressing social issues, with a focus on the key areas of prevention,

6. *Id.*

7. *California Task Force Takes Illegal Guns Off the Street*, CBS News (Mar. 19, 2018, 9:34 AM), <https://www.cbsnews.com/news/california-task-force-takes-illegal-guns-off-the-street/> [https://perma.cc/7VSE-7HCT].

8. Telephone Interview by Roz Katz of Moms Demand Action with Sandra Shanahan, Program Manager of the Seattle–King County Domestic Violence Firearm Enforcement Program (Feb. 6, 2019) (call notes on file with author). The Unit includes three Firearms Prosecutors, detectives and police officers, a program manager, a court coordinator, an advocate, a paralegal, a data technician, and a “court orders problem-solver.” *Id.*

9. *Id.*

10. *Id.*

data collection and analysis, the development of norms, and the importance of a coordinated community response. Part III addresses international human rights law and how it can be used to change the conversation about domestic rights and norms, mobilize and build community, influence public opinion, and exert political pressure. Part IV provides an overview of anti-carceral feminism and examines lessons that can be learned from the domestic violence movement's historic overreliance on the criminal justice system. Lastly, Part V details key takeaways and commonalities between the three theoretical approaches, providing examples from existing community- and public health-based responses that seek to prevent and address intimate partner and gun violence.

I. BACKGROUND

A. *Intimate Partner Violence and Firearms*

The United Nations reports that “[c]ivilians own more than 850 million firearms worldwide, vastly outweighing the number of firearms estimated to be owned by the military and law-enforcement sectors combined.”¹¹ This vast proliferation of weapons in private citizens’ hands has meant that “approximately 86[%] of firearms homicides [occur] in non-conflict settings.”¹²

Although not officially classified as a conflict, something akin to war is playing out in homes across the world.¹³ “[A]n estimated 736 million women—almost one in three” have experienced gender-based violence in their lifetimes;¹⁴ in the United States, an average of 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner.¹⁵

11. U.N. High Comm’r for Human Rights, *Impact of Civilian Acquisition, Possession and Use of Firearms on Civil, Political, Economic, Social and Cultural Rights*, ¶ 5, U.N. Doc. A/HRC/42/21 (Jul. 3, 2019), <https://www.ohchr.org/en/documents/reports/impact-civilian-acquisition-possession-and-use-firearms-civil-political-economic> [<https://perma.cc/JHL9-BBNP>] [hereinafter *Civilian Acquisition*]. The United States has higher levels of household gun ownership than all other developed countries. SMALL ARMS SURVEY: GUNS AND THE CITY (2007), <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2007.html> [<https://perma.cc/UQ6G-W7MC>] [hereinafter SMALL ARMS SURVEY].

12. See *Civilian Acquisition*, *supra* note 11, ¶ 5.

13. See generally Catharine A. MacKinnon, *Women’s September 11th: Rethinking the International Law of Conflict*, 47 HARV. INT’L L.J. 1 (2006) (positing that violence against women is akin to war against women).

14. *Facts and Figures: Ending Violence Against Women*, UN WOMEN <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> [<https://perma.cc/X27G-FRX7>] (last updated Feb. 2022).

15. Michele C. Black, Kathleen C. Basile, Matthew J. Breiding, Sharon G. Smith, Mikel L. Walters, Melissa T. Merrick, Jieru Chen & Mark R. Stevens, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, CTRS. FOR DISEASE CONTROL & PREVENTION (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [<https://perma.cc/4SEG-9LAH>].

In the United States, where residents own more guns per capita than in any other country in the world,¹⁶ the combination of domestic violence and firearm ownership poses grave risks to women. In 2017, half of femicides in the United States involved an intimate partner.¹⁷ Guns are these perpetrators' weapon of choice; firearms are used to commit more than half of all intimate partner homicides in the United States.¹⁸ The U.S. Department of Justice found that more than two-thirds of spouse and ex-spouse homicide victims between 1980 and 2008 were committed with guns.¹⁹ Perpetrators are more likely to use a gun than all other means combined to murder their female intimate partners.²⁰ Firearms are used in 54% of homicides, which is more than double the number of victims killed with a sharp instrument, the next most-prevalent murder weapon.²¹ As experts have unequivocally stated, "[t]he evidence is clear: when a woman is killed, it is most likely to be at the hands of an intimate partner with a gun."²²

16. SMALL ARMS SURVEY, *supra* note 11. The report also notes that Americans own nearly half (48%) of the estimated 650 million civilian-owned guns worldwide. *See id.* In 2010, 90% of women killed by firearms in "high-income countries" were in the United States. Erin Grinshteyn & David Hemenway, *Violent Death Rates: The US Compared with Other High-income OECD Countries, 2010*, 129 AM. J. MED. 266, 269 (2016).

17. Emiko Petrosky, Janet M. Blair, Carter J. Betz, Katherine A. Fowler, Shane P.D. Jack & Bridget H. Lyons, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, CTRS. FOR DISEASE CONTROL & PREVENTION (2017) [hereinafter *Racial and Ethnic Differences in Homicides of Adult Women*], https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm?s_cid=MM6628a1_w [https://perma.cc/7ACW-9UT5]. A report from the Violence Policy Center echoes the CDC's findings, noting that in 2011, more than half of women killed with guns were killed by their intimate partners. *When Men Murder Women: An Analysis of 2011 Homicide Data*, VIOLENCE POL'Y CTR. (2013), <http://www.vpc.org/studies/wmmw2013.pdf> [https://perma.cc/GLJ2-BYLM].

18. *See* James Alan Fox & Emma E. Fridel, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976–2015*, 4 VIOLENCE AND GENDER 37, 40 (2017).

19. ALEXIA COOPER & ERICA L. SMITH, U.S. DEP'T JUST., *HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008* (2011), <http://bjs.gov/content/pub/pdf/htus8008.pdf> [https://perma.cc/ZB5T-UPKK]. If "collateral victims"—family members, friends, new intimate partners, acquaintances, police officers, or strangers who are killed in the same incident as the perpetrator's intimate partner—are considered, the number killed increases. *See* Sharon G. Smith, Katherine A. Fowler & Phyllis H. Niolon, *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, 104 AM. J. PUB. HEALTH 461 (2014). The study found that "[n]early half of corollary victims who were family members of the suspect were minors, and more than one third were elementary school aged or younger." *Id.* at 463.

20. Leonard J. Paulozzi, Linda E. Saltzman, Martie P. Thompson & Patricia Holmgreen, *Surveillance for Homicide Among Intimate Partners—United States, 1981–1998*, 50 MORBIDITY AND MORTALITY WKL. REP. 461 (2001).

21. *See Racial and Ethnic Differences in Homicides of Adult Women, supra* note 17.

22. April M. Zeoli & Shannon Frattaroli, *Evidence for Optimism: Policies to Limit Batterers' Access to Guns*, in *REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY*

The connection between firearms and intimate partner violence is so strong that even the presence of a gun in an abusive household increases the risk of death. A landmark study found that when an abuser has access to a gun, the risk of homicide increases by 500%.²³ Relatedly, simply living in a state with a higher rate of gun ownership is correlated with a higher rate of intimate partners fatally shooting women in a domestic violence incident.²⁴

The impact of non-lethal gun violence is also substantial.²⁵ Perpetrators “who possess guns tend to inflict the most severe abuse.”²⁶ A firearm can also cause deep psychological harm; if “displayed in a hostile way, it can create an ongoing environment of threat and intimidation.”²⁷ Ap-

WITH EVIDENCE AND ANALYSIS 53, 53 (Daniel W. Webster & Jon S. Vernick eds., 2013).

23. Jacquelyn C. Campbell, Daniel Webster, Jane Koziol-McLain, Carolyn Block, Doris Campbell, Mary Ann Curry, Faye Gary, Nancy Glass, Judith McFarlane, Carolyn Sachs, Phyllis Sharps, Yvonne Ulrich, Susan A. Wilt, Jennifer Manganello, Xiao Xu, Janet Schollenberger, Victoria Frye & Kathryn Laughon, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003) [hereinafter *Risk Factors*].

24. Aaron J. Kivisto, Lauren A. Magee, Peter L. Phalen & Bradley R. Ray, *Firearm Ownership and Domestic Versus Nondomestic Homicide in the U.S.*, 57 AM. J. PREVENTATIVE MED. 311 (2019) (finding that residents of states with higher levels of gun ownership are more likely to be shot to death by a family member or intimate partner). The study, examining gun ownership on a state-by-state level from 1990 to 2016, found that states with the highest firearm ownership rates had a 65% higher rate of domestic firearm homicide than states with lower ownership rates. *See id.* at 317. Importantly, the study found no association between rates of gun ownership and non-domestic firearm homicides; homicides involving friends, acquaintances, or strangers were not impacted by rates of gun ownership in a state. As the lead author of the study stated, “it is women, in particular, who are bearing the burden of this increased gun ownership [I]t is not a risk that is equally shared across the population.” Sarah Mervosh, *Gun Ownership Rates Tied to Domestic Homicides, but Not Other Killings, Study Finds*, N.Y. TIMES (July 22, 2019), <https://www.nytimes.com/2019/07/22/us/gun-ownership-violence-statistics.html> [<https://perma.cc/9M3V-D9PQ>].

25. *See* INST. FOR WOMEN’S POL’Y RSCH., THE ECONOMIC COST OF INTIMATE PARTNER VIOLENCE, SEXUAL ASSAULT, AND STALKING 4 (2017), https://iwpr.org/wp-content/uploads/2020/10/B367_Economic-Impacts-of-IPV-08.14.17.pdf [<https://perma.cc/AJS8-LSNQ>]. The Institute for Women’s Policy Research estimated that the cost of intimate partner violence (which can include physical injury and psychological harm to both victims and witnesses, medical costs, financial losses from inability to work, and more) in the United States was \$9.3 billion in 2017. *Id.*

26. *See Risk Factors*, *supra* note 23, at 1092. *See also* Stephanie E. F. Folkes, N. Zoe Hilton & Grant T. Harris, *Weapon Use Increases the Severity of Domestic Violence but Neither Weapon Use nor Firearm Access Increases the Risk or Severity of Recidivism*, 28 J. INTERPERSONAL VIOLENCE 1143 (2013); Judith McFarlane, Karen Soeken, Jacquelyn Campbell, Barbara Parker, Sally Reel & Concepcion Silva, *Severity of Abuse to Pregnant Women and Associated Gun Access of the Perpetrator*, 15 PUB. HEALTH NURSING 201 (1998) (finding that women who reported that their abuser had access to a gun also reported higher levels of abuse in their relationship).

27. Maura Ewing, *An Estimated 4.5 Million Women Have Been Bullied with Guns by Abusive Partners*, THE TRACE (Oct. 3, 2016), <https://www.thetrace.org/2016/10/nonfatal-gun-use-domestic-violence/> [<https://perma.cc/Q639-V86K>].

proximately 4.5 million American women have reported that their intimate partner threatened them with a gun.²⁸ Such threats are often precursors to physical violence; a 2005 study found that nearly half of women who reported intimate partner violence to law enforcement also reported a history of the abuser using firearms to threaten them.²⁹ Thus, whether used to physically or emotionally abuse, a gun is often “the ultimate power tool in the arsenal of a batterer.”³⁰

When enforced, laws, policies, and programs that seek to remove firearms from known perpetrators of intimate partner abuse can mitigate these harms. A 2017 study found that state laws requiring offenders to surrender their firearms were associated with lower rates of intimate partner homicide.³¹ Researchers analyzing two decades of data found that states with laws that limited access to firearms by individuals subject to domestic violence protective orders had significantly lower rates of intimate partner homicides than states without these laws.³² The federal ban

28. Susan B. Sorenson & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 *TRAUMA, VIOLENCE, & ABUSE* 431, 437 (2018). A survey conducted by the National Domestic Violence Hotline found that 22% of respondents in abusive relationships had partners use a gun to either threaten or hurt them. Ten percent of survey respondents also reported that their partner had fired a gun during an argument. *Hotline Focus Survey Provides Firsthand Look at Intersection of Firearms & Domestic Violence; Highlights Need for Stronger Laws and Equal Protection*, NAT'L DOMESTIC VIOLENCE HOTLINE (Jun. 18, 2014), <https://www.thehotline.org/news/hotline-focus-survey-provides-firsthand-look-at-intersection-of-firearms-highlights-need-for-stronger-laws-and-equal-protection/> [https://perma.cc/RLU2-Z47H].

29. Casey Gwinn, *Domestic Violence and Firearms: Reflections of a Prosecutor*, 30 *EVALUATION REV.* 237, 241 (2006).

30. Editorial, *New Law a Good One: Take Handguns From Abusers*, *SYRACUSE HERALD-J.* (Dec. 20, 1996) at A22. In fact, a recent study suggests that abusers who use guns (versus another type of weapon) against their intimate partners intend to intimidate, coerce, and frighten their victims, as opposed to inflict physical harm. Susan B. Sorenson, *Guns in Intimate Partner Violence: Comparing Incidents by Type of Weapon*, 26 *J. WOMEN'S HEALTH* 249, 255 (2017).

31. See generally Carolina Díez, Rachel P. Kurland, Emily F. Rothman, Megan Bair-Merritt, Eric Fleegler, Ziming Xuan, Snadroa Galea, Craig S. Ross, Bindu Kalesan, Kristin A. Goss & Michael Siegel, *State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 *ANNALS INTERNAL MED.* 536 (2017) (studying the association between state intimate partner violence-related firearm laws and intimate partner homicide rates over a twenty-five-year period).

32. See Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 *EVALUATION REV.* 313, 332 (2006); see also F. Stephen Bridges, Kimberly M. Tatum & Julie C. Kunselman, *Domestic Violence Statutes and Rates of Intimate Partner and Family Homicide*, 19 *CRIM. JUST. POL'Y REV.* 117, 127 (2008) (stating that “the family homicide rate decreased across 47 states as the number of states restricting firearms during a restraining order increased”); April Zeoli, Alexander McCourt, Shani Buggs, Shannon Frattoaroli, David Lilley & Daniel W. Webster, *Analysis of the Strength of Legal Firearm Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, 187 *AM. J. OF EPIDEMIOLOGY* 2365, 2365 (2018) (reporting that domestic violence restraining order firearm prohibitions are associated with 10% reductions in intimate partner homicide); EVERYTOWN FOR

on possession by domestic violence misdemeanants led to 17% fewer gun-related homicides among female intimate partner victims.³³ Notably, the data shows no “substitution effect,” whereby other weapons are used to kill where firearms are not available, demonstrating that domestic violence firearm prohibitions can save lives.³⁴ It is therefore of the utmost importance that all efforts be made to remove guns from the hands of these offenders.

B. *The Legal Framework Prohibiting Domestic Violence Offenders’
Firearm Possession*

The Gun Control Act of 1968 (GCA) created a comprehensive set of regulations governing the manufacture, sale, production, and transfer of firearms and ammunition.³⁵ The GCA prohibits firearm possession by those who are deemed likely to use them for harmful or criminal purposes, including convicted felons.³⁶

The first domestic violence-specific gun restriction appeared in the Violent Crime and Law Enforcement Act, enacted as part of the Violence

GUN SAFETY, DOMESTIC ABUSE PROTECTIVE ORDERS AND FIREARM ACCESS IN RHODE ISLAND 10 (2015), <https://everytownresearch.org/reports/domestic-abuse-protective-orders-and-firearm-access-in-rhode-island/> [https://perma.cc/R8LU-6HVL] (finding that states that restrict access to firearms by those under domestic violence restraining orders have seen up to a 25% reduction in intimate partner gun homicides); April M. Zeoli & Daniel M. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large U.S. Cities*, 16 INJ. PREVENTION 90, 92 (2010) (analyzing data from forty-six cities from 1979 to 2003 and finding that any state that prohibited firearm possession by those subject to domestic violence protective orders and those with domestic violence misdemeanor convictions saw a 19% reduction in total intimate partner homicides and had 25% fewer intimate partner homicides committed with guns).

