# I. Background: Gap Theory and The Contested Role of Reputation

How much should regulatory intervention should there be into consumer contracts and markets? There is persistent debate over this question among scholars, regulators, and courts. On one side of the debate stand those who firmly support stronger, more substantive, regulation of consumer contracts and markets. These regulation proponents rely on the accumulating evidence that almost no one reads the fine print and that, as a consequence, sellers insert one-sided terms into their agreements.[[1]](#footnote-1) On the other side of the debate stand those who believe in free markets and in the ability of competitive forces to discipline sellers. Market competition, so the argument goes, will ensure that sellers offering harsh terms to consumers will be driven out of the market.[[2]](#footnote-2) This argument receives even more support from the rise of information technology, and with it the promise of “gossip at scale.”[[3]](#footnote-3)

Furthermore, several prominent scholars have argued that even terms that seem harsh and one-sided on paper may not be harmful to consumers after all, because reputational considerations will constrain sellers from enforcing harsh terms to the letter. Why, then, do these one-sided terms survive at all in competitive markets? According to the theory which I term “the gap theory,”[[4]](#footnote-4) these harsh terms protect sellers against opportunistic consumers. Sellers’ ability to enforce these more severe contracts as written allows them to weed out those consumers who would take advantage of a more generous policy to extract benefits that the seller did not intend to offer.[[5]](#footnote-5)

Under the gap theory, sellers should be allowed to adopt one-sided terms in view of the inherent asymmetry between sellers and consumers. While sellers are constrained by reputational forces, buyers typically are not. Consumers may therefore abuse a seller’s policy term without incurring reputational costs, while sellers will not be able to insist on enforcing the policy to its fullest extent against the consumer without harming their reputations in the market.

The gap theory reflects the broader belief in the ability of competitive market forces, and reputation in particular, to discipline sellers. According to gap theory proponents, reputational constraints will ensure that sellers selectively enforce harsh terms *only* against opportunistic consumers, while departing from the formal agreement to the benefit of the remaining, non-opportunistic consumers.[[6]](#footnote-6)

Sellers’ ability to adopt harsh terms on paper is important under this view, as courts are ill-equipped to distinguish between opportunistic and non-opportunistic buyers. Given the courts’ limited ability to identify the exact circumstances of a given case, it can be expected that sellers will offer contracts lacking terms benefiting the buyer. However, sellers will concurrently have an informal policy of allowing concessions not required by the contract. This descriptive theory therefore also has a normative prong: when consumer misbehavior is observable to sellers but non-verifiable, or verifiable only at a high cost, to courts, sellers should be allowed to use seemingly one-sided terms, since these terms will allow them to behave efficiently.[[7]](#footnote-7)

 Importantly, according to the gap theory, sellers’ willingness to depart from a one-sided contract is not limited to interactions with repeat customers. Sellers that are repeat players in the market, with expectations of doing business with other consumers, may be discouraged them from enforcing one-sided terms to the letter even if these sellers do not expect to have further dealings with a particular consumer.[[8]](#footnote-8)

 The gap theory assigns a pivotal role to reputation. Reputation should be trusted to constrain sellers from insisting on enforcing the contract when dealing with non-opportunistic consumers. Yet, recently, several scholars have questioned the ability of reputation to adequately discipline sellers on multiple grounds.[[9]](#footnote-9) It is true that a business’s concern for reputation can be expected to dissuade it from behaving unfairly towards consumers. In addition, online information, including sites and blogs that provide customer reviews and ratings, is readily available to consumers, now more than ever before.[[10]](#footnote-10) Yet, even today, the flow of information in consumer markets is far from perfect. We live in a world of fake and biased reviews. Even when online reviews are genuine, there are often substantial disagreements between consumers and experts,[[11]](#footnote-11) and even among consumers reviewing the same product.[[12]](#footnote-12) In fact, the disciplining force of reputation has recently been challenged by those who claim that we have reached a point of “reputation failure,” not only because reputational information is neither reliable nor accurate, but also because it is systematically skewed to the extremes.[[13]](#footnote-13)

Second, there are serious questions regarding consumers’ ability to accurately process reputational information and draw meaningful conclusions from it. The task of properly assessing reputational information is inevitably challenging because a seller’s reputation is affected by a myriad of factors, including the quality of the product, the quality of the paper contract, and sellers’ behavior in practice.[[14]](#footnote-14)

The effectiveness of reputational information becomes even more questionable in the particular context of the gap theory. It is unclear that consumers will be sufficiently incentivized to post information about sellers’ departures from the written agreement when reviewing a product online.[[15]](#footnote-15) Furthermore, even if online information is available, consumers might not be able to infer that sellers *systematically*, rather than sporadically, depart from the four corners of the agreement in consumers’ favor.[[16]](#footnote-16) Hence, sellers might have an incentive to enforce harsh terms to the letter even when dealing with non-opportunistic consumers.

The question of whether or not sellers depart from the contractual language when dealing with non-opportunistic consumers has enormous practical significance. If sellers in practice insist on their contractual rights vis-à-vis consumers, even at the risk of affecting their reputations, rather than selectively enforce these terms only against opportunistic buyers, regulation of the contents of standardized agreements may be warranted after all.

Despite the practical significance of the gap theory, as far as this author is aware, it has not yet been tested in the field. This paper represents a first step in filling this gap, relying on retail stores’ return policies as a case study. Building on a combination of observational data and field experiments, this paper investigates potential discrepancies between the “paper deal”—retail stores’ formal return policies—and the “real deal”—retailers’ return practices on the ground.

There are two main reasons for this paper’s focus on retailers’ return policies. First, return policies have been used as the ideal example in the gap literature.[[17]](#footnote-17) Bebchuk and Posner, for example, use this example in their model. Jonston devotes an entire section to “retail sales return policies,” and Becher and Zarsky open their recent article, “Minding the Gap,” with the example of a vendor that stipulates a “no refund and no returns” policy, yet exhibits accommodating behavior.[[18]](#footnote-18) Second, by focusing on retail stores’ return policies on paper and in practice, this paper informs the ongoing debate over whether and how to regulate consumers’ withdrawal rights in the retail market. The next section describes this debate, while also providing background to the study by briefly presenting the legal framework governing consumers’ withdrawal rights in the United States.

# Study 2: The Paper Deal—Real Deal Gap

Study 1 reveals a significant variation across stores in terms of their return policies’ leniency, even with respect to the same product market. Retailers’ return policies vary considerably across all leniency dimensions, and, all other factors being equal, higher quality goods are accompanied by better contract terms. These findings suggest that reputational forces drive sellers to offer more generous return policies to consumers who are willing to pay for them.

