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> Social psychologists and police officers tend to agree that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in run-down ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.[1]

INTRODUCTION

Communities throughout America are beset by increasing problems of gang violence. Once confined to inner cities, gang activities have erupted to threaten virtually all neighborhoods in America, turning formerly unfathomed acts of violence into familiar news stories.[2] Public schools have erupted into war zones;[3] individuals have been slain merely for wearing the wrong color;[4] entire communities have become virtual hostages because they live in a neighborhood that is the occupied "turf" of a criminal street gang.[5]

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1. James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29 (emphasis deleted).

2. *See* Susan Ferriss, *Teen Gangs: The Crazy Life Sweeping Sonoma County "Gangsta" Culture Is Steadily Catching on Among Bored Suburban Youth*, S.F. EXAMINER, Mar. 30, 1997, at D1 (explaining exportation of gangs from urban to suburban and rural communities). In fact, the estimated number of gang members in rural Sonoma County, California, increased from 300 in 1991 to 1050 in 1997. *See id.*

3. *See* J.R. Moehringer, *Littleton Killings Strike at Heart of U.S.*, L.A. TIMES, Apr. 29, 1999, at A1 (discussing school shootings by "trenchcoat mafia").

4. *See generally* FRED A. CLARK, TEENAGE STREET GANGS (1996) (discussing territorial aspects of gang clothing).

5. This scenario is depicted most vividly in the words of Justice Brown, writing for the majority in *People ex rel. Gallo* v. *Acuna*:

> Gang members, all of whom lived elsewhere, congregated on lawns, on sidewalks, and in front of apartment complexes at all hours of the day and night. . . . [O]penly drinking, smoking dope, sniffing toluene, and even snorting cocaine. . .[Residents] are subjected to loud talk, loud music, vulgarity, profanity, fistfights and the sound of gunfire echoing in the streets. Gang members take over sidewalks, driveways, carports, and apartment parking areas, and impeded traffic on public thoroughfares

The rising problem of gang violence has overwhelmed conventional law enforcement techniques. District Attorneys cannot combat criminal street gangs effectively because gang members intimidate potential witnesses into turning a blind eye to the criminal activities of the street gang.[6] One study has indicated that Los Angeles County, alone, had 150,000 gang members in 1992.[7] Another study has demonstrated that gang members outnumbered police officers at a ratio of six to one in Los Angeles County.[8] In short, in the midst of overwhelming lawlessness and violence, conventional law enforcement techniques are rendered ineffective in combating modern street gangs.[9]

Law enforcement agencies have been left with no choice but to search for more effective gang-prevention techniques.[10] The most effective of these new techniques is perhaps the most novel — enjoining the gang as a public nuisance. Although this practice was born in Los Angeles,[11] it first attracted notoriety when it was employed in a San Jose, California, neighborhood known as "Rocksprings," an area in which gang activity had reached a level of grim intensity.[12] Members of the Varrio Sureño Treces gang[13] literally took over Rocksprings, subjecting local residents to virtual mob rule.[14]

Residents of Rocksprings became prisoners in their own homes.[15]

> to conduct their drive-up drug bazaar. Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft are commonplace. . . . [R]esidents have had their garages used as urinals, their homes commandeered as escape routes; their walls, fences, garage doors, sidewalks, and even their vehicles turned into a sullen canvas of gang graffiti.

929 P.2d. 596, 601 (Cal. 1997), *cert. denied*, 521 U.S. 1121 (1998).

6. *See* Nick Anderson, *S.J. Makes Move to Reclaim Gang Territory*, SAN JOSE MERCURY NEWS, Mar. 10, 1993, at 1A (reporting traditional police methods have proven insufficient to control gang activity in San Jose); Richard L. Colvin, *Judge Issues Sweeping Injunction Against Gang*, L.A. TIMES, Apr. 8, 1993, at B1 (home ed.) (reporting deficiencies of traditional police techniques against gangs in Van Nuys).

7. *See* OFFICE OF THE DIST. ATT'Y, COUNTY OF LOS ANGELES, GANGS, CRIME AND VIOLENCE IN LOS ANGELES, at iv (1992) ("Los Angeles is generally acknowledged to have the worst street gang problem in the nation, if not the world"); *see also Susan L. Burrel, Gang Evidence: Issues for Criminal Defense*, 30 SANTA CLARA L. REV. 739, 743-44 (1990) (noting Southern California is facing "an unprecedented gang holocaust").