33. Kerri M. Raissian, *Hold Your Fire: Did the 1996 Federal Gun Control Act Expansion Reduce Domestic Homicides?*, 35 J. POL’Y ANALYSIS & MGMT. 67, 69 (2016). The study also found a 24% reduction in homicides among family members, including parents and siblings. *Id.* at 86. See also Zeoli, McCourt, Buggs, Frattoaroli, Lilley & Webster, *supra* note 32, at 2369 (concluding that laws prohibiting firearm access to those convicted of nonspecific violent misdemeanors were associated with a 23% reduction in intimate partner homicide rates).

34. Raissian, *supra* note 33, at 67 (finding “no evidence that reductions in gun homicides were offset by an increase in nongun homicides” after the Gun Control Act was amended to include a ban on possession by misdemeanor domestic violence offenders). See also CONSORTIUM FOR RISK-BASED FIREARM POL’Y, GUNS, PUBLIC HEALTH, AND MENTAL ILLNESS: AN EVIDENCE-BASED APPROACH FOR FEDERAL POLICY 15 (2013), https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_archive-2019/_pdfs/GPHMI-Federal.pdf [https://perma.cc/6A3P-HKL6].

35. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1220 (codified after amendment at 18 U.S.C. § 922(d)(1)–(7) (2012)). The GCA was enacted as Title VII of the Omnibus Crime Control and Safe Streets Act of 1968.

36. Other categories of individuals disqualified from gun ownership under the GCA include fugitives, drug addicts, those deemed to be mentally incompetent, undocumented immigrants, those dishonorably discharged from the armed services, and those who have renounced their U.S. citizenship. *Id.*

Against Women Act of 1994 (VAWA). Codified in 18 U.S.C. § 922(g)(8), the statute prohibits any person who is subject to a family violence protective order from possessing a firearm.³⁷ Two significant exceptions exist, however. The first is an “official use” exemption, which allows law enforcement officers, military personnel, and others who use firearms in the course of their employment to continue to possess guns.³⁸ The second is the so-called “boyfriend loophole,” which exists because the definition of “intimate partner” utilized in Section (g)(8) does not include dating partners who are not current or former cohabitants or do not have a child in common.³⁹ Legislation to expand the statute’s definition of intimate partner to include dating partners has been proposed in Congress but has thus far been unsuccessful.⁴⁰

The Lautenberg Amendment to VAWA, codified at 18 U.S.C. § 922(g)(9), extended federal firearms prohibitions to persons convicted

37. 18 U.S.C. § 922(g)(8) (2018). A disqualifying order must have been issued after a hearing in which the respondent had notice. § 922(d)(8)(A).

38. 18 U.S.C. § 925(a)(1) (2018).

39. Covered relationships include only spouses, former spouses, those who have a child in common, and those who are currently or have previously cohabitated. 18 U.S.C. § 922(g)(8). The exclusion of dating partners puts a highly vulnerable population at risk. Data from 2003 to 2012 reveals that “[c]urrent or former boyfriends or girlfriends . . . committed a greater percentage of all violent victimizations than spouses . . . and ex-spouses” combined. JENNIFER L. TRUMAN & RACHEL E. MORGAN, *NONFATAL DOMESTIC VIOLENCE, 2003–2012*, at 3 (2014), <https://www.bjs.gov/content/pub/pdf/ndv0312.pdf> [https://perma.cc/S33S-9N4L]. In a study of domestic violence protective orders issued in Los Angeles, researchers found that dating was the most common relationship between the victim and abuser. See Katherine A. Vittes & Susan B. Sorenson, *Are Temporary Restraining Orders More Likely to be Issued When Applications Mention Firearms?*, 30 *EVALUATION REV.* 266, 271 (2006). Victims of elder abuse, who are also increasingly at risk of family violence, are also left unprotected by the statute. According to data from the Department of Justice, the proportion of family homicides that involve a child murdering a parent rose from 9.7% in 1980 to 13% in 2008. ALEXIA COOPER & ERICA L. SMITH, *HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008*, at 21 (2011), <http://bjs.gov/content/pub/pdf/htus8008.pdf> [https://perma.cc/RG3H-EU9F].

40. See, e.g., *Zero Tolerance for Domestic Abusers Act*, H.R. 3207, 115th Cong. (2017); *Protecting Domestic Violence and Stalking Victims Act*, S. 527, 117th Cong. (2021). On June 25, 2022, President Joe Biden signed the *Bipartisan Safer Communities Act* into law. See *Bipartisan Safer Communities Act*, Pub. L. No. 117-159, 136 Stat. 1313 (2022). The legislation tightens, but does not fully close, the “boyfriend loophole.” It amends the definition of misdemeanor crime of domestic violence to include individuals who are in a “current or recent former dating relationship” with a victim. However, anyone prohibited from possessing firearms under this category would have their right to possess automatically restored after five years if they commit no further crimes of violence. The bill also leaves unchanged the definition and relationship categories in § 922(g)(8), which relates to those who are subject to a family violence protective order. See also *Remarks by President Biden at Signing of S.2938, the Bipartisan Safer Communities Act*, WHITE HOUSE (June 25, 2022, 8:30 AM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/06/25/remarks-by-president-biden-at-signing-of-s-2938-the-bipartisan-safer-communities-act/> [https://perma.cc/DK3P-9SLK].

of misdemeanor crimes of domestic violence.⁴¹ A misdemeanor domestic violence⁴² conviction results in a permanent ban on firearms possession.⁴³ Section (g)(9) encompasses a broader range of relationship categories than the protective order statute, covering acts:

committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.⁴⁴

The “similarly situated” language, as well as the lack of an “official use” exemption for members of law enforcement and the military, makes the Lautenberg Amendment more broadly applicable than the federal protective order firearm prohibition.

Taken together, federal law prohibits a broad category of individuals—felons, domestic violence misdemeanants, and those subject to domestic violence protective orders—from possessing firearms. As this author examined in detail in a prior article, numerous legal challenges have been brought against these laws, but they have withstood nearly all constitutional scrutiny.⁴⁵

Enforcement, however, remains a stumbling block. As a threshold issue, domestic violence crimes are violations of state law, but federal prohibitions attach to those who are convicted, a “dichotomy [that] has blurred the line of whether state or federal authorities possess the power

41. See 18 U.S.C. § 922(g)(9) (2018) (“It shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”). See also Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

42. The misdemeanor crime of domestic violence is defined as any state, federal, or tribal misdemeanor that involves “the use or attempted use of physical force, or the threatened use of a deadly weapon” against an intimate partner. 18 U.S.C. § 921(a)(33)(A)(ii) (2018). In *United States v. Castleman*, the Supreme Court held that *any* application of physical force against a domestic partner, not just force that is violent or excessive, could satisfy the requirements for a misdemeanor crime of domestic violence. 572 U.S. 157, 168 (2014). Further, in *Voisine v. United States*, the Court ruled that *reckless* (in addition to intentional or knowing) domestic assault qualifies as a misdemeanor crime of domestic violence. 579 U.S. 686 (2016).

43. § 922(g)(9).

44. § 921(a)(33)(A)(ii). In 2009, *United States v. Hayes* established that a domestic relationship need not be a defining element of the predicate offense to support a conviction for possession of a firearm by a person convicted of the misdemeanor crime of domestic violence. 555 U.S. 415 (2009).

45. See Natalie Nanasi, *Disarming Domestic Abusers*, 14 HARV. L. & POL’Y REV. 559, 570–71 (2020).

and the responsibility to ensure that the laws are enforced.”⁴⁶ This issue is especially pronounced in the more than twenty states that do not have laws prohibiting possession by domestic violence offenders.⁴⁷ As a result, federal prosecutions of perpetrators of intimate partner violence who are found with firearms are rare. Charges for unlawful possession under the Lautenberg Amendment account for a mere 1% of cases filed by federal prosecutors against defendants for unlawful possession of a firearm.⁴⁸ Similarly, the number of prosecutions for violating the domestic violence protective order firearms prohibition “has been minuscule.”⁴⁹

Moreover, a judge cannot order an offender to surrender firearms if that defendant or respondent claims they do not own or possess, or no longer own or possess, them, and in most jurisdictions, it is nearly impossible to assess the veracity of a defendant’s denial. A federal gun registry is prohibited by law⁵⁰ and the vast majority of states also do not require guns to be registered.⁵¹ A lack of coordination between police and prosecutors also frequently prevents judges from having the timely and detailed information required to issue a search warrant for a firearm.⁵²

Lastly, federal law is silent on the issue of enforcement. The law does not require offenders to surrender their firearms, it simply states they cannot possess them. The relevant statutes also do not detail the mechanisms or outline the procedure for seizing firearms from prohibited possessors,

46. Emily J. Sack, *Confronting the Issue of Gun Seizure in Domestic Violence Cases*, 6 J. CTR. FOR FAMILIES, CHILD. & CTS. 3, 7–8 (2005).

47. See generally BATTERED WOMEN’S JUSTICE PROJECT, FIREARMS AND DOMESTIC VIOLENCE: STATE AND TERRITORIAL STATUTORY PROVISIONS (2015), <http://www.bwjp.org/ncpoffc-firearms-and-dv-state-and-territorial-statua.pdf> [<https://perma.cc/W42W-YL3P>] (detailing state and territorial firearms laws, including civil, criminal, and administrative provisions). State laws that prohibit perpetrators of intimate partner violence from possessing firearms are not monolithic. Some state provisions closely mirror federal law, some impose more stringent requirements and are more expansive or comprehensive, while others are less onerous and are less exacting than federal law. *Id.*

48. See Tom Lininger, *A Better Way to Disarm Batterers*, 54 HASTINGS L.J. 525, 531 (2003).

49. *United States v. Wilson*, 159 F.3d 280, 294 (7th Cir. 1998) (Posner, J., dissenting).

50. Federal law prohibits using the National Instate Criminal Background Check System to register firearms. 18 U.S.C. § 926(a) (2018); 28 C.F.R. § 25.9(b)(3) (2019). The 1986 Firearm Owners Protection Act also prevents the federal government from creating a gun registry. § 926(a) (“No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established.”).

51. *Registration*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/owner-responsibilities/registration/> [<https://perma.cc/58H6-GSYG>] (last visited July 13, 2022).

52. See Nanasi, *supra* note 45, at 588–94.

and few jurisdictions have mechanisms in place to effectuate surrender.⁵³ And even when programs are put in place, for the reasons articulated above, they often do not live up to expectations. For example, the founders of a program in Dallas, Texas estimated that they would collect 1,600 guns from domestic violence offenders in its first two years, but only sixty guns were ultimately seized or surrendered.⁵⁴ In 2021, Philadelphia saw a 13% compliance rate with judicial orders to surrender firearms.⁵⁵

In a previous article, this author described the elements of model state-level legislation regarding domestic violence firearm prohibitions and recommended mechanisms for police, prosecutors, judges, and probation departments to implement it.⁵⁶ But existing approaches that rely on the State to keep guns out of the hands of offenders have not proven sufficient, so the remainder of this Article describes alternative theoretical approaches—drawn from public health, international human rights, and anti-carceral feminism—that can be utilized to ensure that perpetrators of domestic violence do not remain in possession of firearms.

II. PUBLIC HEALTH LAW

In the wake of the COVID-19 pandemic, public health law and policy has taken on greater significance in American life. But the field of public health encompasses significantly more than efforts to contain disease; it is:

the study of the legal powers and duties of the state to assure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain . . . individuals for the common good.⁵⁷

53. Congress has attempted to give the federal statutes teeth. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) required states and local governments to certify that their judicial administrative policies and practices included notification to domestic violence offenders of both federal firearm prohibitions and any applicable related federal, state, or local laws. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2959 (expired 2018). Yet VAWA 2005 still did not require states or local governments to establish a procedure for the surrender of firearms by abusers.

54. JUDGE ELMO B. HUNTER LEGAL CENTER FOR VICTIMS OF CRIMES AGAINST WOMEN, TAKING AIM AT FAMILY VIOLENCE: A REPORT ON THE DALLAS COUNTY GUN SURRENDER PROGRAM 6 (2017), <https://www.smu.edu/-/media/Site/Law/clinics/elmo-b-hunter/2599-GunSurrender-LowRes.pdf> [<https://perma.cc/KPS3-V75D>]. See also Nanasi, *supra* note 45, at 575–606 (describing challenges faced by programs that seek to disarm domestic abusers).

55. Editorial, *Domestic Violence Homicides Were Up 240% Last Year. Why is Philly Getting Guns from so Few Accused Abusers?*, PHILA. INQUIRER (Jan. 31, 2022), <https://www.inquirer.com/opinion/editorials/domestic-violence-guns-sheriff-police-act-79-20220131.html> [<https://perma.cc/S2SK-HU5U>].

56. See Nanasi, *supra* note 45.

57. LAWRENCE O. GOSTIN & LINDSAY F. WILEY, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (3d ed. 2016).

Traditionally understood as mechanism for protecting health (i.e., controlling negative influences such as unsafe food and drinking water), public health has evolved towards working to promote “healthier behaviors and building healthier physical and social environments.”⁵⁸ As such, public health is now viewed more broadly “as the authority for and responsibility of organized society to assure the conditions for the population’s health.”⁵⁹

An expansive understanding of public health is not a new concept. As far back as “the 1700s and 1800s[,] state and local officials could do all sorts of things in the name of public health, like close businesses and hold ships at port and forcibly quarantine people”⁶⁰ Safety measures that seem unremarkable today—seatbelt laws, tobacco warnings, and workplace safety regulations—were at one time novel public health initiatives. The concept of public health continues to expand, through measures such as the proposed Anti-Racism in Public Health Act of 2020, which recognizes that “[s]tructural racism serves as a major barrier to achieving health equity” and calls for the Centers for Disease Control and Prevention (CDC) to declare “racism a public health crisis and [name] racism as a historical and present threat to the physical and mental health and well-being of the United States and world.”⁶¹

In 1958, British lawyer and scientist Sir Geoffrey Vickers elegantly “stated that, ‘[a]n issue becomes a public health issue when it transforms from the realm of the given to the realm of the unacceptable.’”⁶² Often, however, “[l]aws designed to promote the common good may . . . constrain individual actions (such as smoking in public places or riding a motorcycle without a helmet).”⁶³ As such, because “what best serves the population may not always be in the interest of all its members,” public health can be “highly political.”⁶⁴

Domestic violence and gun violence, however, have long been recognized as public health crises.⁶⁵ As the CDC declares, “[i]ntimate partner

58. *Id.* at 21.

59. *Id.* at 27.

60. Jeneen Interlandi, *Why We’re Losing the Battle with COVID-19*, N.Y. TIMES MAG. (July 14, 2020), <https://www.nytimes.com/2020/07/14/magazine/covid-19-public-health-texas.html> [<https://perma.cc/XTR7-NZDU>] (quoting Wendy Parmet, a public health scholar at Northeastern University).

61. Anti-Racism in Public Health Act of 2020, S. 4533, 116th Cong. (2020). The Bill provides funding for research to both understand and eliminate structural racism and police violence.

62. John C. Nelson, Ronald B. Adrine, Elaine Alpert & Sara Buel, *Domestic Violence in the Adult Years*, 33 J.L. MED. & ETHICS 28, 31 (2005).

63. GOSTIN & WILEY, *supra* note 57, at 6. The authors further explain that “[p]rotecting and preserving community health is not possible without constraining a wide range of private activities that pose unacceptable risks.” *Id.* at 10.

64. *Id.* at 6.

65. *See, e.g.*, Nelson, Adrine, Alpert & Buel, *supra* note 62, at 28 (noting that “domestic violence is a cross-cutting public health problem that requires multidisciplinary, community-wide prevention efforts and responses”); Joan C. Chrisler &

violence (IPV) is a serious, preventable public health problem that affects millions of Americans.”⁶⁶ Similarly, experts note that firearm-related deaths and injuries result in physical and mental harm, as well as economic loss, which they argue requires gun violence to be approached as “a public health epidemic, rather than a debate about gun rights or control.”⁶⁷

The dangerous nature of domestic and gun violence—both individually and when combined—supports the imposition of public health controls and regulations. In fact, the United States government has regulated far less deadly things. As David Hemenway, the Director of the Harvard Injury Control Research Center, notes, when the Consumer Product Safety Commission identified 17 deaths over the course of 10 years (less than 2 per year—a number dwarfed by deaths due to intimate partner abuse and gun violence) resulting from drawstrings on children’s clothing, the Commission “brought manufacturers together, persuaded them to replace strings with snaps and Velcro, and advised parents to remove drawstrings from existing clothes.”⁶⁸

Whether seeking to protect children from deadly strings or intimate partners from deadly weapons, the core concepts of a public health response to an identified problem include: a focus on prevention, use of data, and coordinated community involvement in both responding to the problem and changing norms. Each will be addressed in detail below.