Study 2 shifts the focus of the inquiry from the paper deal to the real deal. While the findings so far suggest that return policies vary considerably on paper, the question is whether they also vary considerably in practice. Relatedly, Study 2 is targeted at examining whether, when sellers *do* adopt relatively harsh terms on paper, they are willing to depart from the letter of the contract in order to satisfy consumers.

Study 2 accordingly focuses on two main questions. First, it explores whether, as the gap theory suggests, retailers frequently and systematically deviate from their paper policies in favor of non-opportunistic consumers. Second, it explores several potential determinants of the gap between the “paper deal” and the “real deal.” In particular, it focuses on three types of factors: store characteristics, the paper policy, and consumers’ assertiveness.

The first group, store characteristics, consists of all characteristics that were found to significantly influence the contents of retailers’ paper policies. The study examines the effect of stores’ luxuriousness, experience, and type (local or chain) on their propensity to favor consumers by selectively enforcing or setting policy terms. The hypothesis here is that more luxurious and established stores will be more likely to exercise leniency, in addition to being more lenient on paper, because the quality of their service is measured not only by the paper policy, but, perhaps even more importantly, by their treatment of consumers on the ground.

The second group of factors pertains to retailers’ paper policies. Here, the study includes two sets of inquiry. The first examines whether overall paper policy leniency is significantly associated with the gap between the paper and the real deal, even when store characteristics are controlled for. There are two competing predictions here. One prediction is that, all else being equal, those stores that adopt more lenient policies overall are also more likely to exercise forgiveness. The rationale behind this prediction is that stores that choose to adopt a relatively lenient policy on paper may do so because they believe that offering a generous return policy will attract new consumers and keep existing consumers satisfied. In turn, these stores may allow their store clerks discretion to behave even more leniently than the formal policy requires in order to please consumers.

In contrast, a second, competing prediction is that stores that adopt harsher policies on paper are more likely to deviate from such policies. This is because stores that choose to adopt a harsher paper policy may do so for its ex ante chilling effect on consumers (i.e., stores would set a strict return policy to try to discourage consumers from making attempted returns). However, such stores would still like to keep customers satisfied if they try to make returns ex post. Relatedly, stores would face competitive pressures to deviate from their harsher policies in order to compete with stores offering more lenient terms, or with the market norms, that, in turn, shape consumers’ expectations.

The second set of inquiry pertains to whether particular policy terms are stickier than others in terms of the gap. Put differently, are some terms associated with a greater likelihood of deviation than others? In particular, this study explores whether harsher no refund policy terms are more or less likely to be deviated from, compared to more lenient terms that require receipts for refunds or returns.

The third potential determinant of the gap, and of return outcomes more generally, pertains to consumer behavior. Specifically, the study explores whether more assertive consumers are more likely to be treated more favorably than the paper contract requires. While it is expected that consumer assertiveness will increase the likelihood that sellers will exercise leniency, the more interesting question concerns the magnitude of the effect, and whether consumer assertiveness interacts with other determinants of the gap. In particular, the study explores whether assertiveness plays a larger role in more luxurious and established stores, the hypothesis being that these stores are more likely to try to please disgruntled consumers in view of reputational considerations than are more casual and less established stores. In addition, the study examines whether complaining interacts with the type of store—local or chain. One prediction is that chain stores are more likely to deviate from their formal policies when consumers complain than are local stores, because complaining consumers can easily harm the entire chain’s reputation by posting a bad review online. Yet, a competing prediction is that chain stores are more likely to strictly adhere to their policies, regardless of whether consumers complain, while local stores will have more leeway to deviate from their policies.

## Methodology & Design

To shine empirical light on the gap theory, pairs of testers, both white American females around the same age and wearing casual clothes, were sent to return clothing items to 140 retail stores located in Chicago,[[19]](#footnote-19) following a memorized script.[[20]](#footnote-20)

The stores were audited by six testers,[[21]](#footnote-21) and the composition of pairs varied from audit to audit.[[22]](#footnote-22) Data collection took place between March and April 2019, well after the holiday season, so as to avoid potential changes in stores’ return policies that typically occur during that season.[[23]](#footnote-23) Each pair of testers visited the same store twice together, usually within a few days of one another. After leaving each store, the testers filled in a detailed report describing the outcomes of the attempted returns.[[24]](#footnote-24)

In testers’ first visit to each store, they attempted to return a clothing item in its original packaging and condition, with tags attached, but *without the receipt*. If asked for the receipt, testers were instructed to say that they thought they had the receipt with them, but they had looked for it and could not find it.[[25]](#footnote-25) They were then instructed to await the store clerk’s response. If the store clerk agreed to provide a refund, testers were instructed to thank the clerk and leave the store. If, however, they were denied the return or were offered anything other than a refund, testers were instructed to ask to speak to a manager. If the store clerk refused to call a manager or identified him or herself as the manager, or if a manager came to see them, testers were instructed to ask once again for a refund. If still denied a refund, testers were to thank the clerk or manager and leave the store.

This design, and particularly testers’ continued bargaining, facilitates the testing of the interaction between consumer assertiveness and the gap.

In testers’ second visit to each store, they attempted to make *receipted* returns. Adding the “receipt treatment” was meant primarily to allow for testing of whether sellers deviate from their formal policies by providing refunds when consumers present their receipts in stores with harsh no refund policies.

The purpose of the study is to identify systematic, rather than sporadic deviations from the paper policy. The possibility exists that in some of the stores, store clerks deviated from the formal policy by mistake, and not as a result of a systematic store policy allowing for store clerk discretion on the ground. In order to mitigate this concern for random divergences from the paper policies, two auditors were sent to each of the stores, and the analysis includes only those stores in which both testers obtained identical return outcomes in both treatments. This methodological approach is also targeted at mitigating the concern that, despite attempts to control for uniform tester behavior and demographics, as described below, testers must have inevitably differed to some degree. After discarding some tests due to inconsistent outcomes, deviations from the script, or scheduling difficulties, the final sample includes 380 observations from 95 stores.

In order to minimize the possibility of non-uniform bargaining, particular attention was paid to issues of experimental control. A major goal of the study was to choose uniform testers and to train them to behave in a standardized manner. Testers were chosen to satisfy the following criteria for uniformity:

1. *Race:* All testers were white;
2. *Gender:* All testers were female;
3. *Age*: All testers were twenty-two to thirty-years-old;
4. *Education*: All testers had between one and four years of college education;
5. *Dress*: All testers wore casual attire during the audits: jeans, T-shirt, and minimal make-up;
6. *Contact Information:* If asked by the store clerk, each tester provided a fictitious name and address. Importantly, testers were instructed to pay in cash and to refrain from providing any identifying information at the purchase stage, so that store clerks would not be able to obtain information about them from the store’s databases.