8. *See* CRIME, THE WILSON RECORD 7 (summarizing gang problem in Los Angeles County).

9. *See* Bureau of Investigation, Cal. Dep't of Justice, GANGS 2000: A CALL TO ACTION (1993) (noting substantial growth of gangs and need for more effective law enforcement).

10. Christopher S. Yoo, *The Constitutionality of Enjoining Criminal Street Gangs as Public Nuisances*, 89 N.W. L. REV. 212, 215 (1994) (discussing perceived necessity of anti-gang injunctions).

11. *See People* v. *Playboy Gangster Crips*, No. WEC 118860 (Cal. Super. Ct., Los Angeles County, Dec. 11, 1987) (issuing limited preliminary injunction against street gang).

12. *See generally* People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 596 (Cal. 1997).

13. Also known as Varrio Sureño Town or Varrio Sureño Locos. *See id.* at 611.

14. *See id.* at 601-02.

15. *See id.*

Their friends and family refused to visit.[16] They remained indoors, especially at night, and they did not allow their children to play outside.[17] A little girl who was allowed to play outside was threatened by Varrio Sureño Treces members, who told her they would cut out her tongue if she ever cooperated with the authorities.[18]

Rocksprings residents were overwhelmed by the problems created by gangs.[19] As a result, the San Jose City Attorney sought an injunction against the activities of the Varrio Sureño Treces gang on grounds that the gang was a public nuisance.[20] The trial court agreed with the City Attorney, and issued the injunction.[21] The injunction prohibited gang members from (1) congregating with other Varrio Sureño Treces members within Rocksprings; (2) trespassing or defacing the property of Rocksprings residents; and (3) harassing, intimidating, and annoying local residents of Rocksprings.[22]

Upon appeal of the injunction by the Varrio Sureño Treces members, the California Court of Appeal ruled that the "harassing, intimidating and annoying" language of the injunction was unconstitutionally vague and overbroad and that the prohibition of the gangmembers' congregating in Rocksprings violated their First Amendment right to free association.[23] The appellate court struck down fifteen of the twenty-four provisions of the injunction, including the prohibition of Varrio Sureño Treces members from congregating and the prohibition of gang harassment, intimidation, and annoyance of local residents.[24]

The City Attorney successfully sought review by the California Supreme Court.[25] The California Supreme Court, in *People* ex rel. *Gallo* v. *Acuna*[26] overturned the appellate decision.[27] Underscoring the critical gang problems in Rocksprings and throughout America, the California Supreme Court held that the anti-gang injunction was neither vague nor overbroad because its terms were reasonably clear in the con-

16. *See id.* at 602.

17. *See id.*

18. *See id.* at 624 (Mosk, J., dissenting).

19. As noted by Justice Brown, "[V]erbal harassment, physical intimidation, threats of retaliation, and retaliation are the likely fate of anyone who complains of the gang's illegal activities or tells police where drugs may be hidden." *Id.* at 602.

20. *See Acuna*, 929 P.2d at 601; *see also* CAL. CIV. CODE § 3479 (1997).

21. *Acuna*, 929 P.2d at 601; *see also infra* notes 80-89 and accompanying text (explaining specific terms of anti-gang injunctions).

22. *See Acuna*, 929 P.2d. at 624 n.3 (Mosk, J., dissenting) (setting forth specific terms of injunction against Varrio Sureño Treces gang).

23. *See id.* at 602 (discussing Court of Appeal's decision).

24. *See id.*

25. *See id.* (discussing procedural history of *Acuna*).

26. *Id.* at 596.