Sheila Ferguson, *Violence Against Women as a Public Health Issue*, 1087 ANN. N.Y. ACAD. SCI. 235 (2006) (reviewing data on the physical and mental health effects, as well as the economic costs, of violence against women); Linda R. Chambliss, *Domestic Violence: A Public Health Crisis*, 40 CLINICAL OBSTETRICS AND GYNECOLOGY 630 (1997) (providing an overview of domestic violence and its effects on women).

66. *Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html> [<https://perma.cc/H2WD-SYCC>] (last visited July 13, 2022). The World Health Organization has also deemed domestic violence a “global public health problem of epidemic proportions.” WORLD HEALTH ORG., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE 3 (2013), <https://www.who.int/publications/i/item/9789241564625> [<https://perma.cc/7CRE-7VZE>].

67. Megan L. Ranney, *We Must Treat Gun Violence as a Public Health Crisis. These 4 Steps Will Help Us Reduce Deaths*, TIME (Mar. 30, 2021), <https://time.com/5951001/gun-violence-public-health-crisis/> [<https://perma.cc/H3RE-W2TL>]; see also David Hemenway & Matthew Miller, *Public Health Approach to the Prevention of Gun Violence*, 368 N. ENGL. J. MED. 2033 (2013); *Gun Violence*, AM. PUB. HEALTH ASS’N, <https://www.apha.org/topics-and-issues/gun-violence> [<https://perma.cc/5GCJ-7Q4U>] (last visited Jun. 6, 2022) (recognizing that “a comprehensive public health approach to addressing this growing crisis is necessary”); *Gun Violence, A Public Health Epidemic*, ROBERT WOOD JOHNSON FOUND., <https://www.rwjf.org/en/library/research/2017/09/gun-violence—a-public-health-epidemic.html> [<https://perma.cc/8QFP-UTFH>] (last visited July 13, 2022) (the foundation website houses “a collection of analyses and research findings on gun violence as an urgent public health problem”).

68. David Hemenway, *The Public Health Approach to Reducing Firearm Injury and Violence*, 17 STAN. L. & POL’Y REV. 635, 641 (2006).

A. *Prevention*

Unlike medicine, public health focuses on prevention, as opposed to the treatment of an ailment. In other words, the focus is on taking action before a problem arises, by engaging in “a systematic process that promotes safe, healthy environments and behaviors, reducing the likelihood or frequency of an incident, injury, or condition occurring.”⁶⁹ Some of the greatest successes of the public health model—vehicle safety (i.e., seat belt, child car seat, and helmet laws), smoking cessation, and immunizations—demonstrate the life-saving potential of preventative measures.⁷⁰ Prevention has also been recognized as key to eliminating violence against women. In 1985, then-Surgeon General C. Everett Koop convened a workshop on violence and public health, at which experts identified “prevention and intervention tools” to address intimate partner abuse.⁷¹ In the nearly forty years since, both the government and non-governmental organizations (NGOs) have worked to prevent domestic violence.⁷² Prevention has not, however, remained a priority for domestic violence funding. In a 2019 report, the Congressional Research Service aptly described how prevention is an afterthought in efforts to address intimate partner violence, stating: “VAWA grant programs largely address the criminal justice system and community response to these crimes, but certain programs address prevention as well.”⁷³

69. Larry Cohen, Rachel Davis & Corinne Graffunder, *Before it Occurs: Primary Prevention of Intimate Partner Violence and Abuse*, in *THE PHYSICIANS GUIDE TO INTIMATE PARTNER VIOLENCE AND ABUSE* 89 (Patricia R. Salber & Ellen Taliaferro eds., 2006); see also Pamela M. McMahon, *The Public Health Approach to the Prevention of Sexual Violence*, 12 *SEXUAL ABUSE: J. OF RSCH. AND TREATMENT* 27, 27–36 (2000); William H. Foege, Mark L. Rosenberg & James A. Mercy, *Public Health and Violence Prevention*, 5 *RSCH. & ADVOC. DIG.* 2, 2–9 (1995); *The Public Health Approach to Violence Prevention*, *CTRS. FOR DISEASE CONTROL AND PREVENTION*, <https://www.cdc.gov/violenceprevention/publichealthissue/publichealthapproach.html> [<https://perma.cc/9FMP-7K8K>] (last visited July 6, 2022).

70. Cohen, Davis & Graffunder, *supra* note 69, at 90.

71. Anne Flitcraft, *Physicians and Domestic Violence: Challenges for Prevention*, *HEALTH AFF.*, Winter 1993, at 154.

72. See, e.g., PREVENTION INSTITUTE, *A HEALTH EQUITY AND MULTISECTOR APPROACH TO PREVENTING DOMESTIC VIOLENCE* (2017), https://www.preventioninstitute.org/sites/default/files/publications/PI_DV_0726.pdf [<https://perma.cc/YV79-QLSD>] [hereinafter *MULTISECTOR APPROACH TO PREVENTING DOMESTIC VIOLENCE*]; *CTRS. FOR DISEASE CONTROL AND PREVENTION*, *PREVENTING INTIMATE PARTNER VIOLENCE ACROSS THE LIFESPAN: A TECHNICAL PACKAGE OF PROGRAMS, POLICIES, AND PRACTICES* (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf> [<https://perma.cc/JGK3-AP59>].

73. *CONG. RESEARCH SERV., THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION* (updated Apr. 23, 2019), <https://fas.org/sgp/crs/misc/R45410.pdf> [<https://perma.cc/C292-24PB>] [hereinafter *VAWA RESEARCH*]. Prevention efforts receive limited funds because “[g]overnment funding is often a zero[-]sum game; money dedicated to policing, prosecution, and punishment cannot be used to provide other, more welcome types of services and supports for people subjected to abuse.” Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 *HARV. J.L. & GENDER* 53, 74 (2017) (footnote omitted).

Public health experts have also emphasized prevention as a critical factor in addressing gun violence.⁷⁴ It is a particularly important lens with which to view domestic violence gun prohibitions, because the current system is reactive. The law permits the arrest and prosecution of a prohibited possessor found to have a firearm, but by then, it may be too late. A recent report found that over 100 murders were committed in a four-year timespan by domestic violence offenders who were prohibited by law from possessing guns.⁷⁵ Thus, proactive measures that successfully remove firearms can save lives.

Four steps typically comprise prevention efforts.⁷⁶ The first is public health surveillance, or “the ongoing, systematic collection, analysis, and interpretation of health data.”⁷⁷ This allows public health authorities to monitor and track any relevant trends. The second is risk factor research. By determining who is at greatest risk of injury (i.e., those whose abusive intimate partners own firearms),⁷⁸ prevention efforts can be appropriately tailored. The third and fourth steps are to develop and evaluate programs and then disseminate information about what works to affected communities.⁷⁹

Public health prevention, “[a]t its core, . . . fosters environments in which violence would not occur in the first place.”⁸⁰ Put another way, “[n]o epidemic has ever been resolved by paying attention to the treatment of the affected individual.”⁸¹ A focus on the places and situations in which violence occurs requires consideration of “individual choices [in] their social context and [emphasizes] structural explanations for health behaviors and outcomes.”⁸² Why, for example, do prohibited possessors continue to carry guns? Do they feel unsafe in their neighborhoods? Are they criminally involved? Is a firearm necessary for continued employment? Do they feel entitled to possess them? Does carrying a gun bolster their sense of masculinity? Different preventative approaches might be necessary depending on the answers and the underlying structural issues that cause harmful behavior. Once these root causes are understood, “[i]t is often more effective to change . . . the environment in which the problem occurs than it is to focus on trying to change the individual with the last clear chance to prevent the problem (e.g., victim or perpetrator).”⁸³

74. See Hemenway & Miller, *supra* note 67.

75. See Gollan, *supra* note 1.

76. Pamela M. McMahon, *The Public Health Approach to the Prevention of Domestic Violence*, 47 LOY. L. REV. 471, 472 (2001).

77. *Id.*

78. See *Risk Factors*, *supra* note 23.

79. See McMahon, *supra* note 76, at 472.

80. Cohen, Davis & Graffunder, *supra* note 69, at 90.

81. *Id.* (quoting GW Albee, *Psychopathology, Prevention and the Just Society*, 4 J. PRIMARY PREVENTION 5, 40 (1983)).

82. GOSTIN & WILEY, *supra* note 57, at 25.

83. Hemenway & Miller, *supra* note 67, at 2033.

Examining structural causes of harm is necessary because “[r]oot factors like sexism, racism, homophobia, classicism, patriarchy and other forms of oppression and power . . . [shape] societal and community factors that in turn influence relationships and individual levels.”⁸⁴ In the area of intimate partner abuse, for example, addressing broader societal issues such as economic equality, poverty, patriarchal norms, and male privilege can mitigate violence in the home.⁸⁵ Similarly, “[p]olicies that improve parenting skills, channel anger, or reduce racism and injustice, could help to prevent all kinds of violence, including gun violence.”⁸⁶ As such, comprehensive approaches that focus on changing environments, as opposed to individuals’ behavior relating to intimate partner or guns, can be more effective in preventing violence.

B. *Data*

Because a problem must be understood before it is solved, the ongoing and systematic collection, analysis, and interpretation of data is key to not just prevention efforts, but public health efforts more generally.⁸⁷ Research and data can help identify factors that increase risk and lead to protection; they are “crucial for highlighting the problem and for targeting and evaluating interventions.”⁸⁸

A focus on data is particularly important when considering domestic violence gun prohibitions because data in the area is currently deficient. In 1996, Congress passed the “Dickey Amendment,” which prohibits the U.S. government, specifically the CDC, from conducting research on issues related to firearms.⁸⁹ The National Rifle Association (NRA) successfully lobbied for the passage of the Amendment after the CDC declared gun violence a public health issue and issued a number of studies (including one that found that the presence of a gun in the home was associated with an increased risk of homicide) that the NRA branded as biased.⁹⁰ Years later, Congress passed the “Tiahrt Amendments,” which prohibit the National Tracing Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) from releasing information from its firearms trace database to researchers.⁹¹

84. Cohen, Davis & Graffunder, *supra* note 69, at 93.

85. See generally MULTISECTOR APPROACH TO PREVENTING DOMESTIC VIOLENCE, *supra* note 72 (detailing structural drivers, community determinants (e.g., structural racism, socio-economic inequity, and housing insecurity) that are associated with domestic violence).

86. Hemenway, *supra* note 68, at 650.

87. See McMahon, *supra* note 76, at 472.

88. Hemenway & Miller, *supra* note 67, at 2034.

89. Pub. L. No. 104-208, 1110 Stat. 3009.

90. See Allen Rostron, *The Dickey Amendment on Federal Funding for Research on Gun Violence: A Legal Dissection*, 108 AM. J. PUB. HEALTH 865, 866 (2018).

91. Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3128–29 (2009).

The Dickey Amendment “stripped \$2.6 million from the Centers for Disease Control and Prevention—the precise amount budgeted for a study of the health effects of shootings.”⁹² In the two decades since the enactment of the Amendment, “CDC funding for firearm injury prevention has fallen 96[%].”⁹³ Today, “[c]ompared with other [top thirty] leading causes of death, gun violence [is] associated with less funding and fewer publications than predicted based on mortality rate.”⁹⁴

The dearth of research in the area of firearms has cost lives. In fact, even the namesake of the Dickey Amendment, Jay Dickey, reversed his position, recognizing that “[t]he same evidence-based approach that is saving millions of lives from motor-vehicle crashes, as well as from smoking, cancer and HIV/AIDS, can help reduce the toll of deaths and injuries from gun violence.”⁹⁵

Multi-disciplinary research, as exists in other areas of public health, is sorely needed.⁹⁶ Only when data is collected and analyzed—including information about the number of firearms relinquished by domestic abusers; what programs are successful in dispossessing offenders; how, why, and to whom they are surrendered; and the effect of enforcement of domestic violence gun prohibitions on the rate of intimate partner homicide—can effective programs be created, improved, maintained, and replicated.

C. *Development of Norms and Coordinated Community Response*

Norms are “attitudes, beliefs, and standards,” often based in culture and tradition, that dictate “what is okay and not okay to do.”⁹⁷ Because norms are by definition deeply entrenched at both the individual and community levels, norms change slowly and require holistic effort.

92. Sam Roberts, *Jay Dickey, Arkansas Lawmaker Who Blocked Gun Research, Dies at 77*, N.Y. TIMES (Apr. 24, 2017), <https://www.nytimes.com/2017/04/24/us/jay-dickey-dead-arkansas-congressman.html> [https://perma.cc/RWB4-R4L4].

93. MAYORS AGAINST ILLEGAL GUNS, ACCESS DENIED: HOW THE GUN LOBBY IS DEPRIVING POLICE, POLICY MAKERS AND THE PUBLIC OF THE DATA WE NEED TO PREVENT GUN VIOLENCE 2 (Jan. 2013), http://libcloud.s3.amazonaws.com/9/c1/6/1017/3/access_denied.pdf [permalink unavailable].

94. David E. Stark & Nigam H. Shah, *Funding and Publication of Research on Gun Violence and Other Leading Causes of Death*, 317 JAMA 84, 84 (2017).

95. Jay Dickey & Mark Rosenberg, *We Won't Know the Cause of Gun Violence Until We Look for It*, WASH. POST (Jul. 27, 2012), https://www.washingtonpost.com/opinions/we-wont-know-the-cause-of-gun-violence-until-we-look-for-it/2012/07/27/gJQAPfenEX_story.html?utm_term=.0a5ad439dcb0 [permalink unavailable].

96. For example, the National Highway Traffic Safety Administration (NHTSA) Fatality Analysis Reporting System provides public data regarding fatal injuries suffered in motor vehicle traffic crashes. *Fatality Analysis Reporting System*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/research-data/fatality-analysis-reporting-system-fars> [https://perma.cc/F9W6-27HD] (last visited July 13, 2022).

97. See Cohen, Davis & Graffunder, *supra* note 69, at 93.

Education alone is often insufficient to change group behavior, as it “does not effectively address the complexity and nature of [a] problem. Awareness of a risk to health does not automatically lead to protective action because behavior is complex.”⁹⁸ Thus, simply telling individuals and communities that guns and domestic violence are a deadly combination, or showing them the statistics detailed above in Part I, will typically not be sufficient to alter behavior. “Mass behavior change never occurs because of information alone. Norms change, shaped by changes in policies and organizational practice, is generally the tipping factor to change behavior.”⁹⁹

Changing norms is not easy, but it is also not impossible. Many dangerous or harmful things that were socially acceptable in the past—riding in a car without a seat belt, smoking indoors, spousal abuse¹⁰⁰—no longer are. This is not to say that such behaviors do not persist, but when people do engage in the activities, they are perceived as violating social norms. Thus, “[a]s the norm about the propriety of social drinking and driving has changed over time, so should norms about guns,” in particular, “the pernicious current norm that real men use guns to solve problems and settle disputes.”¹⁰¹

Experts generally recognize that “[n]orms are sustained not necessarily because of what they actually are but rather what they are perceived to be.”¹⁰² Changing these perceptions requires an approach that is broad and inclusive, involving the media, institutions such as government and NGOs, the private sector, and importantly, members of the impacted community. Currently, for example, gun ownership is often highlighted as necessary for self-defense or safety in one’s home, but each of these entities has a role to play in helping shift that messaging to focus instead on the risks of having a gun in the home.¹⁰³

98. *Id.* at 91 (footnote omitted).

99. *Id.* at 92.

100. Experts have explained that “[c]hanging harmful norms and culture has long been understood as an important DV prevention strategy.” MULTISECTOR APPROACH TO PREVENTING DOMESTIC VIOLENCE, *supra* note 72, at 30.