All testers attended a training session with the author and research team before visiting the stores. The training included not only memorizing the tester script, but also participating in mock negotiations designed to help testers gain confidence and learn how to negotiate and answer questions uniformly. The script anticipated that store clerks would ask questions, and gave testers a list of contingent responses to questions that might be asked. Testers were accompanied by project coordinators to the stores. The coordinators ensured that testers were following the script and accurately reporting the results.

## The Sample

The sample includes stores with varying degrees of return policy leniency. In particular, the sampled stores vary across two important dimensions. The first is *money leniency*. While 76% of the stores in the sample allowed consumers to return items for refunds, the remaining 24% had a strict no refund policy. The second dimension of difference is *effort leniency*. While 59% of the stores in the sample required that consumers present their receipts for any return or exchange, the remaining 41% allowed consumers to receive store credit or make an exchange even without showing a receipt.

Based on this variation across stores, they were classified as having harsh, moderate or lenient paper policies. Harsh policy stores are those with a strict no refund policy. Importantly, these stores, which comprise 24% of the sample, allow consumers to return non-defective items for exchange or store credit within a designated time period conditional on showing a valid receipt. Lenient policy stores provide refunds to consumers if they meet the return conditions (e.g., if they are able to present a valid receipt), while also allowing consumers to return items for exchange or store credit *without* a receipt, all within a designated time period. These stores comprise 41% of the sample. The remaining stores, 35% of the sample, have a moderate policy, providing refunds to consumers if they meet the return conditions, while requiring valid receipts for any exchange or return.

|  |  |  |
| --- | --- | --- |
|  | Money LeniencyAre refunds allowed? | Effort LeniencyAre non-receipted returns accepted (for store credit or exchange)? |
| Harsh Policy Stores | No | No |
| Moderate Policy Stores | Yes | No |
| Lenient Policy Stores | Yes | Yes |

The study accordingly explores the prevalence of the following deviations from the paper policy in favor of consumers:

|  |  |  |
| --- | --- | --- |
| Is there a pro-consumer gap? | Money Leniency | Effort Leniency |
| Harsh Policy Stores | Are refunds provided? Yes = gap | Are non-receipted returns accepted?Yes = gap |
| Moderate Policy Stores |  | Are non-receipted returns accepted?Yes = gap |
| Lenient Policy Stores |  | Are non-receipted refunds accepted?Yes = gap |

The next section presents the results. It first reports on the prevalence of pro-consumer gaps at the initial stage. It then explores the effect of complaining on the gap by comparing testers’ outcomes at the initial, pre-complaining, stage to their outcomes at the final, post-complaining stage. Finally, it reports the results of multivariate analyses aimed at testing other determinants of the gap, while focusing on store characteristics.

## Results

### Is there a Gap?

Overall, with scenarios of both demanding a receipt and accepting the lack of a receipt, at the initial, pre-complaining, stage, store clerks deviated from their stores’ formal policies in 26% of the stores. In 23% of these stores, the deviation was in the consumer’s favor, while in 3% it was to the consumer’s detriment.

Table \_\_ presents testers’ return outcomes across the different types of stores. Pro-consumer gaps are highlighted in bold, and pro-seller gaps are underlined.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Store Type | Treatment | Return Denied[[26]](#footnote-26) | Exchange/Store Credit Only | Refund Offered |
| Harsh (No Refund) | No Receipt  | 91% | **9%** | 0% |
| Receipt | 0% | 96% | **4%** |
| Moderate(Receipt required for *any* return) | No Receipt  | 64% | **33%** | **3%** |
| Receipt | 0% | 0% | 100% |
| Lenient (Receipt required for refund only) | No Receipt  | 8% | 74% | **18%** |
|  | Receipt | 0% | 0% | 100% |

As the table shows, when testers came without receipts to stores with harsh no refund policies, 100% of these stores refused to provide them with refunds. These results did not significantly change when testers came with receipts: 96% of the harsh policy stores still adhered to their formal no refund policies. At the same time, as many as 36% of the moderate policy stores, requiring receipts for all returns or exchanges, accepted testers’ returns notwithstanding their failure to show a receipt, while 3% of them provided non-receipted refunds.[[27]](#footnote-27) Finally, as many as 18% of the lenient policy stores, demanding a receipt for a refund, offered a refund notwithstanding testers’ failure to present a receipt.

It may also be informative to look at the proportion of deviations from each of the policy terms under scrutiny. While harsh no refund policy terms were deviated from in only 4% of the stores with such a term when a receipt was presented, the more lenient policy terms, requiring receipts for any exchange or return, were deviated from in 25% of the stores with such a requirement. And finally, a refund was provided despite failure to show a receipt in 14% of the stores requiring a receipt for a refund.

These differences in policy terms’ stickiness are plausibly related to the costs and benefits to retailers of deviating from their policy terms. As the findings reveal, harsh no refund policies are typically adopted by local retailers operating only one or two shops in Illinois.[[28]](#footnote-28) These retailers plausibly adopt such policies despite their potential negative effect on sales because the costs of refunding consumers for returned items exceed the benefits of encouraging consumers to buy at the shop by adopting a more lenient return policy. Stores that choose to adopt harsh no refund policies despite the associated risk of discouraging consumers from making purchases at these stores, and despite these terms’ relative salience to consumers, probably do so because of the high depreciation costs they would incur if they allowed consumers to return items for a refund. This is probably also the reason behind these stores’ strict enforcement of their harsh no refund policies vis-à-vis consumers.

Importantly, however, the general inference from the findings is that a significant minority of sellers departs from the paper contract in consumers’ favor, at least when dealing with non-opportunistic, yet one-time, consumers.

Although stores’ likelihood of offering concessions varies across contexts, consumers are often treated significantly more favorably than the formal return policies require. The following sections investigates possible determinants of the observed gap, with the next section exploring whether consumer behavior, and, in particular, the pattern of consumers’ bargaining, affects the likelihood that stores will depart from their formal policies. The paper then turns to focus on the seller and the role of store characteristics in shaping outcomes on the ground.

### Complaining and the Gap

This section explores the impact of consumer bargaining behavior on the gap. The study’s prediction was that displaying assertiveness by complaining to the store’s management will increase the chances that sellers will offer concessions.

 To test the effect of consumer assertiveness on the gap, testers were instructed to continue to bargain with the store clerk if denied a refund at the initial stage. Testers escalated assertiveness levels throughout the bargaining process, asking to speak to a manager and then asking the manager for a refund. This experimental design enables testing for the interaction between consumer assertiveness and the gap by comparing testers’ initial return outcomes to their final outcomes after complaining.