27. *See generally id.*

text of the Varrio Sureño Treces gang.[28] The Court also held that the anti-gang injunction did not violate the free association rights of the Varrio Sureño Treces members because there is no cognizable First Amendment right to free association implicated by membership in a criminal street gang.[29]

Although the Varrio Sureño Treces members sought *certiorari* by the United States Supreme Court, the writ was denied.[30] Thus, in California, anti-gang injunctions have become an established law enforcement tool.[31] In fact, California law enforcement agencies have welcomed anti-gang injunctions as the appropriate solution for an urban problem that has grown out of control.[32] The California Legislature has amended the California Street Terrorism Enforcement and Prevention Act to permit the California Attorney General to maintain an action against enjoined street gangs for damages.[33] Support for anti-gang injunctions in California has been fueled by its success as a weapon to combat gang activity.[34]

Not all, however, share these sentiments. Many commentators have criticized the California Supreme Court's decision in *Acuna*. These critics call the use of injunctive relief against gangs violative of the gang members' First Amendment rights to free association and free speech, as well as the right to due process of law.[35] The most impas-

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28. *See id.* at 618.

29. *See id.*

30. 521 U.S. 1121 (1998).

31. *See generally* Julie Gannon Shoop, *Gang Warfare: Legal Battle Pits Personal Liberty Against Public Safety*, TRIAL, Mar. 1998, at 12 (discussing acceptance of anti-gang injunctions in California).

32. *See id.* (quoting City Attorney, "[T]he injunction brought an overnight result"); *see also* Bergen Herd, Note, *Injunctions as a Tool to Fight Gang-Related Problems in California After People ex rel. Gallo v. Acuna: A Suitable Solution?*, 28 GOLDEN GATE U. L. REV 629, 675 (1998) (discussing success of anti-gang injunctions).

33. *See* CAL. PEN. CODE § 186.20 (1999).

34. Rocksprings residents were reported as finally feeling safe in their homes; arrests decreased by seventy-four percent; and violent crime dropped by eighty-four percent. Further, crime did not shift to surrounding areas, as some critics predicted. *See* Bergen Herd, Note, *Injunctions as a Tool to Fight Gang-Related Problems in California After People ex rel. Gallo v. Acuna: A Suitable Solution?*, 28 GOLDEN GATE L. REV. 629, 675-76 (1998); *see also* Shoop, *supra* note 31, at 12-13 (discussing anti-gang injunction as "overnight success").

35. *See infra* note 90 and accompanying text (explaining and addressing criticisms of injunctive relief against gangs); *see also* City of Chicago v. Morales, 119 S.Ct. 1849 (1999) (holding anti-gang restriction invalid under substantive due process principles); O.C. v. State, 722 So.2d 839, 841-42 (1998) (refusing to uphold sentencing enhancement for gang affiliation under constitutional principles). Unfortunately, a few who share these sentiments have resorted to accusations of racism against those who support the anti-gang injunctions. *See, e.g.*, Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249, 2268-78 (1998) (attributing anti-gang injunctions to aversive racism). Stewart implies that Justice Brown, writing for the majority in *Acuna*, was an aversive racist. *See id.* at 2276. Stewart was apparently unaware that Justice Brown is Afro-American.

sioned criticism of the *Acuna* injunction comes from Justice Mosk, the lone dissenter in *Acuna*. Justice Mosk apparently viewed the *Acuna* injunction as a racially-discriminatory deprivation of the rights of Latinos to free association under the First Amendment.[36] Justice Mosk complained that the injunction against the Varrio Sureño Treces gang "deprives a number of simple rights to a group of Latino youths."[37] Pointing to Benjamin Franklin's admonition that "[t]hey that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety,"[38] Justice Mosk concluded, *inter alia,* that the portions of the injunction limiting the gang's right to associate with one another should be stricken.[39]

Arguments that anti-gang injunctions are unconstitutional have been fueled recently by the United States Supreme Court decision in *City of Chicago v. Morales*.[40] In *Morales*, the Supreme Court determined the constitutionality of a "gang loitering" ordinance.[41] The Chicago ordinance prohibited individuals from loitering with gang members.[42] The ordinance defined "gang member" as any individual a police officer reasonably believes to be in a gang.[43] The ordinance defined "loitering" as "remain[ing] in one place with no apparent purpose."[44]

The court struck down the ordinance in a plurality opinion finding the definition of loitering unconstitutionally vague because neither citizens nor police officers could discern what constituted "remaining in one place with no apparent purpose."[45] The Court concluded that this vagueness did not provide insufficient notice of the prohibited conduct and consequentially allowed for arbitrary enforcement by the police.[46]

Morales, however, is not controlling on the issue of the constitutionality of anti-gang injunctions. Anti-gang injunctions, unlike the gang loitering ordinance at issue in *Morales*, unambiguously define specific types of prohibited conduct.[47] The *Morales* Court recognized the

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Indeed, the fact that Stewart repeatedly referred to Justice Brown as "he" indicates Stewart was also unaware that Justice Brown is a woman.