101. Hemenway & Miller, *supra* note 67, at 2035.

102. Cohen, Davis & Graffunder, *supra* note 69, at 93 (citing Alan David Berkowitz, *Applications of Social Norms Theory to Other Health and Social Justice Issues*, in *THE SOCIAL NORMS APPROACH TO PREVENTING SCHOOL AND COLLEGE AGE SUBSTANCE ABUSE* 259–79 (2003)).

103. As experts have noted, “[t]he best available research suggests that homes with guns are more likely to experience a homicide or suicide than homes without guns. Yet advertisements for handguns have touted the home or personal protection benefits of the product, without mentioning the potential risks.” Jon S. Vernick & Stephen P. Teret, *A Public Health Approach to Regulating Firearms as Consumer Products*, 148 U. PA. L. REV. 1193, 1201 (2000) (footnote omitted); see also Dylan Matthews, *Living in a House with a Gun Increases your Odds of Death*, VOX (Nov. 14, 2018, 4:19 PM), <https://www.vox.com/2015/10/1/18000520/gun-risk-death> [permalink unavailable] (explaining that risk of homicide, suicide, and accidental death are all increased when there is a gun in a home).

From a public health perspective, coordinated community response is key to changing norms. Public health initiatives are state- and locality-driven.¹⁰⁴ Similarly, gun laws vary widely from state to state. Varied legal structures and communities require unique approaches and solutions—programs and policies that aim to dispossess rural conservative men of their guns will likely not be equally effective in urban communities of color. Accordingly, involving the communities themselves in efforts at change is critical. In the fight against domestic violence, for example, men have a vital role to play in changing norms around acceptable treatment of women.¹⁰⁵

Ultimately, a public health approach to addressing the twin pandemics of intimate partner and gun violence requires a broad-based approach. The “key to the success in reducing drunk-driving deaths was a combination of stronger laws and enforcement, changes in social norms . . . , more ‘crashworthy’ cars, better roads, and an improved emergency medical system.”¹⁰⁶ Similarly, in order to ensure that perpetrators of domestic violence do not have access to firearms, we must “examine all possible interventions, including changing social norms and passing new laws, and . . . engage as many people and institutions as possible in a multifaceted way.”¹⁰⁷

III. INTERNATIONAL HUMAN RIGHTS LAW

Although “the national dialogue around gun violence often focuses on gun rights and the Second Amendment,” scholars have argued that the issue should be reframed as a human rights concern.¹⁰⁸ As the U.N. High Commissioner for Human Rights has noted, “[g]iven the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens.”¹⁰⁹

104. Polly J. Price, *Immigration Policy and Public Health*, 16 *IND. HEALTH L. REV.* 235, 237 (2019) (“The CDC plays a very limited role in combatting contagious disease in the [United States]. The CDC cannot intervene, direct, or provide assistance unless states individually invite them to do so.”).

105. For example, Men Stopping Violence is an organization devoted to encouraging and assisting men to take action to end violence against women. *Creating a Safer World*, MEN STOPPING VIOLENCE, <https://www.menstoppingviolence.org> [<https://perma.cc/LU8K-2ENH>] (last visited July 13, 2022).

106. Hemenway & Miller, *supra* note 67, at 2032–33.

107. *Id.* at 2033.

108. Leila Nadya Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 *WASH. U. J.L. & POL’Y* 1, 3–4 (2019) (emphasis omitted).

109. U.N. High Comm’r for Human Rights, *Human Rights and the Regulation of Civilian Acquisition, Possession and Use of Firearms* ¶ 52, U.N. Doc. A/HRC/32/21 (Apr. 15, 2016), <https://digitallibrary.un.org/record/841793?ln=EN> [<https://perma.cc/BMT2-4U2P>] [hereinafter *Human Rights and Regulation*]. The Commissioner also noted that firearms are “‘the primary medium’ of human rights violations and abuses” and that “the misuse of firearms affect[s] the entire spectrum of human rights.” *Id.* ¶ 9.

Many have long advocated that human rights principles should encompass freedom from both gun violence¹¹⁰ and domestic abuse.¹¹¹ In the United States, a broad range of local governments have declared that the ability to live free of domestic violence is a fundamental human right.¹¹² Bridging the two issues, the U.N. High Commissioner for Human Rights notes that “seemingly non-gendered practices, such as a gun culture, also had consequences for gender-based violence.”¹¹³

The field of human rights is expansive, but generally, “human rights are the expression of what is required to be fully human.”¹¹⁴ At minimum, they require “the most immediate and basic needs of all human beings” to be met.¹¹⁵ In addition to ensuring that all individuals can live in safety, the movement for human rights also “seeks a revolution of values

110. See *id.* ¶¶ 52–54 (contending governments should recognize the negative impact gun violence has on human rights and craft firearm policies with this relationship in mind); *Amnesty International Report Declares Gun Violence in the United States to be a Human Rights Crisis*, AMNESTY INT’L (Sept. 12, 2018), <https://www.amnesty.org/en/latest/news/2018/09/gun-violence-human-rights-crisis/> [<https://perma.cc/E78D-8A3B>]; Sadat & George, *supra* note 108, at 4 (using a human rights lens to research, analyze, and propose concrete actions to address the U.S. gun violence crisis); Barbara A. Frey, *Due Diligence to Prevent Foreseeable Harm: The International Human Rights Agenda on Civilian Gun Violence*, 60 WASH. U. J.L. & POL’Y 91, 91 (2019) (explaining how regulation of firearms came to be part of the United Nations’ human rights agenda).

111. See Paola Garcia Rey, *Domestic Violence as a Human Rights Violation*, ACLU (Mar. 14, 2011, 8:46 PM), <https://www.aclu.org/blog/womens-rights/violence-against-women/domestic-violence-human-rights-violation> [<https://perma.cc/HT4M-RZL3>]; U.N. Special Rapporteur, *Violence Against Women, its Causes and Consequences*, ¶ 26, U.N. Doc. A/HRC/41/42 (June 20, 2019) (“Over the past 25 years, violence against women has come to be recognized as a violation of women’s human rights and a form of gender-based discrimination.”); see also Caroline Bettinger-López, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RIGHTS L. REV. 19 (2008); Rhonda Copelon, *International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Law-making*, 11 AM. U. J. GENDER SOC. POL’Y & L. 865 (2003); Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISPANIC J. BEHAV. SCI. 107 (1999); Max D. Siegel, *Surviving Castle Rock: The Human Rights of Domestic Violence*, 18 CARDOZO J.L. & GENDER 727 (2012); Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence As A Human Rights Issue*, 58 ALB. L. REV. 1119 (1995).

112. See generally *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/gender-justice-clinic/freedom-from-domestic-violence-as-a-fundamental-human-right-resolutions-presidential-proclamations-and-other-statements-of-principle/> [<https://perma.cc/T5WL-V77E>] (last visited July 19, 2022) (listing resolutions and proclamations, laws citing to them, and federal statements that have recognized freedom from domestic violence as a human right).

113. *Human Rights and Regulation*, *supra* note 109, ¶ 22.

114. FORD FOUND., *CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE UNITED STATES* 9 (2004), https://www.fordfoundation.org/media/1737/2004-close_to_home.pdf [<https://perma.cc/PY8X-G26W>] [hereinafter *CLOSE TO HOME*].

115. *Id.* at 6.

. . . that places the affirmation of human dignity and equality at the center of domestic and foreign policy.”¹¹⁶

International human rights law, which “imposes specific obligations on States to protect their citizens,” is one way to achieve these aims.¹¹⁷ A significant number of international treaties are relevant to the work of protecting individuals from both gun violence and intimate partner abuse. The foundational Universal Declaration of Human Rights (UDHR), for example, recognizes the “inherent dignity and . . . the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world.”¹¹⁸ Many other international instruments can be seen as protecting an array of human rights implicated by gun and domestic violence, including the right to health, housing, and education and freedom of religion.¹¹⁹

In a 2019 report, the U.N. Human Rights Council expressed concern that “high levels of firearms in circulation among civilians lead to a broad range of acts that can affect a wide variety of human rights.”¹²⁰ It detailed the various rights that are infringed by unregulated firearms, noting, for example, that “[t]he Committee on Economic, Social and Cultural Rights has asserted that the right to housing should be seen as the right to live somewhere in security, peace and dignity” and that the “right to health . . . embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life.”¹²¹ A detailed examination of the treaties and human rights implicated by gun and domestic violence is beyond the scope of this Article; it will therefore focus on three particularly relevant rights—life, security, and freedom from discrimination.

The UDHR explicitly protects the right to life and security of person, cornerstones of human rights that are also safeguarded in other international instruments.¹²² “The right to life for all living human beings is a *jus*

116. *Id.*

117. Leila Nadya Sadat & Madaline George, *Guns and Human Rights: US Violates International Human Rights Law*, HUMAN RIGHTS AT HOME BLOG (Apr. 2, 2018), https://lawprofessors.typepad.com/human_rights/2018/04/guns-and-human-rights.html [<https://perma.cc/2S2R-QDH2>].

118. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights].

119. *See generally* Sadat & George, *supra* note 108, at 60 (arguing that gun violence in the United States implicates rights enshrined in human rights treaties and customary international law and that the United States is violating its international legal obligations by failing to exercise due diligence in preventing and reducing gun violence).

120. *Civilian Acquisition*, *supra* note 11, ¶ 7.

121. *Id.* ¶¶ 22, 24.

122. For example, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) directs states to protect life and prevent violations of the right to life. International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter International Covenant on Civil and Political Rights]. The right to security of person is also codified in the ICCPR at Article 9. *Id.* at art. 9. Additionally, the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW); International Covenant on Economic, So-

cogens norm that is non-derogable under treaty and customary international law.”¹²³ Because no other human rights can be achieved without one’s life, “states have a positive obligation of due diligence to prevent violations of the right to life by taking measures to address actual or foreseeable threats to the right to life,” including threats that come from private actors.¹²⁴ The right is broad, encompassing deprivations of life that involve an “intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by [either] an act or omission.”¹²⁵

The right to security is found in a number of foundational international instruments, including the UDHR,¹²⁶ the International Covenant on Civil and Political Rights (ICCPR),¹²⁷ and the International Convention of the Elimination of All Forms of Racial Discrimination (ICERD).¹²⁸ It is “also included in most regional human rights instruments.”¹²⁹

The U.N.’s Human Rights Committee has focused on the rights to life and security in the context of guns, asserting that States should “protect their populations . . . against the risks posed by excessive availability of firearms.”¹³⁰ The Committee has also spoken out about governments’ responsibilities towards survivors of family violence, proclaiming that “States parties must respond appropriately to patterns of violence against categories of victims such as . . . violence against women, including domestic violence . . . [and] violence against children.”¹³¹

The UDHR also demands freedom from discrimination and equal protection of the law,¹³² specifically placing civil and political rights on the same footing as more tangible rights to food and housing.¹³³ The U.N.

cial and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC) all have provisions relevant to the protection of life and security. *See* Convention for the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

123. Sadat & George, *supra* note 108, at 51 (citation omitted).

124. AMNESTY INT’L, IN THE LINE OF FIRE: HUMAN RIGHTS AND THE U.S. GUN VIOLENCE CRISIS 31, https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf [<https://perma.cc/AC8H-AR7D>] [hereinafter IN THE LINE OF FIRE].

125. U.N. Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)*, ¶ 6, U.N. Doc. CCPR/C/GC/36 (2018), <https://www.refworld.org/docid/5e5e75e04.html> [<https://perma.cc/9WTU-CEJ2>] (citation omitted).

126. Universal Declaration of Human Rights, *supra* note 118.

127. International Covenant on Civil and Political Rights, *supra* note 122, at art. 9(1).

128. G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, (Jan. 4, 1969).

129. Sadat & George, *supra* note 108, at 56.

130. U.N. Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 9, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

131. *Id.*

132. Universal Declaration of Human Rights, *supra* note 118, at art. 7.

133. *Id.* at art. 25.

Human Rights Council, “[a]larmed that hundreds of thousands of human beings of all ages around the world continue to have their human rights . . . negatively affected by the misuse, intentional or unintentional, of firearms” has recognized:

[T]hat civilian firearms-related violence and insecurity pose direct risks to the right to life, security of person and physical integrity, and also affect other civil and political, as well as economic, social and cultural rights, including the rights to health, to education, to an adequate standard of living and social security, and to the right to participate in public, political and cultural life[.]¹³⁴

Concepts of non-discrimination and equal protection, as enshrined in such treaties like the ICERD, are especially relevant to a conversation about firearms because gun violence disproportionately impacts people of color. In the United States, for example, although “African Americans represented approximately 13% of the U.S population in 2016, they made up 58.5% of gun homicides nationwide.”¹³⁵ Women are also disproportionately affected.¹³⁶ Nearly a million women in the U.S. have reported being shot or shot at by an intimate partner.¹³⁷ The Committee on the Elimination of Discrimination Against Women “expressed concern that the proliferation of firearms affects women and girls as victims of conflict-related gender-based violence [and] as victims of domestic violence” and “noted a correlation between the proliferation and use of firearms and femicide.”¹³⁸

Although international law has significant potential to address both gun and domestic violence, the “U.S. government has long resisted signing and ratifying many major human rights treaties,” and even when the U.S. does, “few federal legislative changes or initiatives” result.¹³⁹ Moreover, “on the few occasions when the U.S. government has ratified a human rights treaty, it has done so in a way designed to preclude the treaty from

134. Human Rights Council Res. 70/1, U.N. Doc. A/HRC/RES/38/10, ¶ 2 (July 18, 2018).

135. *IN THE LINE OF FIRE*, *supra* note 124, at 15. The report also notes that “a black male aged 15–34 was more than 10 times more likely to die from firearm homicide than a white male of the same age group.” *Id.*

136. *See Civilian Acquisition*, *supra* note 11, ¶ 36 (noting that “[i]n the context of domestic violence, civilian access to firearms has a disproportionate impact on the rights to life and to security of person of women”).

137. Sorenson & Schut, *supra* note 28, at 431.

138. *See Civilian Acquisition*, *supra* note 11, ¶ 35.

139. Lesley Wexler, *The Promise and Limits of Local Human Rights Internationalism*, 37 *FORDHAM URB. L.J.* 599, 605 (2010). Wexler adds that “[u]nlike its European counterparts, the U.S. federal government has created no national human rights institution, utilizes no human rights ombudspersons, lacks a human rights commission, and fails to conduct human rights impact statements on proposed initiatives.” *Id.* (citation omitted).

having any domestic effect.”¹⁴⁰ This has led to what Harold Koh describes as the “most problematic face of American exceptionalism: when the United States actually uses its exceptional power and wealth to promote a double standard . . . [wherein] the United States proposes that a different rule should apply to itself than applies to the rest of the world.”¹⁴¹

There is, however, room for optimism about the role of international law in U.S. litigation. Treaties are the “supreme Law of the Land,”¹⁴² and “[t]he United States is required to comply with and implement provisions of these treaties just as it would any other federal law.”¹⁴³ Many human rights also rise to the level of customary international law.¹⁴⁴ While international law has historically been seen as secondary or subsidiary to domestic law, and American courts were reluctant “to enforce, apply, or, in some cases, even recognize foreign standards and institutions,” the tide may be turning.¹⁴⁵ Attorneys from the National Economic and Social Rights Initiative note that “[t]he use of international human rights by domestic courts is . . . growing, with several major Supreme Court cases recently making reference to either comparative or international human rights law.”¹⁴⁶ And even if courts are unwilling to accept international law as binding, it can be used to supplement “core arguments grounded in U.S. law, [or] provid[e] background information on international dimensions or approaches to an issue, or [act] as a last resort when domestic institutions fail.”¹⁴⁷

In addition to using international human rights law in litigation, lawyers can also utilize the rhetoric, theories, and policies that are at the core of international law in their advocacy. For example, the “bringing human rights home” movement¹⁴⁸ has long used international human rights stan-

140. Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 CHI. J. INT'L L. 347, 347 (2000).

141. Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1485–86 (2003).