The results reveal that consumer assertiveness plays a major role in determining sellers’ leniency in practice. As expected, complaining significantly affected the on the ground behavior of stores, regardless of whether or not testers actually saw a manager. Yet, the magnitude of the effect is striking. While only 23% of the stores treated testers more leniently than the policy required at the initial stage before the testers had asked to speak to management, 27% of the stores treated them more leniently than required by the policy after testers had complained but before they had seen a manager, and as many as 37% of the stores treated testers more favorably at the final stage, after most testers had spoken with a manager.[[29]](#footnote-29) Importantly, complaining significantly improved consumers’ likelihood of both receiving refunds in stores with no refund policies and of having their returns accepted in stores with a receipt requirement, notwithstanding their failure to show a receipt.[[30]](#footnote-30)

In the 9% of the stores that provided refunds to testers at the initial stage, testers did not register any complaint. It is therefore instrumental to compare the rates of pro-consumer gaps within only those stores in which testers complained, before and after complaining.[[31]](#footnote-31) This comparison reveals, once again, that complaining had a significant and strong effect on the gap, almost doubling the rates of pro-consumer gaps in these stores: 25% of the stores behaved more leniently than required by the contract after consumers had complained, compared to only 14% of them at the pre-complaining stage.[[32]](#footnote-32)

Notably, testers spoke to a manager in 77% of the stores that responded to complaints by relaxing their return policies. When looking only at the stores in which testers bargained with the manager, complaining had a similar effect, increasing the rates of pro-consumer gaps from 16% to 24%.[[33]](#footnote-33)

We can also compare the results of those who asked to see a manager but had their request denied to the outcomes of those who indeed spoke with the store’s manager. As anticipated, those who saw a manager obtained higher rates of concessions than did those whose requests to see a manager were denied, although this difference was not statistically significant: 24% of the stores in which consumers saw a manager exhibited a pro-consumer gap, compared to 17% of those in which testers’ requests to see a manager were denied.[[34]](#footnote-34)

When delving into differences among stores based on their paper policies, complaining significantly improved testers’ return outcomes among the harsh and moderate policy stores,[[35]](#footnote-35) but not among the lenient policy stores, plausibly because they were already relatively generous towards consumers. However, even in stores with lenient policies, complaining operated in the expected direction of improving consumers’ outcomes.

When examining the effect of complaining on sellers’ deviations from each of the observed policy terms, the results reveal that complaining had no effect on consumers’ chances of obtaining a refund notwithstanding a clear no refund policy, regardless of whether or not they had presented valid receipts. Yet, complaining significantly increased consumers’ chances of receiving an exchange or store credit despite their failure to present receipts, from 25% to 39%.[[36]](#footnote-36) Finally, complaining significantly increased consumers’ chances of receiving non-receipted refunds in stores that required receipts for refunds, from 11% to 17%.[[37]](#footnote-37)

In summation, the results reveal that complaining significantly increased consumers’ chances of obtaining concessions not required by the contract. However, it is important to note that complaining had only a limited effect. It did not change consumers’ return outcomes in the vast majority of stores (63%). And the results of complaining depended on the type of return policies the store had, so that in the context of the harsh no refund policies, complaining did not improve outcomes at all, while in the context of the other, more lenient policy terms, it had a significantly greater impact.[[38]](#footnote-38)

### Possible Implications of the Complaining Effect

The results reveal that complaining significantly increased the probability that the seller would depart from the formal policy to the consumer’s advantage. While it is expected that assertiveness will improve outcomes, the magnitude of the effect was remarkable. Complaining almost doubled the consumer’s chances of obtaining concessions not otherwise required by the contract.

What can explain the immense role of assertiveness in shaping stores’ leniency on the ground? There are two possible explanations for the observed effect. First, sellers interesting in rewarding good customers while discouraging bad ones may use customer assertiveness as a proxy for the underlying claim’s merits.[[39]](#footnote-39) Consumers who complain most often and loudest may be presumed to be those who are most inconvenienced by the failure of the product or service to meet their expectations. By waiting for the consumer to make the first move by complaining, the company effectively lets the high-value, high-information consumers identify themselves.

Under a second, less positive scenario, sellers might create obstacles to recovery and then accede to the demands of the occasional insistent buyer, regardless of the underlying claim’s merits.[[40]](#footnote-40) Put differently, sellers may use the gap to attract and keep the business of insistent consumers without giving every consumer the same benefits it gives the insistent consumers. Indeed, some consumers may not even realize that they can obtain concessions by complaining to the seller. Notably, these two approaches are not necessarily mutually exclusive. In fact it is possible that they coexist and complement one another. Sellers may use consumer assertiveness both as a proxy for the claim’s merit and as a screening device, allowing them to satisfy only the consumers that complain without bearing the costs of providing concessions to all consumers.

In either case, the strategy of allowing employees to respond to consumer complaints with various forms of concessions not required by the contract is a cost-minimizing way for a store to increase the probability that it will both keep the business of insistent consumers and prevent such consumers from tarnishing its reputation (through social media, for example). Segmenting insistent and non-insistent buyers this way, the seller can save costs by offering the benefits only to those insistent buyers who expect them and would not buy the product without them.

Ultimately, sellers will engage in cost-benefit analyses and will decide accordingly about whom to treat more favorably than the contract requires. These decisions will necessarily hinge on the inevitable compromise between the reputational harm and inconvenience sellers will incur from enforcing unwanted terms on buyers and the costs saved from refusing to make concessions. Consumers who complain and continue to bargain might increase sellers’ costs of adhering to the contract for several reasons. First, in the short term, insistent consumers might create more confusion and inconvenience for the clerks and managers in the store. Second, insistent consumers are more likely to generate reputational harm to the seller than those who relent and acquiesce. And third, complainers might refrain from entering into future transactions with the seller.

### Store Characteristics and the Gap

This section explores whether various store characteristics are associated with a higher likelihood of a pro-consumer gap. In particular, it tests the predictions that more luxurious and established stores will be more likely to depart from their formal policies even when keeping the paper policy fixed, and that chain stores will be more likely to apply a pro-consumer gap than will local stores.

The first proposition, that more luxurious and established stores will be more likely to exercise leniency on the ground, even when the paper policy is controlled for, is based on the premise that these stores’ reputations derive not only from their formal policies, but also, perhaps even mainly, from their willingness to deviate from these policies when facing dissatisfied consumers.