36. People *ex rel.* Gallo v. Acuna, 929 P.2d 596 (Cal. 1997) (Mosk, J., dissenting).

37. *Id.*

38. *Id.*

39. *Id.*

40. 199 S.Ct. 1849 (1999).

41. *See id.* at 1854 (describing characteristics of Chicago ordinance).

42. *See id.*

43. *See id.*

44. *Id.*

45. *See id.* at 1859.

46. *See id.* at 1860-61.

47. *See infra* notes 91-102 and accompanying text (arguing that anti-gang injunctions are not unconstitutionally vague).

narrow scope of its holding, stating expressly that the decision was limited to the specific ambiguities in the Chicago ordinance.[48] Justice O'Connor, in a concurring opinion, wrote:

> It is important to courts and legislatures alike that we characterize more clearly the narrow scope of today's holding. As the ordinance comes to this Court, it is unconstitutionally vague. Nevertheless, there remain open to Chicago reasonable alternatives to combat the very real threat posed by gang intimidation and violence. For example, the Court properly and expressly distinguishes the ordinance from laws that require loiterers to have a "harmful purpose," *from laws that target only gang members*, and from laws that incorporate limits on the area and manner in which the laws may be enforced. In addition *the ordinance here is unlike a law that "directly prohibit[s]" the " 'presence of a large collection of obviously brazen, insistent and lawless gang members* and hangers on in the public ways' " that " 'intimidates residents.' "[49]

Thus, the Supreme Court's decision in *Morales* does not implicate the constitutionality of anti-gang injunctions. More direct attacks on the constitutionality of anti-gang injunctions, such as Justice Mosk's, also ring hollow. At the outset, Justice Mosk's characterization of anti-gang injunctions as a deprivation of Latino rights diverts the issue. Anti-gang injunctions do not implicate race. They target all gang-related activities, irrespective of the gang's racial composition.[50] Thus, Justice Mosk's attempt to cast injunctions into a light of racial animus is utterly misguided.

Justice Mosk's quotation of Benjamin Franklin also fails to support the conclusion that the concerted lawlessness of street gangs is protected by the Constitution.[51] Although Justice Mosk may think the residents of Rocksprings "deserve neither safety nor liberty" because they "seek a little safety" from the Varrio Sureño Treces gang, his view is not legally supported.[52] Egregious acts of concerted lawlessness and violence are

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48. *See Morales*, 119 S.Ct. at 1857, 1864.

49. *Id.* at 1864 (emphasis added) (citations omitted).

50. *See* People *ex rel.* Gallo v. Acuna, 929 P.2d 596 (Cal. 1997) (Mosk, J., dissenting) (setting forth language of injunction). There is no indication at any point in the majority, concurring, or dissenting opinions in *Acuna* that gang membership was limited to Latinos. *See generally id.* Indeed, some of the local residents of Rocksprings were presumably people of color, yet the dissent is notably unconcerned by the numerous violations of their rights by the Varrio Sureño Treces gang. *See id.*

51. In fact, Justice Mosk's quotation of Benjamin Franklin is out of context. Benjamin Franklin was criticizing those who refused to fight the oppressive British Monarchy. Axiomatically, Franklin did not seek to inhibit the citizens of a local community from standing up to an oppressive street gang. *See id.*

52. *Id.* at 623.

not constitutionally protected activities.[53] To hold otherwise would effectively turn the Constitution on its head by destroying the ability of the government to govern and rendering constitutionally protected liberty a perpetuum of anarchy.