142. U.S. CONST. art. VI., cl. 2.

143. Sadat & George, *supra* note 108, at 37. The authors note that this requirement is “subject to any lawful reservations, understandings, and declarations (RUDs) entered at ratification,” of which the U.S. has entered many. *Id.*

144. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 702 (AM. L. INST. 1987). The Restatement lists a number of human rights violations that also violate international law, including genocide, slavery, torture, prolonged arbitrary detention, and systematic racial discrimination. *Id.*

145. Clifford Bob, *Bringing Human Rights Home? The Promises and Pitfalls of Rights Strategies in American Social Justice Advocacy*, 101 AM. SOC'Y INT'L L. PROC. 82, 82 (2007).

146. Catherine Albisa & Sharda Sekaran, *Foreword*, 30 N.Y.U. REV. L. & SOC. CHANGE 351, 353–54 (2006).

147. Bob, *supra* note 145, at 82.

148. See generally CYNTHIA SOOHOO, CATHERINE ALBISA & MARTHA F. DAVIS, BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES (2009); *The Bringing Human Rights Home Lawyers' Network*, COLUM. L. SCH. HUM. RTS. INST., <https://web.law.columbia.edu/human-rights-institute/bhrh-lawyers-network> [<https://perma.cc/MWZ8-XLG5>] (last visited July 13, 2022) (provid-

dards and strategies in efforts to combat intimate partner violence and other harms in the United States.

Thus, even if U.S. courts are reluctant to officially incorporate international human rights law, a vast array of non-legal uses exist, including using rights rhetoric and methodologies for normative development, as a mobilizing and community or coalition-building tool, and to both exert political pressure and influence public opinion.

A. *Rights Rhetoric and Methodologies*

Classifying an issue as one that concerns human rights immediately elevates its significance and consequence. This is because “[t]he core idea of human as opposed to constitutional rights, [is] that these are inalienable rights that belong to every human being.”¹⁴⁹ A human rights label lends moral and political weight to an issue, such as domestic violence, that may otherwise be diminished or dismissed in society. As such, utilizing an international human rights rhetoric has the potential “to open up possibilities that working within a strict constitutional or civil rights framework does not. The idea of human rights has power precisely because it takes us immediately to the most unassailable and universal basis for rights claims—human dignity and freedom.”¹⁵⁰

The human rights categorization also forges a connection between a singular issue and something both deeper and broader. As the founders of the U.S. Human Rights Education & Advocacy Initiative explained, “[a]s soon as you label something a human rights violation, you draw a picture in your mind that includes women violated in the U.S. and other women around the world . . . Human rights creates that picture, creates the symbolism, imagery and the power of connection.”¹⁵¹ A human rights issue has gravity and is situated in something greater than itself—it becomes more than “just” a problem of domestic violence or gun violence, but instead a universal and collective concern.¹⁵²

And while words and rhetoric are certainly important, the true significance of the human rights designation is that it can then be used to support novel approaches and solutions to a problem. For example, the “Cities for CEDAW” (Convention on the Elimination All Forms of Discrim-

ing a platform for members of the Bringing Human Rights Home network, which includes over 800 lawyers, to “share strategies across issue areas and develop joint responses to common challenges and needs”).

149. Larry Cox, *A Movement for Human Rights in the United States: Reasons for Hope*, 40 COLUM. HUM. RTS. L. REV. 135, 138 (2008).

150. *Id.* at 140.

151. CLOSE TO HOME, *supra* note 114, at 58.

152. This is akin to a phrase popularized by second-wave feminists in the 1960s—“the personal is political.” The phrase underscored the connection between women’s personal experiences and larger social and political efforts to end male supremacy and achieve gender equality. See generally CAROL HANISCH, THE PERSONAL IS POLITICAL (1969), <https://webhome.cs.uvic.ca/~mserra/AttachedFiles/PersonalPolitical.pdf> [<https://perma.cc/NR5W-UE9G>].

ination Against Women) campaign seeks “to ‘Make the Global Local’ and protect the rights of women and girls by passing legislation establishing the principles of CEDAW in cities and towns across the United States.”¹⁵³ In San Francisco, “[u]sing the human rights framework of CEDAW . . . allowed [the city] to move from a rhetoric of women’s rights to a more concrete reality for rights holders.”¹⁵⁴ These successes demonstrate that “as human rights rhetoric becomes normalized, they can also shore up legal and political arguments advanced on other grounds, so that . . . advocates find themselves with a new ‘tool kit’ in the struggle.”¹⁵⁵

B. *Normative Development*

International human rights law can also be used to develop principles, models, and “guidance for how international legal norms, standards, and policies can be implemented at the domestic level.”¹⁵⁶ Whether officially¹⁵⁷ or less formally, the “interdependent framework [of] human rights represent[s] a *revolution in values* with the goal of promoting social and economic justice at home and on a global scale.”¹⁵⁸

A human rights framework can help illuminate what is possible and provide a gold standard to aspire to. An international perspective can also highlight where the United States is out of step with the rest of the world.¹⁵⁹ And when domestic law cannot “either [describe] or [provide] [an] adequate remedy for the multiple, synergistic and cumulative” harms faced by individuals, especially those in marginalized communities, human

153. *About Us*, CITIES FOR CEDAW, <http://citiesforcedaw.org/about-cedaw/> [<https://perma.cc/WJ3B-8CXE>] (last visited July 13, 2022).

154. Tarah Demant, *The Effort to Bring Human Rights Home*, 41 HUM. RTS. 17, 18 (2015).

155. Sadat & George, *supra* note 108, at 7.

156. Caroline Bettinger-López, Jessica Gonzales v. United States: *An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States*, 21 HARV. HUM. RTS. J. 183, 193 (2008).

157. Harold Koh describes the transnational legal process as taking place when

an international law rule is interpreted through the interaction of transnational actors in a variety of law-declaring fora, then internalized into a nation’s domestic legal system. Through this three-part process of interaction, interpretation, and internalization, international legal rules become integrated into national law and assume the status of internally binding domestic legal obligations.

Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623, 626 (1998).

158. Albisa & Sekaran, *supra* note 146, at 353 (emphasis added).

159. See, e.g., Anthony N. Bishop, *The Death Penalty in the United States: An International Human Rights Perspective*, 43 S. TEX. L. REV. 1115, 1120–21 (2002) (“Disregarding the increasing international norms, the United States continues to violate international conventions it is a party to that limit the use of the death penalty. For example, states continue to impose the death penalty arbitrarily and against juvenile offenders and the mentally ill in violation of international law.”).

rights law can provide a way forward.¹⁶⁰ For example, “[o]ne of the key goals of the Battered Mothers’ Testimony Project,” that monitored family court proceedings in Massachusetts, “was to inject international standards of governmental accountability into the discussion of U.S. domestic violence.”¹⁶¹ The leaders of the project believed, as scholars have argued, that “[o]nly when countries perceive [the] phenomenon [of intimate partner violence] as an international human rights violation, will there be a standard against which domestic legislation can be tested and improved.”¹⁶²

International human rights principles can help “hold federal, state, and local government actors to a higher and more expansive standard.”¹⁶³ For example, the U.S. Supreme Court has consistently declined to recognize a right to be free from family violence, holding that the Fourteenth Amendment’s Due Process Clause does not impose a duty on states to protect an individual from harms caused by private actors.¹⁶⁴ But “human rights principles . . . make clear that the government has an affirmative obligation to protect individuals from private acts of violence, to investigate alleged violations and publicly report the results, and to provide an adequate and effective remedy when these duties are breached.”¹⁶⁵ Human rights law and standards require governments to recognize both positive and negative rights. This means that states must not only refrain from harming their citizens, but also take proactive steps to protect them from harm.¹⁶⁶ It is this international human rights lens that opens up the possibility of the State taking a more active role in prevention efforts.¹⁶⁷

160. CLOSE TO HOME, *supra* note 114, at 14.

161. *Id.* at 61.

162. Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 425 (2003).

163. Bettinger-López, *supra* note 111, at 21.

164. *See* *Deshaney v. Winnebago Cnty. Dep’t. of Soc. Serv.*, 489 U.S. 189, 196 (1989) (holding that the Constitution did not impose an affirmative obligation on the government to provide aid to a child who was being physically abused by his father, “even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual”); *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768–69 (2005) (finding that the Fourteenth Amendment’s procedural Due Process clause does not impose a constitutional duty on police departments to enforce court-issued restraining orders).

165. Bettinger-López, *supra* note 111, at 21.

166. *See* Stephen R. Arnott & Margaret C. Hobday, *It’s a Human Right: Using International Human Rights Principles to Assist Employees Experiencing Domestic Violence*, 18 EMP. RTS. & EMP. POL’Y J. 1, 27 (2014) (noting that CEDAW “suggests that governments have a broad obligation to take positive measures to eliminate gender-based violence, just as they have obligations to eliminate both intentional and disparate impact discrimination”).

167. *See id.* at 33 (“When viewed through an international human rights lens, domestic violence is not an individual problem for which our country has no responsibility, but rather, as some state laws explicitly recognize, it is a societal problem that the government has a vital interest in and a responsibility to address.”).

Similarly, a human rights label can also help erode the public-private distinction. The phrase is used to describe a phenomenon wherein, for example, a harm such as sexual assault that occurs in the public sphere of “politics, government and the state” is considered a crime or violation, whereas a rape that occurs in one’s home or within one’s family is considered a private matter.¹⁶⁸ The delineation of public and private is not a neutral act, as the “[m]eanings of ‘private’ and ‘public’ are based on social and cultural assumptions of what is valued and important . . . assumptions [that] are deeply gender-based.”¹⁶⁹ As Caroline Bettinger-López states:

[t]he international human rights framework concentrates on governmental accountability for State acts and omissions that violate basic notions of dignity, civility, and citizenship. Reframing the issue [of domestic violence] as a public matter highlights the State’s role in perpetuating violence against women when it fails to respond appropriately to victims.¹⁷⁰

An international human rights framework helps move the needle from conceptualizing intimate partner or gun violence as simply results of interpersonal disputes towards an understanding of the issues as “a public policy concern in which government has vital interests and responsibilities.”¹⁷¹

Ultimately, “integrating international human rights norms [is] a means of developing, expanding, and transforming the content and meaning of our human/civil rights jurisprudence.”¹⁷² A human rights discourse provides new ways of thinking about old, seemingly intractable, problems. It allows one to “break out of the chokehold of domestic law” and “assert the inalienability of rights in a much broader sense than has ever been expressed constitutionally.”¹⁷³ As the Ford Foundation states, “reframing one’s work in human rights terms ‘takes you back to the pri-

168. See HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 232 (2000); Hilary Charlesworth, *Feminist Methods in International Law*, 93 AM. J. INT’L L. 379, 382 (1999); Jaya Ramji-Nogales, *Questioning Hierarchies of Harm: Women, Forced Migration, and International Criminal Law*, 11 INT’L CRIM. L. REV. 463, 464 (2011) (explaining that private, opportunistic violence against female forced migrants is overlooked by governments and excluded from international criminal law with respect to criminal accountability).

169. Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 978 (1991). Scholars have argued that:

[n]owhere is the effect . . . of the public/private split more evident than in the case of domestic violence which literally happens “in private.” States dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action.

Thomas & Beasley, *supra* note 111, at 1123.

170. Bettinger-López, *supra* note 111, at 51.

171. Arnott & Hobday, *supra* note 166, at 21.

172. Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69, 69 (1996).

173. CLOSE TO HOME, *supra* note 114, at 9.

macy of equality and dignity no matter what the circumstance. Once you reassert that basic principle, peoples' perceptions of the problem change and new avenues for advocacy open up.'¹⁷⁴

C. *Mobilizing and Community Building*

Another “[strength] of the human rights framework is its ability to place different stakeholders together under one umbrella.”¹⁷⁵ As discussed above, the ability to live free from domestic and gun violence can be encompassed under a range of human rights, including the right to life, security, health, nondiscrimination, and equal protection. In fact, “[o]ne of the greatest values of the international human rights legal framework is its recognition that civil, political, economic, social, and cultural rights are interdependent and must be respected and ensured as a unified whole.”¹⁷⁶ This holistic view allows human rights principles to support a range of advocacy goals, even ones that might otherwise seem unrelated, including “struggles for the abolition of slavery, women’s suffrage, the rights of indigenous people, labor rights, the rights of immigrants, and economic and social rights.”¹⁷⁷

Under this big tent, new coalitions and community partnerships can be built. As civil/women’s/human rights activist Loretta Ross stated, “[t]here is simply no better way to broaden the influence and effectiveness of all our struggles for social justice than through human rights.”¹⁷⁸ Groups advocating for different issues can come together to achieve common goals, and varied professionals can bring their unique talents to the cause. The integrated strategies that a human rights framework allows can be the key to success; human rights can be “a common language . . . used by activists from disparate movements [that links] a range of strategies including legal work, organizing, public and community education, and scholarship.”¹⁷⁹

The human rights mantle can also serve to unite local and international advocates and advocacy. As the founders of the Women’s Rights Network explained, “framing stories of domestic abuse as human rights

174. *Id.* at 10.

175. Bettinger-López, *supra* note 111, at 71.

176. Albisa & Sekaran, *supra* note 146, at 351. The authors also noted that: To limit our conception of human rights to a few specific violations that occur outside of our borders radically narrows the potential that human rights have for moving us towards a more equitable society within the United States, free of grave harms such as homelessness, hunger, illiteracy, unnecessary morbidity and mortality, [sweatshops], and severe social exclusion.

Id.

177. Cox, *supra* note 149, at 139.

178. CLOSE TO HOME, *supra* note 114, at 7 (emphasis omitted). Additionally, “[t]he sense of empowerment that comes with the use of human rights is a crucial tool for community-based organizers.” *Id.* at 12.

179. Albisa & Sekaran, *supra* note 146, at 354–55.

violations had real potential as a strategy to link international and domestic anti-violence work.”¹⁸⁰ Integrating human rights norms can develop, expand, and ultimately transform otherwise exclusively domestic areas of law. Ultimately, “[a]ligning grass-roots advocacy and protests within a broader human rights framework provides a rhetoric that insists that the experience of ‘local’ rights holders is part of a larger, international narrative of human rights and must be considered with the gravity by which we address human rights concerns internationally.”¹⁸¹

D. *Influencing Public Opinion and Exerting Political Pressure*

Lastly, once holistic, multi-issue coalitions are in place, they can be used to influence public opinion and exert political pressure to make change. As Mary Robinson, the former U.N. High Commissioner for Human Rights stated, “[w]e must . . . win the war of ideas and make the case that a world of true human security is only possible when the full range of human rights—civil and political, as well as economic, social, and cultural—are guaranteed for all people.”¹⁸²

The U.S. Human Rights Network is an example of an organization that connects groups “to strengthen a human rights movement and culture within the United States.”¹⁸³ The Network has a multipronged strategy that includes “engaging, connecting and mobilizing communities” in “diverse sectors across issue areas” and “building the capacity of . . . [those] grassroots groups.”¹⁸⁴ Through community-based collective action, the Network can raise “the visibility of local human rights concerns and activism to shape the public discourse locally, nationally, and internationally . . . and facilitat[e] effective collective action to secure the structural change needed to fully realize human rights.”¹⁸⁵

This goal of incorporating human rights concepts into our domestic legal and political landscape and of making the principles a fundamental part of the way in which we both view and address social problems, can be achieved if the preceding steps are taken. Once human rights rhetoric and methodologies begin to influence norms and the way in which advocacy occurs, the bedrock rights to life, security, and freedom from discrimination can become part of our public discourse and the solutions put in place to address issues such as gun violence and domestic abuse.

180. CLOSE TO HOME, *supra* note 114, at 58.

181. Demant, *supra* note 154, at 19.

182. Mary Robinson, *What we Expect from America*, AM. PROSPECT (Oct. 1, 2004), <https://prospect.org/special-report/expect-america/> [<https://perma.cc/Z7DG-289J>].

183. *About Us*, U.S. HUM. RTS. NETWORK, <https://ushrnetwork.org/about-us> [<https://perma.cc/WZB5-7GVQ>] (last visited July 13, 2022).