This prediction was supported by a series of qualitative interviews conducted by this author in preparation for the field experiment. For example, a former store clerk at Saks Fifth Avenue mentioned, in response to the author’s question as to whether she ever deviated from the store’s formal return policy, that: “It’s up-scale so they want to be very customer friendly. So they were much more bendable with the rules, and they are an expensive store so they don’t want to lose a customer fighting over $30.”[[41]](#footnote-41) More casual stores, in contrast, build their reputations by offering lower prices. Therefore, they will likely offer no discretionary benefits but charge lower prices.[[42]](#footnote-42) Similarly, a former store clerk at the Bally luxury shoe store told this author that:

In a high-end luxury you didn’t want to lose a good client. If you have a good client come back in, more so with the women than men, saying “you know, I’ve worn these shoes for a couple of weeks, and they really itch, and I tried to make adjustments, but they’re just not really working for me,” you’re not gonna (sic) lose someone spending $25,000 a year at your store over a $500 pair.[[43]](#footnote-43)

The second prediction, that chain stores will be more likely to engage in pro-consumer gaps than local stores, is based on the premise that chain stores, like more luxurious and established stores, are likely to suffer higher reputational losses from refusing to cater to their customers’ demands. Local stores, at the same time, are likely to deviate from their policies when facing repeat customers in order to maintain their loyalty. But, when dealing with one-time customers, chain stores are more likely to behave leniently than are local stores, either because, unlike many local sellers, they would be unable to distinguish between one-time and recurring customers, or because even one-time customers might harm their reputation by telling others what happened through social media. These informational channels are likely to affect local sellers to a lesser degree. Finally, local sellers typically incur higher depreciation costs in terms of their lower ability to resell or return non-defective items to the manufacturer, and are therefore likely to adhere to their policy terms, while chain stores have more flexibility to deviate from the same terms, which they adopt primarily to deter opportunistic consumers from bringing claims.

A series of simple and multivariate regression analyses was used to explore these hypotheses and to evaluate the determinants of the gap.

In the first set of regressions, the dependent variable receives 1 if a pro-consumer gap was applied by the audited store, and 0 otherwise. The explanatory variables are the following store characteristics:

1. *Luxuriousness:* Stores were classified as discount, mainstream, or luxury stores based on the median prices of clothing items posted on their websites.[[44]](#footnote-44) Discount stores were defined as all stores with median prices in the lower 25th percentile (i.e., lower than $26). Mainstream stores were defined as all stores withe median prices between the 25th and 75th percentiles (i.e., between $26 and $70), and luxury stores were defined as all stores with median prices in the upper 25th percentile (i.e., above $70);
2. *Store Type:* Whether the store is local (0) or part of a chain (1);
3. *Experience:* As calculated as years of operation since establishment;
4. *Size*: As calculated by annual revenues (included as control);
5. *Policy Type*: Harsh, moderate or lenient (included as control).

Table \_\_ reports the results of six multivariate regression models. In Models One and Two, the dependent variable is assigned 1 if a pro-consumer gap was applied by the audited store, and 0 otherwise. Model One looks at return outcomes at the first, pre-complaining stage, while Model Two looks at the final return outcomes, post-complaining. In models Three and Four, the dependent variable is whether a refund was provided notwithstanding the formal paper policy of either demanding receipts or denying refunds, while Model Three looks at outcomes at the first stage and Model Four looks at outcomes at the final stage. Finally in models Five and Six, the dependent variable is whether non-receipted returns were accepted despite testers’ failure to show a receipt, while looking only at the moderate and harsh policy stores that require a receipt for any return. Model Five looks at first stage outcomes, while Model Six looks at the final stage. Across all regression models, the dependent variable is regressed on all store characteristics, while controlling for policy type.

[table to be included].

The results reveal that, consistent with the study’s predictions, luxury stores were significantly more likely to depart from their formal policies than were both mainstream and discount stores.[[45]](#footnote-45) In addition, and as expected, the more established the store was, the more likely it was to behave more leniently than the formal policy dictated.[[46]](#footnote-46) Finally, chain stores were significantly more likely to apply pro-consumer gaps than were local stores.[[47]](#footnote-47)

Surprisingly, controlling for all other determinants, smaller stores were more likely to provide refunds despite testers’ failure to meet the policy requirements than were larger stores. It is possible that, all other factors being equal, smaller stores need to behave more forgivingly in order to be able to compete with the larger stores. This relationship should be further explored in future studies.

[Graphs to be included]

### The Paper Deal and the Gap

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The study also tests the prediction that, controlling for store characteristics, stores with more lenient policies on paper are more likely to deviate from their already lenient policies in favor of consumers than are stores with harsher return policies. This may be because a generous return policy on paper may reflect the store’s lenient approach to consumer returns in practice, and the emphasis it puts on satisfying consumers’ demands.

For the purpose of testing this prediction, a series of multivariate regressions was conducted. The regressions use stores’ overall leniency score as the explanatory variable, while controlling for store characteristics and policy type. The dependent variable is valued at 1 if a pro-consumer gap was applied by the audited store, and 0 otherwise. Models One and Two regress the dependent variable on the policy leniency score, while controlling for the store’s policy type. Model One uses initial return outcomes as the dependent variable, while Model Two uses final return outcomes as the dependent variable. These models reveal that policy leniency is significantly associated with stores’ propensity to apply pro-consumer gaps. A one point increase in a policy’s overall leniency score is associated with an 8% increase in the likelihood of a gap at the initial stage (*p* < 0.01), and with a 7% increase in the likelihood of a gap at the final stage (*p* < 0.05). Remarkably, overall policy leniency is significantly associated with the probability of a gap at the final stage (*p* < 0.1) even after controlling for all other determinants of the gap. This suggests that the stores’ paper policies are significantly associated with the gap regardless of stores’ characteristics, indicating that stores that adopt a more lenient paper policy are also more willing to deviate from it in order to satisfy consumers on the ground.

[table to be included]

## Discussion of Study 2 Findings

The results show that pro-consumer gaps persist across various types of retail stores, including chain and local, large and small, luxurious and casual. While gaps are more prevalent in some contexts and stores than in others, the general conclusion is that a significant proportion of retailers behaves more leniently towards non-opportunistic, one-time consumers than their formal policies require.

The results show that even clear, explicit terms operate as guidelines in practice, allowing store clerks to exercise discretion on the ground. These findings lend support to the theory that sellers often intentionally use one-sided terms in their standardized agreements in order to distinguish between different types of consumers through selective enforcement of these terms.

Why do some stores deviate from their formal policies in favor of consumers and others do not? The results show that several store characteristics are strongly associated with a higher likelihood of applying pro-consumer gaps. In particular, more luxurious, more established, and chain stores were more likely to depart from their policies when facing one-time, non-opportunistic consumers than were less luxurious, less established, and local stores.

Indeed, the more lenient stores were already significantly associated with more generous return policies on paper. Yet, even when keeping the paper policy constant across stores, more luxurious and established stores, and stores operating as part of a chain, were more likely to depart from their policies in order to cater to consumers’ demands. These findings suggest that product and store quality is signaled by, and reflected in, more generous return policies, both on paper and in practice.