The California Supreme Court correctly held that gang activities may be enjoined as public nuisances. The activities of street gangs rely on territorial control carried out by violence and threats of violence.[54] It is well established and indeed necessary, that an individual who commits an act of violence may be prosecuted without constitutional implication.[55]

Anti-gang injunctions are the appropriate reconciliation of the relevant competing interests. The civil liberties of the gang members are at stake, the public safety and welfare interests of the community are threatened, and the rights of the common citizen are at risk. Because it is unreasonable to expect the common citizen to constantly be subjected to the inherent intimidation and violence of criminal street gangs, anti-gang injunctions present the proper solution for resolving these conflicting interests.

This Article defends the constitutionality of anti-gang injunctions, which requires a two-step analysis. The first consideration is whether gang activities constitute a public nuisance.[56] The second consideration is whether it is constitutional to enjoin the activities of a street gang.[57]

I. AN APPLICATION OF STREET GANG ACTIVITIES TO NUISANCE LAW

The threshold issue turns on whether the activities of street gangs are public nuisances in the first instance. This analysis involves a detailed examination of the common law definitions of public and private nuisances as they have evolved in state courts. The analysis also examines how those principles have been codified by statute in various

53. *See* City of Dallas v. Stanglin, 490 U.S. 19, 25 (1990) (holding activity with only incidental expression is not constitutionally protected); *see also infra* notes 78-214 and accompanying text (discussing constitutionality of gang injunctions); *accord* Robert Teir, *Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging*, 54 LA. L. REV. 285, 322 (1993) (arguing constitutionally protected activity is properly limited to conduct intended to have an expressive element); Gregory S. Walston, *Examining the Constitutional Implications of Begging Prohibitions in California*, 20 WHITTIER L. REV. 547 (1999).

54. *See infra* note 121 and accompanying text (explaining nature and motive of gang activities).

55. As noted by the Supreme Court, "A physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment." Wisconsin v. Mitchell, 508 U.S. 476, 484 (1988) (examining First Amendment implications on regulation of violent acts).

56. *See infra* notes 58-77 and accompanying text.

57. *See infra* notes 78-214 and accompanying text.

state legislatures. An application of the attributes of street gangs to the general nuisance principles used by most state courts confirms the conclusion that gang activities fall squarely within the definition of a public nuisance.[58]

A. *Principles of Nuisance at Common Law*

As noted by Justice Brown, who wrote for the majority in *Acuna*, "There are few 'forms of action' in the history of Anglo-American law with a pedigree older than suits seeking to restrain nuisances, whether public or private."[59] The modern action for abatement of a public nuisance originated during the reign of Richard II.[60] It is no surprise, then, that underlying an action for nuisance is the ancient maxim, *sic utere tuo ut alienum non laedus*, or *one must use his own right as not to infringe on the rights of others.*[61] In other words, the determination of whether an activity is a nuisance requires the reconciliation of the perpetually competing interests of the rights of the individual and the rights of the many.[62]

By allowing a cause of action for abatement of a nuisance, the common law courts of England, as well as the subsequent state courts of America, recognized a fundamental principle of governance—no liberty is absolute, and the State has a responsibility to govern its citizens by properly balancing individual liberty against the liberties of others.[63] The courts were not the first to recognize this duty. Political philosophers during the early democracy movement agreed that an individual's acceptance of the peace and safety offered by a sovereign required the individual to sacrifice the right to unfettered liberty.[64]

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58. *See infra*, notes 59-77 and accompanying text.

59. People *ex. rel.* Gallo v. Acuna, 929 P.2d 596, 603 (Cal. 1997).

60. *See id.* (citing the Stat. of 12 Rich. II, 1389, ch. 13 and, declaring "casting dung, etc." into waters and ditches a nuisance).

61. *See* Richardson v. Kiev, 34 Cal. 63, 73 (1867) (stating general maxim underlying public nuisance actions); *see also* 58 AM. JUR. 2D *Nuisances* § 1 (1971) (discussing general attributes of public nuisance); *see generally* San Diego Gas & Elec. Co. v. Superior Court, 920 P.2d 669 (Cal. 1996).

62. *See* 58 AM. JUR. 2D *Nuisances* § 35 (1971) (discussing nature and limits of action for public nuisance); *see also* People ex rel. Busch v. Projection Room Theater, 17 Cal. 3d 42, 50-51 (1987) (applying public nuisance principles).

63. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972) ("The very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests."); *accord* LOCKE, TREATISES OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION (D. Appleton-Century Co. 1937) (discussing balance between individual rights and sovereign powers).

64. These arguments are most distinctly set forth in the "Social Compact" theories of eighteenth century philosophers. As stated by John Locke:

> For when any number of men by the consent of every individual, made a community, that they have thereby made that community, one body with a power to

Reconciliation of the rights of the individual and the rights of society is of particular importance in an action for public nuisance. While a private nuisance is characterized by an unreasonable exercise of an individual's right at the expense of another individual's rights, a public nuisance is characterized by an unreasonable exercise of an individual is right at the expense of a *public* right.[65] Such a determination necessarily involves a balancing test, where the importance of the individual right is weighed against the importance of the public right.[66] If the public right is determined to be more important than the exercise of the private right, courts will hold that the exercise of the private right is unreasonable and will enjoin it as a public nuisance.[67]

Thus, a public nuisance was defined at common law as a substantial and unreasonable interference with a public right.[68] The various courts that have applied this definition have emphasized that this is a contextual determination that is resolved by weighing the totality of all relevant

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> act as one body, which is only by the will and determination of the majority. For that which acts any community being only the consent of the individuals of it, and being one body must move one way it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority . . . and so every one is bound by that consent to be concluded by the majority. . . .

Id. at 63. Rousseau, too, argued that each individual equally submits himself to a social compact. As each individual is an equal part of the compact, sovereignty in the state is composed of the combined will, or the "general will", of each member of the State, and ruled accordingly. ROUSSEAU, THE DISCOURSES AND OTHER POLITICAL WRITINGS (Victor Gaurevitch ed., Cambridge Univ. Press 1997) (1762). David Hume also envisioned a social contract whereby the sovereignty of the State was created by the submission of each individual. *See* HUME, A POLITICAL ESSAY, (Cambridge Univ. Press 1997) (1754). These social compact political philosophers left a distinct impression on the Framers. *See* ALEXANDER HAMILTON, ET AL., THE FEDERALIST PAPERS (Clinton Rossiter ed., 1961) (discussing balance between sovereignty and liberty). This struggle between the rights of the individual and the rights of the many, known as the "Madisonian Dilemma," lives to this day. *See* ROBERT BORK, THE TEMPTING OF AMERICA 129-140 (1992).

65. *See generally*, 58 AM. JUR. 2D *Nuisance* (1971) (discussing distinction between private nuisance and public nuisance); *see also* Robert Cohen, *Bad Lands: Many Alternatives to CERCLA for the Recovery of Environmental Cleanup Costs*, 17 LOS ANGELES LAWYER 11 (1995).

66. *See generally* 58 AM. JUR. 2D *Nuisance* (1971) (discussing scope of public nuisance).

67. *See* Hassel v. San Francisco, 78 P.2d 1021, 1022 (Cal. 1938) (addressing claim for abatement of public nuisance); *see generally* Treisman v. Kamen, 493 A.2d 466, 469 (N.H. 1985) (balancing the harm to plaintiff in nuisance action against the utility of defendant's conduct). At common law, a nuisance was merely an injury to some interest in land. Most jurisdictions subsequently have expanded the scope of a nuisance to involve property or personal rights. *See* 58 AM JUR 2D *Nuisance* §§ 1-2 (1971) (explaining general definitions of nuisance).

68. *See generally* Sandifer Motors, Inc. v. Roeland Park, 628 P.2d 239 (Kan. App. 1981) (discussing common law public nuisance); Exxon Corp v. Yarema, 516 A.2d 990 (Md. App. 1986)(addressing reasonableness of activity); San Diego Gas & Elec. Co. v. Superior Ct., 920 P.2d. 669 (Cal. 1996); Anderson v. Souza, 243 P.2d 497 (Cal. 1951) (weighing private right against public harm in adjudicating nuisance claim); Weber v. Peiretti, 178 A.2d 92 (N.J. Ch. 1962) (employing reasonableness test in adjudicating nuisance action); RESTATEMENT (SECOND) OF TORTS, § 821B, cmt.e (1965) (defining public nuisance as an "interference with a right common to the general public").

factors.[69] In sum, a common law action for public nuisance lies where a defendant's conduct amounted to a substantial and unreasonable interference with a public right, given the totality of the facts.