184. *Id.*

185. *Id.*

IV. ANTI-CARCERAL FEMINISM

The role of law enforcement in addressing intimate partner violence has a long, complex history in the United States. For decades, police, prosecutors, and courts ignored and often even condoned domestic violence.¹⁸⁶ Officers routinely blamed victims for provoking the attacks they suffered, admonishing them to be “better wives” in order to prevent future abuse.¹⁸⁷ Perpetrators who were arrested were given sentences that suggested authorities diminished the severity of the harm that victims had experienced.¹⁸⁸ Victims in traditionally underserved communities fared the worst. As Donna Coker explains, “[p]olice often believe that violence is an unremarkable event in the households of poor people of color and that police intervention is therefore likely to be ineffective or unnecessary.”¹⁸⁹

In the 1960s and 70s, political, cultural, and legal forces caused the pendulum to swing from official neglect to mandatory legal intervention in the lives of survivors of intimate partner violence. One of the primary goals of feminists in that era was to remove discretion from officials so that they would treat the assault of an intimate partner as seriously as the assault of a stranger.¹⁹⁰ In order to effectuate this aim, mandatory arrest¹⁹¹

186. See, e.g., *State v. Oliver*, 70 N.C. 60, 61–62 (N.C. 1874) (opining that in cases of intimate partner violence, “[i]f no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive”); Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970–1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47 (1992) (“Throughout the 1970s and early 1980s, officers believed and were taught that domestic violence was a private matter, ill[-]suited to public intervention.”).

187. SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* 58 (1982) (proffering that police officers condoned domestic violence by reinforcing misogynistic stereotypes regarding the marital relationship, such as the ideas that women needed to be “kept in line” by their husbands or that they “enjoyed” this violent behavior).

188. See Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1521–24 (1998).

189. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1033 (2000). A study of the Phoenix Police Department revealed officers’ beliefs that “arrests were a waste of time and meaningless” in certain immigrant communities and low-income neighborhoods “because violence is a way of life for them.” Kathleen J. Ferraro, *Policing Battered Women*, 36 SOC. PROBS. 61, 67 (1989).

190. See Holly Maguigan, *Wading into Professor Schneider’s “Murky Middle Ground” Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 427, 430 (2003) (“[T]he desire to remove discretion from police and prosecutors stems from a sense of the historic inadequacy of their response to domestic violence”); Deborah Epstein, *Redefining the State’s Response to Domestic Violence: Past Victories and Future Challenges*, 1 GEO. J. GENDER & L. 127, 136 (1999) (describing feminists’ goal of having law enforcement treat “family abuse ‘like any other crime’”).

191. Mandatory arrest policies compel officers who respond to a domestic violence call to effectuate an arrest once probable cause has been established.

and mandatory/no-drop prosecution¹⁹² policies were implemented across the country. Treating domestic abuse as a criminal justice issue allowed feminists to secure public support for their movement to end intimate partner violence. “[D]raw[ing] the curtain [and] shut[ting] out the public gaze” was no longer an acceptable response to family violence.¹⁹³

Reconceptualizing domestic violence as a crime became “one of the clearest cases where a civil rights movement has turned to criminalization as a primary tool of social justice.”¹⁹⁴ It also began the transformation of understanding the problem of violence against women as primarily a criminal justice issue—one to be solved by arresting and prosecuting individual perpetrators—as opposed to a problem with societal, cultural, or political solutions.

This framing was accepted in and subsequently accelerated by the passage of VAWA, which provided, and continues to provide, substantial funding for law enforcement and prosecution efforts to combat domestic abuse.¹⁹⁵ The federal Office of Violence Against Women (OVW), created to implement VAWA, has since its creation “awarded more than \$8 billion in grants and cooperative agreements to state, tribal, and local governments, nonprofit organizations, and universities.”¹⁹⁶ The vast majority of these funds have gone to law enforcement.¹⁹⁷ Activists note that:

[R]eliance on state funding to support anti-violence programs has increased the professionalization of the anti-violence movement . . . [,] alienated it from its community-organizing, social justice roots . . . [,] taken power away from women’s ability to organize collectively to stop violence[, and] . . . promoted an individualistic approach toward ending violence such that the only way people think they can intervene in stopping violence is to call the police.¹⁹⁸

192. Mandatory/no-drop prosecution policies do not permit prosecutors to dismiss criminal charges in a domestic violence case, even if the victim does not want to cooperate with the prosecution or see it proceed.

193. *State v. Oliver*, 70 N.C. 60, 62 (N.C. 1874).

194. JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* 180 (2007).

195. VAWA was enacted as part of the 1994 Crime Act. A representative describing the law at a 2000 reauthorization hearing honed in on the significance of the criminal justice system in combatting violence against women, stating that “[s]ince it was signed into law in 1994, the Violence Against Women Act has strengthened criminal laws and provided funding to enhance their enforcement. It has also provided a foundation for a successful long-term criminal justice effort to end violence against women.” 146 CONG. REC. 8086, 8099 (Sep. 26, 2000).

196. VAWA RESEARCH, *supra* note 73, at 4.

197. *See id.* at 5.

198. INCITE! WOMEN OF COLOR AGAINST VIOLENCE, GENDER OPPRESSION, ABUSE, VIOLENCE: COMMUNITY ACCOUNTABILITY WITHIN THE PEOPLE OF COLOR PROGRESSIVE MOVEMENT 28–29 (2005), <https://incite-national.org/wp-content/uploads/2018/08/cmtty-acc-poc.pdf> [<https://perma.cc/L98E-7RCU>].

These concerns are best summed up by the term “carceral feminism,” coined by sociologist Elizabeth Bernstein,¹⁹⁹ which refers to “an approach that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women.”²⁰⁰ It prioritizes “feminist anti-violence collaboration with the *carceral state* or that part of the government most associated with the institutions of police, prosecution, courts, and the system of jails, prisons, probation, and parole.”²⁰¹

Critics argue that crime is a “coded language for talking about race”²⁰² and that a carceral focus “ignores the ways in which race, class, gender identity, and immigration status leave certain women more vulnerable to violence.”²⁰³ As such, the tactic “has been criticized by . . . feminist advocates for ignoring the violence that the state and its criminal justice system inflicts upon marginalized women: those who are poor, Black, brown, transgender, LBGTQ+, or otherwise outside the mainstream.”²⁰⁴ They also note that a singularly crime-centered approach “fails to address factors that exacerbate abuse, such as male entitlement, economic inequality, the lack of safe and affordable housing, and the absence of other resources.”²⁰⁵

Additionally, a carceral approach to domestic violence is often both over- and underinclusive—either harmful to certain survivors or leaving them without protection.²⁰⁶ Many historically marginalized communities simply do not trust the police.²⁰⁷ “[R]ace, class, sexual orientation, immigration status, and other identities may have [a profound impact] on women’s decisions to invoke formal systems.”²⁰⁸ Victims of color may therefore be hesitant or even afraid to report crimes to law enforcement

199. Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism”*, 18 DIFFERENCES: J. FEMINIST CULTURAL STUD. 143 (2007).

200. Victoria Law, *Against Carceral Feminism*, JACOBIN (Oct. 17, 2014) <https://www.jacobinmag.com/2014/10/against-carceral-feminism/> [<https://perma.cc/L3NN-F9BN>].

201. Mimi E. Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 J. OF ETHNIC AND CULTURAL DIVERSITY IN SOC. WORK 219, 220 (2018).

202. *Id.* at 222.

203. Law, *supra* note 200.

204. Aparna Polavarapu, *Global Carceral Feminism and Domestic Violence: What the West Can Learn from Reconciliation in Uganda*, 42 HARV. J. L. & GENDER 123, 125 (2019) (footnote omitted).

205. Law, *supra* note 200.

206. See generally Natalie Nanasi, *The U Visa’s Failed Promise for Survivors of Domestic Violence*, 29 YALE J.L. & FEMINISM 273 (2018) (describing the negative consequences faced by immigrant survivors of IPV who engage with law enforcement).

207. See generally Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police*, 8 POLICE Q. 322 (2005) (examining the relationship of police policies and practices to trust in the police).

208. Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 37 (2009).

because of “legitimate concerns that they will be subjected to differential treatment because of their ethnicity, gender, and immigration status.”²⁰⁹

Such concerns are intensified when the racial or ethnic composition of a police force does not match that of the neighborhood it is policing.²¹⁰ For example, when facing violence in the home and deciding whether to seek police assistance, a Latina’s calculus is complex, as she “must decide whether to invoke assistance from an outsider who may not look like her, sound like her, speak her language, or share any of her cultural values.”²¹¹ As a result, “[f]or many victims of color, family and community take precedence as a means of addressing domestic violence concerns, because ‘the legal system has proven itself unreliable.’”²¹²

Survivors lose agency as soon as law enforcement becomes involved in their lives. Pursuant to near-universal mandatory arrest and prosecution policies across the United States, victims often have no say as to what happens to the perpetrator after police are called. Many people who have experienced domestic violence are dependent on their partners for financial support, childcare, housing, transportation, healthcare, or other critical needs. If that partner is arrested and jailed, or perhaps even deported,²¹³ a victim may have achieved immediate physical safety at the

209. Edna Erez & Carolyn Copps Hartley, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4 W. CRIM. REV. 155, 158 (2003). See also *What to Do Instead of Calling the Police: A Guide, A Syllabus, A Conversation, A Process*, ARTIST TR., <https://artisttrust.org/wp-content/uploads/2018/12/What-To-Do-Instead-of-Calling-the-Police.pdf> [<https://perma.cc/QMF9-BZHJ>] (last visited July 13, 2022).

210. See Jeremy Ashkenas & Haeyoun Park, *The Race Gap in America’s Police Departments*, N.Y. TIMES, (Apr. 8, 2015), https://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html?_r=0 [<https://perma.cc/TWQ5-N96S>].

211. Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 246 (1994).

212. Phyllis Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Culture, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REV. 31, 49 (2008) (citing Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN’S L.J. 217, 238 (2003)).

213. Domestic violence and other gender-based crimes, such as stalking, protective order violations, or sexual violence, are deportable offenses. See 8 U.S.C. § 1227(a)(2)(E)(i) (2012) (“Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable.”); 8 U.S.C. § 1227(a)(2)(E)(ii) (“Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.”). Police involvement might therefore unwittingly initiate a process that leads to deportation, the potentially permanent loss of a woman’s partner and her children’s father, and the ensuing fracturing of a family and the victim’s economic instability.

expense of long-term safety and stability.²¹⁴ And physical safety might even be fleeting, for an abuser may retaliate against the survivor after being arrested²¹⁵ or being forced to relinquish a gun,²¹⁶ or the violence may increase if the perpetrator loses a job after becoming involved in the criminal justice system.²¹⁷

Survivors who engage with law enforcement may also find themselves entangled in a web of state scrutiny. They may be at risk of losing their children, their jobs, or their housing if they cannot balance the demands of cooperating with criminal or civil legal cases and the many other demands on their time and lives.²¹⁸ Survivors may even find themselves in-

214. Studies have shown that there is a 50% chance that a female victim of domestic violence will drop below the poverty line if she leaves her abuser. See Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence & Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359, 368 (1996) (citing NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, STATISTICS PACKET (3d ed. 1994)). A participant in a study of low-income survivors of domestic violence explained that she "avoided leaving her abusive husband for years because she feared losing the only wealth she had, her property and home." Cynthia K. Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study*, 21 VIOLENCE AGAINST WOMEN 3, 15 (2014). The ACLU has reported that domestic violence is a leading cause of homelessness for women. See ACLU WOMEN'S RIGHTS PROJECT, DOMESTIC VIOLENCE AND HOMELESSNESS, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> [<https://perma.cc/9NVH-3XPH>].

215. The term "separation violence" describes the phenomenon of increased violence towards survivors after they assert agency against an abuse by, for example, attempting to leave a relationship or engaging with law enforcement. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–66 (1991). The National Institute of Justice reported that attempting to leave a violent relationship was the precipitating factor in 45% of murders of a woman by a man. Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower Her Risk of Death*, 250 NAT'L INST. JUST. 6 (2003). As such, a "victim is in a better position to choose [how to protect herself], as she knows best what her partner is capable of and what is likely to occur from the separation." Nichole Miras Mordini, Note, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295, 323 (2003).

216. Carolyn B. Ramsey, *Firearms in the Family*, 78 OHIO ST. L.J. 1257, 1296–97 (2017). The loss of a weapon can anger an abuser, especially if he sees gun control as an attack on his "masculinity, independence, and moral identity." Tom Jacobs, *For Some Americans, the Gun is a Sacred Object*, PAC. STANDARD (Nov. 28, 2017), <https://psmag.com/news/for-many-white-men-god-is-in-the-gun> [<https://perma.cc/VSU9-G2RC>]. See also F. Carson Mencken & Paul Froese, *Gun Culture in Action*, 66 SOC. PROBS. 3, 4 (2019) ("[T]he symbol of the gun has become a source of identity and moral meaning to specific populations within the United States . . .").

217. Studies have shown that "the rate of violence increases as the number of periods of male unemployment increases." MICHAEL L. BENSON & GREER L. FOX, CONCENTRATED DISADVANTAGE, ECONOMIC DISTRESS, AND VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS, at II-3-5 (2004). See also *Risk Factors*, *supra* note 23, at 1092 (finding that unemployment is "the most important demographic risk factor for acts of intimate partner femicide").

218. See LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE 20 (Claire M. Renzetti ed. 2018) (noting that "[c]oupled with state laws and policies that hold mothers accountable for their inability to prevent their partners from being violent in the presence of

carcerated. Studies have shown that mandatory intervention policies increase domestic violence arrest rates for women.²¹⁹

Notably, carceral domestic violence policies can “increase the policing of communities of color . . . and put marginalized groups of women, such as those in the LGBTQ+ community, at risk of heightened harassment and abuse from police.”²²⁰ As such, the unintended consequences of a law enforcement-centric approach to intimate partner abuse has caused “a painful reckoning” in the anti-violence movement.²²¹ “Stricter criminal penalties have protected some survivors, but [they have] also led to the arrest and prosecution of others and contributed to a ballooning prison population that is disproportionately made up of men and women of color.”²²²

Consequences for offenders is a concern for many survivors as well. Marginalized women may face what scholars have described as a “double bind” wherein they are forced to achieve “empowerment through the disempowerment of a male member of the community.”²²³ Survivors of color may not believe it is in the interest of their community to involve the police²²⁴ and “[v]ictims whose batterers are African American . . . may be

their children, the increased involvement of the criminal legal system means greater scrutiny of women’s parenting and an increased likelihood that mothers will lose their children”); Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. ILL. L. REV. 171 (2003) (exploring the racial disparities in the child welfare system); Natalie Pattillo, *Victims of Spousal Abuse are Losing Their Children to Social Services*, PAC. STANDARD (Mar. 5, 2018), <https://psmag.com/social-justice/victims-spousal-abuse-children> [<https://perma.cc/QS7J-JPKZ>].

219. See Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1343 (2001) (finding that mandatory arrest policies lead to an increase in dual arrest). See also Shamita Das Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364 (2002) (summarizing studies of increased rates of arrests of women, including those due to dual and mandatory arrest). Dasgupta notes that women identified by police as primary aggressors were in most cases abused themselves, but because they were not identified as victims, “the contexts of their violence . . . remained invisible.” *Id.* at 1375. She calls for increased training that would allow officers to differentiate between defensive and non-defensive violence and to identify a predominant aggressor in situations of domestic abuse. Such training, she suggests, would mitigate problems arising from mandatory arrest policies. *Id.* at 1382; Maguigan, *supra* note 190, at 442–43.

220. Polavarapu, *supra* note 204, at 134.

221. Zoë Carpenter, *A Reckoning Inside the Domestic-Violence Movement*, THE NATION (Oct. 7, 2020), <https://www.thenation.com/article/society/domestic-violence-police/> [permalink unavailable].

222. *Id.*

223. Rivera, *supra* note 211, at 248. See also Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J.L. REFORM 915 (2015) (describing the challenges that arise when immigrant victims seeking U visas accuse immigrant defendants of a crime).

224. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–62,

particularly hesitant [to send their batterer to jail] if they view the justice system as oppressive or racist.”²²⁵

Because police response to intimate partner violence often exists at one of two extremes—either tepid²²⁶ or damaging—many survivors do not call them for help. A 2018 Bureau of Justice Statistics survey revealed that “less than half (43%) of violent victimizations were reported to police.”²²⁷ The National Domestic Violence Hotline reports that women (including those who had previously called the police in the aftermath of abuse and those who had not), “shared a strong reluctance to turning to law enforcement for help: 1 in 4 reported that they would not call the police in future.”²²⁸

Given the many issues detailed above, the domestic violence advocacy community has been forced to contend with the failures of carceral feminism. Recently, gender-violence advocates from over thirty states called themselves “to account for the ways in which this movement, and particularly the white leadership within this movement, has repeatedly failed Black, Indigenous, and people of color (BIPOC) survivors, leaders, organizations, and movements[.]”²²⁹ They signed an open letter calling for “di-

1296–99 (1991) (exploring the coexisting and overlapping racial and gendered dimensions of violence against women of color).