The strategy of allowing employees the discretion to grant case-specific benefits beyond those required by standard form contracts can be seen as a sophisticated way for the firm to increase its revenues by gaining the loyalty of existing customers and establishing a good reputation that will attract new customers. Yet, despite this apparently encouraging picture, the findings presented in this study raise several major concerns.

One concern involves the finding that most stores do not depart from their formal policies, even when facing non-opportunistic consumers. Sellers were particularly reluctant to deviate from harsh policy terms. In fact, no refund policy terms were enforced in all but one of the stores that adopted such strict terms, regardless of whether or not consumers were able to show receipts. Yet, even in the context of the more lenient terms, the majority of stores strictly adhered to their formal policies. In fact, in 79% of the stores, store clerks initially refused to grant consumers *any concessions*; and in 91% of the stores, store clerks initially refused to refund consumers for the returned products.

While more luxurious and established stores were more likely to exercise leniency, even among these stores, the majority of sellers were unwilling to depart from the four corners of the agreement. And while consumers’ complaints significantly increased their chances of securing forgiving behavior, the majority of sellers refused to depart from the formal requirements even after consumers had complained, and, in most cases, even after consumers had bargained with the store’s manager.

The fact that sellers often refuse to grant concessions does not, in and of itself, imply that sellers’ adherence to their formal contract terms is inefficient. Admittedly, in competitive markets with no informational asymmetries, sellers have strong incentives to satisfy consumers. It may therefore seem unlikely that sellers will insist on enforcing harsh terms to the letter at the risk of driving away customers unless these terms reflect an efficient risk allocation between sellers and consumers. In the case of return policies, for example, the findings suggest that harsh no refund policies are often adopted by local sellers that typically incur high depreciation costs from facilitating returns because of their lower ability to resell used items or return them to the supplier.

While sellers’ insistence on following the contract to the letter may be efficient, even if the contract or term is unfavorable to the consumer, the results suggest that sellers’ departures from their contract terms might lead to inefficiencies and negative distributive outcomes both ex ante and ex post.

Ex ante, the variation in return outcomes across stores with identical paper policies leads to a “lemons” problem.[[48]](#footnote-48) Namely, consumers will be unable to distinguish between sellers that strictly enforce their paper policies and those that, by not doing so, provide higher quality services. This informational lacuna could distort consumers’ purchasing decisions. For example, consumers might buy items from a seller with a strict no refund policy even though they are aware that they may need to return the items to the seller, optimistically assuming that the seller will deviate from its policy, while, in fact, the seller is unlikely to demonstrate any leniency. At the same time, consumers might refrain from buying items from particular sellers because they may wrongly assume that these sellers enforce their policies to the letter, while, in fact, the latter often behave more leniently than their policy dictates.

Firms that enforce their terms to the letter will have no incentive to let consumers know that they provide lower quality services by virtue of their refusal to grant concessions. Sellers that systematically deviate from their policies when facing non-opportunistic consumers are apparently incentivized to advertise this practical leniency, thereby solving this lemons problem by distinguishing themselves from the stores that strictly adhere to the written agreement vis-à-vis all consumers. But if a store’s policy to systematically under-enforce its policy is made public, store clerks might not be able to fend off those opportunistic consumers against whom the formal policy was adopted to protect in the first place. The fact that non-lenient firms benefit from the behavior of lenient firms by guising themselves as such might, in turn, lower the incentives of firms to be lenient, thereby resulting in an equilibrium.

So why do gaps persist? One reason for the absence of a lemons equilibrium is the rise of online information flows. Stores’ policies to be lenient on the ground are often “exposed” online,[[49]](#footnote-49) but firms still use harsh paper policy terms in order to fend off opportunistic consumers. Another reason to use these harsh policy terms is their ex ante chilling effects on consumers. Even if it is known that a certain seller has the habit of departing from a specific policy term, the mere presence of the term may nonetheless encourage consumers to abide by it, while discouraging them from making claims ex post.

Note that even if there was a lemons equilibrium, such that consumers could not distinguish between high quality, lenient stores and low quality stores ex ante, stores will still be likely to apply a gap, because after the gap is applied, consumers will learn about it. Thus, applying the gap becomes a way in which to gain consumer loyalty and create a customer base. Even if low value consumers will ultimately buy at lower price stores, stores that apply a gap will still be attractive to the high value, sophisticated, and more assertive consumers.

The observed gaps may also lead to several inefficiencies at the post-contract stage. First, some consumers might be discouraged from even trying to obtain concessions from the seller that either vary from or directly contravene its formal policy. In the specific context of returns, consumers may be discouraged by the clear language of the policy and may consequently refrain from trying to return items to the seller if, according to the explicit terms of the policy, the items are not eligible for returns or if the consumers otherwise fail to meet the conditions set forth in the policy. In fact, sellers may adopt harsh contract terms precisely in view of this *in terrorem* effect on consumers.

Second, even if consumers do request concessions from sellers, the consumers may relinquish their claims once sellers refer them to the contracts that they had “agreed” to enter. It is important to note that in this study, store clerks referred testers to the formal policy in the vast majority of stores, including half of the stores in which a gap was ultimately applied. While testers were instructed to continue to bargain and complain despite initial rejections of their claims, other purchasers, perhaps most, would react to the store clerks’ initial negative responses dismissing their requests by acquiescing and accepting the formal contractual terms without dispute.

Yet, even if consumers do not relent and continue to bargain and complain, ultimately, if the seller remains firm in its decision to strictly enforce the agreement, consumers do not have any real ability to discipline the seller. Having no legal entitlement, consumers cannot even threaten to take legal action.

Some of these concerns may be addressed and mitigated through informational flows. For example, consumers may post online reviews that praise stores that exercise leniency while criticizing or shaming those that do not. Sellers, in turn, will be incentivized to depart from one-sided terms, fearing the risks of reputational harm, either from attempting to impose unwanted terms on buyers or from becoming known as inflexible when disputes arise. Yet, there are reasons to fear that these informational flows will be inadequate to support consumers’ ability to withdraw from a contract.

First, there is accumulating evidence suggesting that people are contract formalists, tending to believe that the contract is the final word. This preconception may be particularly strong in the context of standardized consumer agreements.[[50]](#footnote-50) As a result, consumers may not feel wronged by a seller’s adherence to the written policy, even if a seller is known for exercising leniency towards other consumers. In such cases, consumers may believe that the seller has a legitimate reason for failing to forgive or to respond to their complaints, reasoning that a store that enforces the terms of its contracts, even selectively, is merely doing what it has a contractual right to do.