225. Lauren Bennett, Lisa Goodman & Mary Ann Dutton, *Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective*, 14 J. INTERPERSONAL VIOLENCE 761, 769 (1999). Studies have shown that men of color have borne the brunt of harsher domestic violence laws. In Milwaukee County, Wisconsin, for example, although African-Americans represented only 24% of the total population, they constituted 66% of domestic violence arrests. Sarah M. Buel, *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AM. U. J. GENDER SOC. POL’Y & L. 309, 319 (2002). See also Coker, *supra* note 189, at 1034–35 (noting that “disproportionate numbers of African American and somewhat lower but still disproportionately high numbers of Latinas/os are the subject of criminal justice intervention in domestic violence cases” (citations omitted)).

226. See Laureen Snider, *Criminalising Violence Against Women: Solution or Dead End?*, 74 CRIM. JUST. MATTERS 38, 38 (2008) (“Assault complaints today are taken seriously by police, prosecutors, judges, and juries—particularly when the victim is middle class, white, gainfully employed or still at school; living with her parents if under 20, or a ‘chaste woman,’ ‘faithful wife,’ and ‘good mother’ if living with a man . . . women without the moral, social, and economic capital . . . still face scepticism and demonization.” (citation omitted)).

227. RACHEL E. MORGAN & BARBARA E. OUDEKERK, U.S. DEPARTMENT OF JUSTICE BUREAU OF JUSTICE STATISTICS CRIMINAL VICTIMIZATION 8 (2018), <https://www.bjs.gov/content/pub/pdf/cv18.pdf> [<https://perma.cc/LC64-7H2P>].

228. TK LOGAN & ROBERTA VALENTE, NAT’L DOMESTIC VIOLENCE HOTLINE, WHO WILL HELP ME? DOMESTIC VIOLENCE SURVIVORS SPEAK OUT ABOUT LAW ENFORCEMENT RESPONSES 2 (2015), <http://www.thehotline.org/resources/law-enforcement-responses> [<https://perma.cc/2GMB-X2BV>].

229. Elise Buchbinder, *Moment of Truth*, END DOMESTIC ABUSE WIS. (July 14, 2020, 4:50 PM), <https://www.endabusewi.org/moment-of-truth/> [<https://perma.cc/9ZHA-T88A>].

vestment and reallocation” and a “rigorous commitment to and participation in . . . community solutions and supports.”²³⁰

The move away from a predominantly carceral approach to addressing intimate partner abuse has arisen because

[c]riminalization shifts responsibility for policing domestic violence from the community to the state. While that initial move grew out of community failures to sufficiently protect people from abuse, the result has been to relieve communities of any responsibility for or ability to hold citizens accountable without resorting to the criminal legal system.²³¹

Reflecting upon the lessons learned from the overcorrection from under-enforcement to over-enforcement of domestic violence laws can be instructive for current efforts to dispossess domestic violence offenders of their firearms. Leaders and decisionmakers should learn from the mistakes of the past and avoid going down the same, arguably ineffective, path.

Fortunately, non-carceral interventions against domestic violence, including community-based alternatives to arrest and prosecution, exist. The primary responses are transformative justice and restorative justice (RJ), both of which “challenge punitive, retributive criminal responses to gender violence.”²³² Transformative justice seeks “resolutions within more intimate systems of community or civil society . . . [relying] upon the leadership and interests of marginalized communities.”²³³ Restorative justice describes “any process in which the victim and offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”²³⁴

RJ is not concerned with determining whether a crime occurred, but instead, whether harm was committed. The goal “is not to punish the offender, but rather to engage the offender in whatever measures are required to restore the victim.”²³⁵ In other words, RJ practices are not intended to adjudicate or establish guilt; they aim to rehabilitate the re-

230. *Id.*

231. Goodmark, *supra* note 73, at 73–74.

232. Kim, *supra* note 201, at 225. Although transformative and restorative justice are distinct from criminal justice approaches, scholars argue that “most RJ programs have been institutionalized within conventional criminal justice systems, often coupled with diversionary practices or as an alternative sanction within them,” blurring the distinction between the two and potentially compromising the ideals of RJ. William R. Wood & Masahiro Suzuki, *Four Challenges in the Future of Restorative Justice*, 11 VICTIMS AND OFFENDERS 149, 154 (2016).

233. Kim, *supra* note 201, at 226 (citation omitted).

234. Economic and Social Council Res. 2002/12 (July 24, 2002).

235. Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 74 (1999).

sponsible party and “address the impact of harmful behavior and actions to repair and prevent future harm.”²³⁶

RJ therefore shifts “the focus from an adversarial binary of victim and perpetrator to one that acknowledges the impact of harm not only on individuals but on broader communities.”²³⁷ Donna Coker describes an RJ process that exemplifies this type of community accountability: the Family Group Conferencing process involves not only the person responsible for the harm and the victim, “but also ‘supporters’ (i.e., friends or family members of the responsible person and the victim/survivor), and in some programs, professional staff (e.g., counselor, addiction treatment professionals) and trained community members.”²³⁸ As such, “while RJ processes focus on the responsibility of individuals who *directly* caused the harm, the process has the potential to reach and change larger systemic causes of harm and to tap community resources to repair harms.”²³⁹

As the domestic violence advocacy community continues to navigate the journey from underenforcement, to a singular focus on a criminal justice response, back to equilibrium, it is clear that community-based interventions that involve collective solutions or engage the perpetrator without involving the state are critical. Indeed, such approaches may return the anti-domestic violence movement to its roots, as early feminist groups were non-hierarchical and resisted collaboration with the state, which the groups viewed as having protected abusers and ignored survivors.²⁴⁰ As discovered in this author’s prior research, one of the most intractable issues regarding enforcement of domestic violence gun prohibitions is that those with a history of criminal justice involvement who do not trust the system often do not admit to firearm ownership or otherwise comply with orders to surrender firearms.²⁴¹ As such, utilizing multidisciplinary anti-carceral and coordinated community-wide responses in an effort to change social norms surrounding both intimate partner violence and guns may be a necessary and useful alternative approach.

V. COMMON THEMES

Although public health, international human rights, and anti-carceral feminism appear on the surface to be disparate unrelated areas, several common themes relevant to intimate partner violence and firearms exist. This Part details those key commonalities.

236. Donna Coker, *Restorative Responses to Intimate Partner Violence*, in COMPAR. DISP. RESOL. 48 (Maria Federica Moscati, Michael Palmer & Marian Roberts eds., 2020).

237. Kim, *supra* note 201, at 225. RJ is used in the United States, but “largely practiced within and sanctioned by the criminal justice system.” *Id.* at 226.

238. Coker, *supra* note 236, at 47.

239. *Id.* at 48.

240. See LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN 31–33 (2008).

241. See Nanasi, *supra* note 45.

A. *Carceral Approaches Alone Cannot Ensure that Domestic Violence Offenders are Dispossessed of Firearms*

The most significant commonality between the three theories described in this Article is that they all move beyond seeing intimate partner violence, guns—and the intersection of intimate partner violence and guns—as a problem for only the carceral state to solve. Alternative approaches such as “[p]ublic health strategies are necessary . . . because the criminal justice system has not been completely effective.”²⁴² Despite years of attempting to address domestic violence by arresting and prosecuting perpetrators, rates of recidivism remain high.²⁴³ Similarly, “federal attempts to confront daily gun violence have relied heavily on the criminal legal system, and all have failed to significantly decrease gun homicides.”²⁴⁴ Although “researchers and policy makers are . . . shifting toward evidence-based approaches to [domestic] violence prevention, . . . the dominance of the criminal law paradigm—ineffective and harmful as it may be—is stubbornly persistent.”²⁴⁵

Public health, international human rights, and anti-carceral feminism all demonstrate that programs and policies that move beyond the criminal justice system can be successful. As Camille Davidson notes, “[w]hen public health strategies are combined with criminal justice remedies, the end result is a more proactive approach to domestic violence that relies first on preventative measures and uses criminal remedies as a backup.”²⁴⁶ If, for example, the reason offenders are not surrendering their firearms, as required by law, is because they are not safe in their neighborhoods, working to make their neighborhoods safer is likely a more effective solution than arresting them for noncompliance. As activist and sociologist Beth E. Richie explains, “[a]ll we say is ‘call 911’ . . . [b]ut (carceral feminists) oft-failed to tell victims, ‘call your local housing authority, and there will be mandatory housing for you’ or ‘call your local childcare center, and we’ll make sure your kids get adequate care.’”²⁴⁷

242. Camille M. Davidson, *What’s Love Got to do With It?: Examining Domestic Violence as a Public Health Issue Using Their Eyes Were Watching God*, 81 UMKC L. REV. 867, 876 (2013).

243. Martha Coulter & Carla VandeWeerd, *Reducing Domestic Violence and Other Criminal Recidivism: Effectiveness of a Multilevel Batterers Intervention Program*, 24 VIOLENCE & VICTIMS 139, 140 (2009).

244. Taylor King, *Address Gun Violence by Going After the Root Causes*, BRENNAN CTR. FOR JUST. (Apr. 14, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/address-gun-violence-going-after-root-causes> [<https://perma.cc/2SAE-UJDL>] (describing initiatives launched under Presidents Trump and Obama that relied heavily on the criminal justice system to reduce gun violence and failed to meaningfully decrease gun homicides).

245. GOSTIN & WILEY, *supra* note 57, at 506.

246. Davidson, *supra* note 242, at 868.

247. Kevin Gross, *Carceral Feminism and the Flaws of Punishment-Based Policy*, DEPAULIA (May 10, 2015), <http://depauliaonline.com/nation/2015/05/10/carceral-feminism-and-the-flaws-of-punishment-based-policy> [<https://perma.cc/MG6L-AT7F>].

The approaches addressed in this Article also serve to reframe the problems of intimate partner and firearms violence from ones to be solved by focusing on incarcerating one person towards solutions that implicate society at large. Put another way, “[t]he emphasis on criminal justice maintains focus on the individual: the crime is a discrete crime against an individual woman and the remedy applies to her situation alone.”²⁴⁸ But public health, international human rights, and non-carceral approaches recognize “that domestic violence is not a problem between individuals, affecting only them, and for which they, alone, are responsible, but . . . a problem that affects us all.”²⁴⁹

The decades-long effort to reduce gun violence in historically disadvantaged neighborhoods reveals the range of possibilities for disarming domestic abusers and provides models for programs to effectuate that goal. A broad spectrum of options exists. On one end of the spectrum is suppression, or the “attempt to extinguish violent behavior with aggressive law enforcement alone.”²⁵⁰ On the other are programs that eschew law enforcement cooperation, focusing exclusively on the provision of community-based social services. And in the middle are hybrid models that utilize “focused deterrence,” a “blended strategy of law enforcement, community mobilization, and social service actions.”²⁵¹

Focused deterrence was pioneered by Oakland Ceasefire, a partnership between community members and law enforcement. Ceasefire community partners provided social services to those deemed most likely to engage in gun violence but “narrowly targeted law enforcement actions [were also] taken against those individuals who continue[d] to engage in violent crime.”²⁵² Proponents of focused deterrence describe it as a way to give potential offenders “something to say yes to,” while leaving

248. Polavarapu, *supra* note 204, at 135.

249. Aiken & Goldwasser, *supra* note 5, at 143.

250. Jeffrey A. Butts, Caterina Gouvis Roman, Lindsay Bostwick & Jeremy R. Porter, *Cure Violence: A Public Health Model to Reduce Gun Violence*, 36 ANNU. REV. PUB. HEALTH 39, 40 (2015). An example of a suppression program is Boston’s Operation Ceasefire. The initiative included “a direct law enforcement attack on illicit firearms traffickers . . . and an attempt to generate a strong deterrent to gang violence.” U.S. DEP’T OF JUST., REDUCING GUN VIOLENCE: THE BOSTON GUN PROJECT’S OPERATION CEASEFIRE 1 (2001), <https://www.ojp.gov/pdffiles1/nij/188741.pdf> [<https://perma.cc/643Q-RTMM>]. Community organizations’ participation was limited to their delivery to targeted gang members law enforcement’s message that “violent behavior (especially gun violence) would evoke an immediate and intense response.” *Id.* at 3.

251. Anthony A. Braga, David Weisburd & Brandon Turchan, *Focused Deterrence Strategies and Crime Control*, 17 CRIMINOLOGY & PUB. POL’Y 205, 206 (2018).

252. MIKE MCLIVELY & BRITTANY NIETO, GIFFORDS L. CTR., A CASE STUDY IN HOPE: LESSONS FROM OAKLAND’S REMARKABLE REDUCTION IN GUN VIOLENCE 25 (2019), <https://giffords.org/lawcenter/report/a-case-study-in-hope-lessons-from-oaklands-remarkable-reduction-in-gun-violence/> [<https://perma.cc/W4G4-3KTW>].

“[p]olice [to] deal with the most persistent offenders” who don’t.²⁵³ More broadly, the goal is to both deter specific offenders “(i.e., specific deterrence) . . . [and set] an example that persuades others in the community to avoid illegal behavior (i.e., general deterrence). Both approaches depend heavily on the power of the state to punish criminal behavior.”²⁵⁴

Focused deterrence has also been employed in efforts to address intimate partner violence. One example is the Offender Focused Domestic Violence Initiative in High Point, North Carolina. Through the Initiative, offenders were “provided access to resources to address any issues which may somehow contribute to their violent behavior,” what leaders referred to as a “a message of opportunity.”²⁵⁵ At the same time, “offenders were made aware of the swift, certain, and potentially severe consequences for new [intimate partner domestic violence] offenses.”²⁵⁶ The program resulted in a 20% reduction in both intimate partner violence-related calls to police and intimate partner violence arrests.²⁵⁷ Recidivism, however, was not impacted.²⁵⁸

Critics argue that the twin aims of focused deterrence are mutually exclusive—that “positioning police and prisons as the principal antidote discourages seeking [and funding] other responses, including community interventions and long-term organizing.”²⁵⁹ Moreover, they claim that programs “using aggressive law enforcement strategies . . . exacerbate trauma and mistrust of law enforcement in communities of color that can contribute to gun violence in the first place.”²⁶⁰ In the wake of such critiques, several gun violence prevention organizations that do not involve any law enforcement cooperation have emerged.

One such program is Advance Peace, whose eighteen-month Peace-maker Fellowship provides fellows—young adults identified as likely to be perpetrators and/or victims of gun violence—with life coaching, social services navigation, internship opportunities, financial assistance, and

253. Casey Parks, *Portland’s High Stakes Experiment to Shrink the Role of Police in Fighting Gun Violence*, THE TRACE (Sept. 10, 2020), <https://www.thetrace.org/2020/09/portland-police-racism-gun-violence-shootings-data-hardesty/> [https://perma.cc/S4SL-7F4S].

254. Butts, Roman, Bostwick & Porter, *supra* note 250, at 40.

255. Stacy M. Sechrist & John D. Weil, *Assessing the Impact of a Focused Deterrence Strategy to Combat Intimate Partner Domestic Violence*, 24 VIOLENCE AGAINST WOMEN 243, 263 (2018). Resources provided by community partners included “batterer intervention treatment, substance abuse and mental health treatment, job readiness training, educational opportunities, housing needs, and others.” *Id.*

256. *Id.* at 247.

257. *Id.* at 259–60.

258. *Id.* at 260.

259. Law, *supra* note 200.

260. JASON COBURN, DEVONE BOGGAN & KHAALID MUTTAQI, ADVANCE PEACE AND FOCUSED DETERRENCE: WHAT ARE THE DIFFERENCES? 3 (2020), <https://www.advancepeace.org/wp-content/uploads/2020/08/ap-focused-deterrence-v1-1.pdf> [https://perma.cc/486C-4YPK].

other resources.²⁶¹ The model is high-touch, with daily check-ins to ensure that fellows receive the support they need for success.²⁶² Indeed, success has been achieved. The American Public Health Association reported that after the program began in Richmond, California, “violent gun crime declined by 43[%] and gun deaths dropped by 55[%].”²⁶³

Like Advance Peace, Cure Violence, a global violence reduction organization, employs outreach workers who “help connect high-risk individuals to positive opportunities and resources in the community, including employment, housing, recreational activities, and education.”²⁶⁴ The organization explicitly situates its work in an anti-carceral and public health framework, explaining that it “attempts to stop the transmission of violence in a manner similar to that of public health interventions designed to curtail epidemics or to reduce the impact of harmful behavior such as smoking or overeating.”²⁶⁵

Although Advance Peace and Cure Violence work with at-risk perpetrators of gun violence, with a focus on those who are gang-affiliated, their work is relevant here. Community-based work across state and national borders and outside the carceral framework can serve as a model for organizations who work with perpetrators of intimate partner violence, to whom similar services and incentives could be provided to turn over firearms and cease engaging in violent behavior.

B. *Prevention is Critical*

Addressing the root causes of social problems in order to prevent violence is at the heart of each of the three theoretical frameworks addressed in this Article. Efforts in the international human rights sphere to combat intimate partner abuse implicate not just the violence itself, but the underlying and interconnected conditions that cause it, primarily the lack of social and economic rights.²⁶⁶ Human rights advocates believe that equalizing the “‘rights deficit’ that exists for so many domestic violence victims who seek holistic protection for the long-haul: safe and secure housing, physical and mental health care, job security, and child care” is the best way to keep them safe.²⁶⁷

Relatedly, opponents of the carceral state have long argued that incarceration is inadequate to address domestic violence because jailing offenders “does not impact the broader problem of gender inequality, and existing societal power structures persist.”²⁶⁸ A law enforcement-centric

261. *Id.* at 2.

262. *The Solution*, ADVANCE PEACE, <https://www.advancepeace.org/about/the-solution/> [<https://perma.cc/5C46-EPQF>] (last visited July 13, 2022).

263. Parks, *supra* note 253.

264. Butts, Roman, Bostwick & Porter, *supra* note 250, at 41.

265. *Id.* at 40.

266. See Bettinger-López, *supra* note 111, at 74–75.

267. *Id.* at 75.

268. Polavarapu, *supra* note 204, at 135 (footnote omitted).

approach does not address the systemic causes of violence and abuse, or structural drivers such as socioeconomic inequality, food and housing insecurity, or misogyny. Addressing them, advocates argue, is what can prevent future violence from occurring.

As public health experts note, creating safe and healthy environments can be one of the most effective tools for preventing both gun and intimate partner violence.²⁶⁹ “Firearm violence by private actors has a strong socio-economic dimension,”²⁷⁰ as does intimate partner violence, which is exacerbated by economic insecurity.²⁷¹ Like the seat belt laws championed by public health officials, alleviating poverty and ameliorating living conditions can prevent harm from occurring in the first place. As the U.N. Human Rights Council recommends, implementing “[programs] that bring together social services, [healthcare] and law enforcement professionals and community workers [can] address and counter the root causes of firearm violence among civilians.”²⁷²

Grassroots organizations working to prevent firearms and intimate partner violence are increasingly employing such prevention-focused models. Advance Peace has implemented a public health approach in its mission to reduce gun violence, one which “recognizes gun violence as a disease.” It emphasizes prevention-based strategies that stop “the ‘transmission’ and spread through a combination of behavioral and structural interventions, meaning a focus on legal, policy and social norm change.”²⁷³ Similarly, Men Stopping Violence, a nonprofit organization that works to end men’s violence against women, “believes that an analysis of the interconnection of oppressions is critical to ending violence against women and girls”²⁷⁴ and has incorporated prevention-focused methods into its work.²⁷⁵

269. See *supra* Section II.A.

270. IN THE LINE OF FIRE, *supra* note 124, at 35. See also *Civilian Acquisition*, *supra* note 11, ¶ 55 (“[R]esearch indicates that urban armed violence is related to poverty, inequality, unemployment, youth maladjustment, and the prevalence of firearms.”).

271. See Greer Litton Fox & Michael L. Benson, *Household and Neighborhood Contexts of Intimate Partner Violence*, 121 PUB. HEALTH REPS. 419, 424 (2006). See also Aiken & Goldwasser, *supra* note 5, at 158–59 (“[S]tudies have . . . consistently shown that [court] orders have less effect on men with prior criminal histories, men who are unemployed, and men who have substance abuse problems.” (citation omitted)).

272. *Civilian Acquisition*, *supra* note 11, ¶ 63.

273. COBURN, BOGGAN & MUTTAQI, *supra* note 260, at 3.

274. *About*, MEN STOPPING VIOLENCE, <https://www.menstoppingviolence.org/about/> [https://perma.cc/S2CT-YYLD] (last visited July 20, 2022).

275. See Ulester Douglas, Lee Giordano & Greg Loughlin, *Men Stopping Violence’s Definition of Male Sexual Violence Against Women: Implications for Prevention and Intervention*, in HANDBOOK OF INTERPERSONAL VIOLENCE ACROSS THE LIFESPAN 2 (Robert Geffner, Jacquelyn W. White, L. Kevin Hamberger, Alan Rosenbaum, Viola Vaughn-Eden & Victor I. Vieth eds., 2020).

C. Solutions Must be Community-Based

The final unifying theme between the three substantive areas addressed in this Article is the central role of communities, particularly those most impacted by intimate partner and gun violence, in preventing and addressing harm. “[P]ublic health encourages connectedness,”²⁷⁶ international human rights turn our customarily insular focus outward, and anti-carceral feminism seeks community, as opposed to law enforcement, solutions to intimate partner abuse.

Perpetrators are more likely to surrender their firearms if they are provided information, services, and counsel from those they trust. This can be offered by community-based organizations or in partnership with the “faith-based organizations, neighborhood associations, [and] tenant councils” that are critical to both public health initiatives and restorative justice models.²⁷⁷ These groups can serve as a safer and more effective alternative to state solutions, especially when programs are tailored to the needs of specific communities and situate those most affected by the violence and harm perpetrated by firearms and against intimate partners at the center of the advocacy.²⁷⁸

Community-based programs can also draw on the expertise and authority of respected leaders or authority figures. Such voices are critical because “it is necessary to ensure that those who engage in norm management are trusted by the people whose norms are at issue.”²⁷⁹ Men Stopping Violence uses trusted messengers—other men who have perpetrated violence against their intimate partners—in its efforts to prevent and address domestic abuse. It seeks to build “accountability among men and with communities” by “engaging and mobilizing men as catalysts for change.”²⁸⁰ Many organizations seeking to end gun violence in their communities have also implemented this approach, training and deploying “violence interrupters,” individuals who intervene in conflicts before they escalate.²⁸¹ Cure Violence, for example, selects violence interrupters “for

276. GOSTIN & WILEY, *supra* note 57, at 19.

277. Butts, Roman, Bostwick & Porter, *supra* note 250, at 42.

278. See CLOSE TO HOME, *supra* note 114, at 7. International human rights provides instruction and support for this tailored and victim-centric approach. As Caroline Bettinger-López states, “[t]he human rights framework pushes us to consider whether our country’s current response to domestic violence, based largely upon a criminal justice model, is really a one-size-fits-all solution for protecting victims, especially those from communities that have troubled histories with law enforcement.” Bettinger-López, *supra* note 111, at 21.

279. Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2049 (1996).

280. About, MEN STOPPING VIOLENCE, <https://www.menstoppingviolence.org/about/> [<https://perma.cc/GTS3-7LZD>] (last visited June 4, 2022).

281. *Who are the Violence Interrupters?*, NAT’L INST. OF JUST. (Oct. 28, 2009), <https://nij.ojp.gov/topics/articles/who-are-violence-interrupters> [<https://perma.cc/J5CF-SPQ8>].

their own experiences with crime and violence.”²⁸² “Ideally, [hailing from] the same communities in which they are working,” they “are hired for their ability to establish relationships with the most high-risk young people.”²⁸³ Similarly, Advance Peace fellows are “credible messengers”²⁸⁴ who work with “street outreach workers”²⁸⁵ providing social services and access to programs. Such interventions have proven successful; “[i]n Baltimore, former gang members who served as mentors and violence interrupters helped reduce the homicide rate in four neighborhoods.”²⁸⁶

A strength of community-based approaches is that community is where education occurs and norms change. Changing norms is a focus of international human rights and public health models, and through one-on-one or small group conversations facilitated by organizations in neighborhoods across the U.S., change is happening. For example, Men Stopping Violence’s “Manhood Revisited” workshop “explores an alternative” to “destructive and sexist notions of masculinity . . . whose core principle is respect for self, others and the community.”²⁸⁷ Similarly, Cure Violence “seeks to create individual-level and community-level change in communities where it is a norm for young people to carry a gun.”²⁸⁸

The core of these organizations’ work is building accountability,²⁸⁹ re-envisioning what it means to be a man, and reconceptualizing how “real” men deal with problems (i.e., not with a gun or through perpetrating violence). In short, they seek to “instill anticonflict and antiviolence norms throughout the community.”²⁹⁰ Transforming the “behavior and attitudes” of one person can not only impact that individual, but also demonstrate to the community at large “that there are more acceptable and less harmful ways to resolve personal conflicts and disputes.”²⁹¹ And it is this strengthening of anti-violence social norms that can both prevent and reduce violence.²⁹²

282. Butts, Roman, Bostwick & Porter, *supra* note 250, at 41.

283. *Id.*

284. COBURN, BOGGAN & MUTTAQI, *supra* note 260, at 2.

285. *Id.*

286. Parks, *supra* note 253.

287. *Our Training*, MEN STOPPING VIOLENCE, <https://www.menstoppingviolence.org/dinners/ovmv/#> [<https://perma.cc/CN3A-PX8F>] (scroll to bottom of page and click on “Our Training” to view hover image with this citation’s information) (last visited July 20, 2022).

288. Butts, Roman, Bostwick & Porter, *supra* note 250, at 40.

289. *About*, MEN STOPPING VIOLENCE, <https://www.menstoppingviolence.org/about/> [<https://perma.cc/64HB-39E6>] (highlighting the organization’s “practice of building accountability among men and with communities”) (last visited July 13, 2022).

290. Butts, Roman, Bostwick & Porter, *supra* note 250, at 41.

291. *Id.* at 40.

292. See JOHN JAY COL. CRIM. JUST., RSCH. AND EVALUATION CTR., REDUCING VIOLENCE WITHOUT POLICE: A REVIEW OF RESEARCH EVIDENCE 8–11 (Nov. 2020), https://johnjayrec.nyc/wp-content/uploads/2020/11/AV20201109_rev.pdf [<https://perma.cc/KJ39-FHVW>].

Human rights and public health approaches demonstrate that through targeted and thoughtful community action, what may seem aspirational can, in fact, be achieved. And shaping “behavior by relying on the normative power of the social environment rather than on the coercive power of law enforcement and prosecution” achieves anti-carceral aims as well.²⁹³

Lastly, the community-based approaches championed by public health experts, human rights advocates, and anti-carceral feminists bring together groups that might not otherwise collaborate, thereby building the capacity of grassroots organizations and providing more holistic services to those in need. For example, the Mississippi Workers Center for Human Rights “saw in human rights a way to link the disparate and at times even antagonistic strands of civil rights and economic justice.”²⁹⁴ A human rights framework has brought together domestic and international organizations, while anti-carceral feminist theories have, in the search for alternatives to law enforcement, led to the building of coalitions among domestic violence advocates and other social justice organizations, such as those providing housing or transportation services.²⁹⁵

Collaboration between community organizations allows them to address “multiple forms of violence [and engage] with multiple social movements, including movements for racial and economic justice, as well as gender and reproductive justice, to center those who have been most marginalized at the core of the work.”²⁹⁶ Community partnerships can also highlight “the interrelatedness and co-occurrence of multiple forms of violence,” (i.e., that gun violence and intimate partner violence are interconnected) which can in turn “strengthen the shared community determinants that protect against these forms of violence.”²⁹⁷

CONCLUSION

Law enforcement-focused efforts to disarm domestic abusers have not yielded meaningful results. Wagging our fingers at abusers and threatening, “we will convict you if we find you with a gun,” has not only failed to convince them to surrender their firearms, but has made survivors less safe

293. Butts, Roman, Bostwick & Porter, *supra* note 250, at 48–49.

294. CLOSE TO HOME, *supra* note 114, at 13.

295. For example, INCITE! uses “a human rights framework in addressing violence against women of color,” which has led it to provide “community services such as micro credit, health care, education, etc.” *Community Accountability Working Document: Principles/Concerns/Strategies/Models*, INCITE! (Mar. 5, 2003), <https://incite-national.org/community-accountability-working-document/> [<https://perma.cc/7PYR-VRDK>].

296. LISA FUJIE PARKS, CASEY CASTALDI, RACHEL DAVIS, JULIETTE PRICE, ALISHA SOMJI & MORGAN CROCE, PREVENTION INSTITUTE, A HEALTH EQUITY AND MULTISECTOR APPROACH TO PREVENTING DOMESTIC VIOLENCE 53 (2017), https://www.preventioninstitute.org/sites/default/files/publications/PI_DV_0726.pdf [<https://perma.cc/3BF2-SP4J>].

297. *Id.*

in the process. As the United Nations Human Rights Council states, “[w]hile regulatory measures are an essential and effective measure for reducing the risks inherent in civilian access to firearms, they are not always successful on their own because they do not fully address the larger social, cultural, and economic factors driving firearm violence.”²⁹⁸

It is therefore time to explore alternative approaches. As Amnesty International explained in a recent report, “[l]ong-term, adequately funded, evidence-based projects, tailored towards specific social, economic and cultural contexts and working in partnership with the affected communities, are needed if sustained reductions in firearm violence are to be achieved.”²⁹⁹ We have tried to threaten domestic violence offenders into compliance with gun laws, but the evidence suggests that engaging with them through trusted messengers, providing resources and opportunities, and committing to long-term efforts to change norms around both intimate partner violence and gun ownership may prove more effective.

The most significant obstacle remains political will. Experts assert that “[c]ommunity groups might reduce gun violence just as well as police officers do, but civic leaders have never deeply invested in them, and researchers haven’t studied them as rigorously as they have law enforcement.”³⁰⁰ Because “[t]he only enduring commitment cities have made is to the police and criminal legal system, . . . they become the default plans in dealing with violence over time.”³⁰¹ But public health, international human rights, and anti-carceral feminist theories demonstrate that another way is possible, that alternative mechanisms exist to improve the enforcement of laws intended to protect survivors of domestic abuse from gun violence.

Cass Sunstein has described law as having an “expressive function,” meaning that the objective of law can sometimes be to “make a statement,” as opposed to change or control behavior.³⁰² In the area of intersection between intimate partner and gun violence, however, symbolism is insufficient. Compliance and enforcement are necessary because lives are at stake. Guns cannot be allowed to remain in the hands of those who have

298. *Civilian Acquisition*, *supra* note 11, at ¶ 45. The Council also notes an issue that is particularly relevant in the United States—that “regulatory measures often meet stiff resistance in States where many individuals feel that gun ownership is at the heart of personal and national identity while also being crucial for personal security.” *Id.*

299. *IN THE LINE OF FIRE*, *supra* note 124, at 33.

300. Parks, *supra* note 253.

301. *Id.*

302. Sunstein, *supra* note 279, at 2024. Sunstein does not advocate that law be used solely to make a statement, noting that “[o]ften[,] law’s ‘statement’ is designed to move norms in fresh directions.” *Id.* at 2051. “[W]ithout desirable effects on social norms,” he argues, “there is not much point in endorsing expressively motivated law.” *Id.* at 2047. *See also* Richard Albert, *The Expressive Function of Constitutional Amendment Rules*, 59 *MCGILL L.J.* 225, 228–29 (2013) (arguing that the rules that govern constitutional amendment express constitutional values).

demonstrated that they cannot be trusted with them. The theories and ideas detailed in this Article can serve as a guide to achieve that important goal.