Concurrently, when sellers depart from the contract in favor of consumers, consumers might not report this more lenient behavior because they may believe, perhaps erroneously, that the seller’s leniency was a one-time occurrence rather than strategic, albeit concealed, behavior. Indeed, consumers may reasonably assume that if the seller’s policy was one of leniency, the seller would put this policy in writing in order to increase sales.[[51]](#footnote-51) According to this line of reasoning, the question arises as to why would sellers advertise strict policies or terms that might discourage or scare away consumers, rather than more lenient terms that could encourage consumers to buy more, if sellers actually intended to behave leniently towards consumers at the post-contract stage. Consumers are unlikely to realize that sellers use these harsh terms in order to fend off opportunistic consumers. As a result, consumers may not share their experiences of sellers’ leniency with others. But even if they did provide information about sellers’ deviations from their formal policies on social media, other consumers may fail to realize that these deviations reflect a systematic inclination, rather than one-time deviations, for the same reasons mentioned earlier.

In addition to distorting consumers’ purchasing decisions, the ability to apply a gap might also lead sellers to adopt inefficient contractual risk allocations. Sellers may find it profitable to begin with an inefficient risk allocation that assumes that a sufficient number of buyers will not protest. Consequently, the combined costs of accepting the risk for insistent buyers and any reputational loss from alienating disappointed but non-insistent buyers are less than the cost of absorbing the costs of all defects. This despite the fact that absorbing the costs of all defects would be a more efficient risk allocation from a social welfare perspective.

In addition, the findings raise distributional concerns. The findings reveal that stores are nearly twice as likely to depart from the paper contract once consumers complain, but are otherwise likely to enforce harsh terms to the letter. This complaint-based segmentation of consumers effectively leads to the cross-subsidization of the complaining consumers by the more acquiescent, non-complaining consumers.

If consumer assertiveness is correlated with socio-economic status, this complaint-based discrimination might have troubling distributive implications. There is abundant evidence that people from lower socio-economic backgrounds and members of disadvantaged groups exhibit a lower sense of entitlement, a lower willingness to bargain over payoffs, and a higher inclination to accept unfavorable offers than do people from higher socio-economic strata.[[52]](#footnote-52) Similarly, race and gender were found to influence what people expect and feel they deserve, with blacks and females feeling significantly less entitled than whites and males.[[53]](#footnote-53)

In the particular context of contracts, empirical evidence suggests that low income, less educated consumers and those belonging to minority groups (e.g., black and female buyers) are more likely to feel bound by standardized agreements and to see the four corners of these agreements as the final word.[[54]](#footnote-54)

In the context of the gap, it is plausible therefore, that lower-income, less-educated consumers, as well as members of disadvantaged groups, will feel more discouraged or demoralized by the language of the contract or by sellers’ initial refusals to grant concessions. This, in turn, might lead to a troubling conclusion that in view of sellers’ selective enforcement of their formal agreements, poorer, less-educated consumers, and racial and gender minority groups ultimately cross-subsidize those consumers who are better-off.

These findings may inform the regulatory debate. Reputational theories suggest that no intervention in the contents of standardized agreements is warranted because “firms will not take advantage of the one-sided contracts” and will only “exceptionally […] stand by the letter of the contract.”[[55]](#footnote-55) Consequently, it is argued, “courts would do well to take a hard line in enforcing the terms of one-sided consumer contracts in the absence of evidence of fraud.”[[56]](#footnote-56)

According to this study’s findings, harsh and one-sided terms are frequently enforced vis-à-vis non-opportunistic consumers. As a result, regulatory interventions in the contents of standardized agreement may be warranted.

These findings also suggest that reputation plays a more major role among certain types of sellers but not among others. In particular, more luxurious, more established, and chain stores are more likely to behave more leniently to consumers, both on paper and in practice. It may therefore be warranted to focus regulatory efforts on those market players who, while controlling large shares of the market, are less constrained by reputational forces. These include discount stores, local stores, and less established stores.

The study’s findings also highlight the importance of regulatory audits, targeted at ensuring that sellers do not discriminate against non-assertive, less entitled consumers, or consumers belonging to lower socio-economic strata or to minority groups.

1. Radin, Boilerplate; Zamir & Ayres; take references from Arbel. [↑](#footnote-ref-1)
2. Relaxing the rationality assumption by acknowledging that consumers’ rationality is limited may also be grounds for regulatory intervention, even according to proponents of free markets. [↑](#footnote-ref-2)
3. Cite Arbel. [↑](#footnote-ref-3)
4. Manisha Padi has dubbed similar theories as the “option value theory,” but make a distinction for new information that is unobservable to the seller at the time of signing. I believe that in many cases, the gap is the outcome of the need to distinguish between consumers on a basis that is observable to sellers, but is non-verifiable to courts. [↑](#footnote-ref-4)
5. Id. [↑](#footnote-ref-5)
6. Bebchuk & Posner; Jonston; Gilllette. [↑](#footnote-ref-6)
7. Gillette Rolling Contracts 2004, p. 704; Becbuck & Posner. [↑](#footnote-ref-7)
8. Bebchuk & Posner 2. [↑](#footnote-ref-8)
9. See, e.g., Margaret Radin, Boilerplate, at 190-92; Zamir & Teichman, 311. [↑](#footnote-ref-9)
10. *See, e.g.,* Zamir & Teichman, Behavioral Economics and the Law, p. 311; Arbel, references in footnote 4. [↑](#footnote-ref-10)
11. Bart De Langhe et al., Navigating by the Stars: Investigating the Actual and Perceived Validity of Online User Ratings, 42 J. CONSUMER RES. 817 (2016) (Studying correlations between online reviews and scores provided by the magazine Consumer Reports, finding that “The average correlation is 0.18, and 34% of correlations are negative.”) [↑](#footnote-ref-11)
12. See, Arbel, at 6. [↑](#footnote-ref-12)
13. Arbel, Reputation Failure, at 5. [↑](#footnote-ref-13)
14. See, e.g., [↑](#footnote-ref-14)
15. Cite Becher & Zarsky. [↑](#footnote-ref-15)
16. See Becher & Zarsky, Minding the gap, at 14; Becher & Zarsky, E-Contract Doctrine, at 342. [↑](#footnote-ref-16)
17. [↑](#footnote-ref-17)
18. Id. [↑](#footnote-ref-18)
19. At first, 130 stores were randomly selected out of the sample of stores used in Study 1. Yet, since the original draw only included 13 stores with harsh no refund policies, 10 more stores with harsh no refund policies were randomly selected out of all no refund policy stores in the database and were added to the sample, resulting in a sample of 140 observations. [↑](#footnote-ref-19)
20. This audit technique (similarly to audit techniques used in “fair housing” tests and other discrimination studies) necessarily involves a certain degree of deception, and therefore inevitably raises important questions of research ethics (see Ayres, 1991; Fix and Struyk 1992). The study’s design sought to minimize the effects of the tests on sellers by conducting tests at off-peak hours (mid-afternoons during the week). In addition, in accordance with IRB instructions (and with the law in Illinois), the testers’ conversations with store clerks were not recorded or videotaped. Rather, testers recorded their audit results using survey forms prepared by the author. The survey forms are available in Appendix \_\_.\_\_\_. [↑](#footnote-ref-20)
21. [↑](#footnote-ref-21)
22. Rather than matching tester A with tester B for all tests, A was sometimes matched with B, sometimes with C, and so on. [↑](#footnote-ref-22)
23. For consistency, testers were instructed to audit the stores on weekdays in the afternoons. [↑](#footnote-ref-23)
24. In stores with harsh no refund policies, two different testers attempted to make receipted returns, so as to avoid the concern that sellers that had already refused to provide refunds in the no receipt treatment would be influenced by their prior decisions when testers returned with receipts. [↑](#footnote-ref-24)
25. See full instructions and script in Appendix \_\_\_. [↑](#footnote-ref-25)
26. Including cases where store clerks only allowed testers to exchange the item for a different size or color. [↑](#footnote-ref-26)
27. Three percent of these stores allowed for a refund, while the remaining 33% offered an exchange or store credit. [↑](#footnote-ref-27)
28. A regression of formal policy type on stores’ characteristics reveals that local stores are significantly more likely to adopt harsh no refund policies, compared to chain stores, even when controlling for the store’s age and size and for whether the store is public or private (*b =* 0.22, SE = 0.05, *p* < 0.001). [↑](#footnote-ref-28)
29. Importantly, 77% of the testers who had complained ultimately saw a manager, and the reported results also include those did not see a manager. [↑](#footnote-ref-29)
30. For refund: t = 1.64, df = 169, *p* = 0.052; for non-receipted returns: t = 1.78, df = 169, *p* < 0.05. [↑](#footnote-ref-30)
31. This means that all stores that provided refunds to testers at the initial stage (n = \_\_) are excluded from the analysis. [↑](#footnote-ref-31)
32. t = 1.86, df = 169, *p* < 0.05. [↑](#footnote-ref-32)
33. [↑](#footnote-ref-33)
34. T = 1.75, df = 97, *p* < 0.05. [↑](#footnote-ref-34)
35. For stores with moderate policies, complaining significantly improved the chances of receiving a non-receipted return or exchange, t = 1.7, df = 57, *p* < 0.05 (effect on refund rates was marginally significant: t = 1.46, df = 57, *p* < 0.1). For stores with harsh policies, complaining significantly improved the chances of receiving a non-receipted return or exchange, t = 2.2, df = 41, *p* < 0.05. [↑](#footnote-ref-35)
36. [↑](#footnote-ref-36)
37. [↑](#footnote-ref-37)
38. Add regression results—regression of gap on policy type, complaint, and interaction term. [↑](#footnote-ref-38)
39. See, e.g., Gillette 2004, p. 707; Jonston, 881. [↑](#footnote-ref-39)
40. See, e.g., Gillette 2004, p. 707 for a similar assertion. [↑](#footnote-ref-40)
41. Interview #7 with Leila (Saks Fifth Avenue) (recorded interview on file with the author). [↑](#footnote-ref-41)
42. This, in turn, might lead consumers who do not value the concessions that certain stores offer to switch to buying at stores that do not provide concessions, but offer lower prices. Still, some stores will continue to offer concessions as long as a sufficiently large group of consumers values these concessions and is willing to pay higher prices for them. These stores will be unlikely to change their formal policies, however, as they will still need to fend off opportunistic consumers by relying on the harsh paper terms to dismiss their claims. [↑](#footnote-ref-42)
43. Interview #4 with Michael (Bally shoe store) (recorded interview on file with the author). [↑](#footnote-ref-43)
44. Explain website scraping method using python + complementing python with manual coding in cases were websites blocked access. [↑](#footnote-ref-44)
45. Luxury stores were significantly more likely to apply pro-consumer gaps than were mainstream and discount stores, at both the initial, pre-complaining, and final, post-complaining, stages. These stores were significantly more likely to accept non-receipted returns, compared to both mainstream and discount stores. When examining the final return outcomes, luxury stores were also more likely to provide non-receipted refunds than were mainstream and discount stores. [↑](#footnote-ref-45)
46. This effect is driven by older stores’ greater likelihood of offering refunds notwithstanding testers’ failure to show a receipt. Older stores were not significantly more likely to allow for non-receipted returns more generally, as Models Five and Six show. [↑](#footnote-ref-46)
47. While chain stores were not significantly more likely to provide refunds, they were more likely (at the 10% significance level) to accept non-receipted returns at the final, post-complaining, stage. [↑](#footnote-ref-47)
48. Cite Akerloff and explain. [↑](#footnote-ref-48)
49. [↑](#footnote-ref-49)
50. [↑](#footnote-ref-50)
51. Cite Yonathan Arbel’s paper (Reputation Failure). Maybe Rory Van Loo’s work? [↑](#footnote-ref-51)
52. *See*, e.g., Jost et al., A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo, Political Psychology, 25(6) 881-919, 2004; Pelham & Hetts, Underworked and Overpaid: Elevated Entitlement in Men’s Self Pay, 37 Journal of Experimental Social Psychology, 92-103, 2001; Paul K. Piff, Wealth and the Inflated Self: Class, Entitlement and Narcissism (2014); Major (1994), from social inequality to personal entitlement; Hu et al., Low Social Status Decreases the Neural Salience of Unfairness (2014); O'Brien, L. T., & Major, B. (2009). Group status and feelings of personal entitlement: The roles of social comparison and system-justifying beliefs. In J. T. Jost, A. C. Kay, & H. Thorisdottir (Eds.), Series in political psychology. Social and psychological bases of ideology and system justification (pp. 427-443). New York, NY, US: Oxford University Press. Lareau, Annette, "Invisible Inequality: Social Class and Childrearing in Black Families and White Families," 67 Am. Sociological Rev. 747 (2002) (that particular logics of childrearing socialize middle and upper income white families to raise their children with a sense of entitlement and assertiveness to get what they want later in life, vs. childrearing strategies among the lower-classes and people of color, that tend to result in a lack of assertiveness or lack of a sense of entitlement, thereby limiting their access to educational and job opportunities later in life. [↑](#footnote-ref-52)
53. [↑](#footnote-ref-53)
54. Eigen? Hoffman? Furth-Matzkin & sommers. [↑](#footnote-ref-54)
55. Bebchuk & Posner, at 12. [↑](#footnote-ref-55)
56. Bebchuk & Posner, at 11. [↑](#footnote-ref-56)