B. *Statutory Developments of Nuisance Principles*

During the last century, most jurisdictions have codified actions for public nuisance.[70] Indeed, the modern statutory nuisance has effectively obviated the common law nuisance. Although an action for a common law nuisance still technically exists, modern state courts generally are unwilling to declare an activity a common law nuisance in lieu of declaring it a nuisance by statute.[71]

Notwithstanding this development, most state legislatures define a public nuisance so broadly that the courts inevitably return to the common law to determine whether the activity is reasonable in light of the totality of the facts.[72] For example, California defines a public nuisance as:

> [a]nything that is injurious to the public health, is indecent or offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property or that unlawfully obstructs the free passage of use, in the customary manner, of any . . . public park, street or highway. . .[73]

C. *Application of Nuisance Principles to Street Gangs*

Under a plain application of public nuisance principles, the illicit activities of street gangs are a public nuisance. A neighborhood occu-

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69. *See generally* Portman v. Clemintina Co., 305 P.2d 963 (Cal. App. 1957) (motive alone is not determinative of whether nuisance lies); *see also* 58 AM. JUR. 2D *Nuisance*, § 1 (1971) (discussing general nature of nuisance).

70. *See, e.g.*, ALA. CODE § 6-5-160.1 (1998); CONN. GEN. STAT. ANN. §§ 19a-343a (1999); IDAHO CODE §§ 18-5901; MICH COMP. LAWS ANN. § 600.2425 (1948). California also has enacted various "nuisance *per se*" statutes, which declare specific activities public nuisances. *See, e.g.*, CAL. GOV'T. CODE, § 50231 (1998) (abandoned excavations); CAL. PUB. RES. CODE, §§ 3757, 3760 (1984) (well drilling locations); CAL. PENAL CODE § 186.22a (1999) (buildings or houses operated by street gangs for illicit purposes).

71. *See* People v. Lim, 118 P.2d 472, 474-75 (Cal. 1941) (indicating that courts lack legal authority to extend the definition of a wrong not provided for by statute); *see also* People *ex rel.* Gallo *et al.* v. Acuna, 929 P.2d 596, 606-07 (Cal. 1997) (concluding courts lack authority to find public nuisance in absence of statutory definition).

72. *See supra*, note 70 and accompanying text (setting forth various states' nuisance statutes); *see, e.g.*, Anderson v. W.R. Grace & Co., 628 F. Supp 1219, 1233 (D. Mass. 1986) (addressing reasonableness issue of nuisance claim); Bronson v. Oscoda, 470 N.W.2d 688, 690-91 (Mich. Ct. App. 1991); Leo v. General Elec. Co., 538 N.Y.S.2d 844, 846 (A.D. 1989); Brown v. Scioto City Bd. of Comm. 622 N.E.2d 1153, 1158-59 (Ohio Ct. App. 1993); Wernke v. Halas, 600 N.W.2d 117, 121 (Ind. Ct. App. 1992).

73. CAL. CIV. CODE § 3479 (1997).

pied as gang "turf" becomes unsafe for local residents.[74] Residents' property rights become subservient to the mob rule of the gang members, who enter residents' homes, deface their vehicles, threaten their friends and families, peddle drugs, and loudly congregate on their lawns.[75] Such actions are utterly devoid of any public benefit and are a naked and unmitigated interference with the public safety and welfare rights of the local community.

Accordingly, gang activities are unreasonable under a public nuisance analysis. Given the totality of the facts, gang activities substantially interfere with the property rights of the members of the local community, who are coerced into allowing gang members trample the rights of community residents by using fear and coercion.[76] Further, the gang has no social benefit to mitigate its detrimental impact on the community.[77] Thus, street gangs fall squarely within the definition of a public nuisance.

II. A CONSTITUTIONAL ANALYSIS OF THE VALIDITY OF ANTI-GANG INJUNCTIONS

A simple determination that gang activity constitutes a public nuisance does not complete the analysis. The second consideration when examining the validity of a gang injunction explores the injunction's constitutional dimension.

Applying constitutional principles to anti-gang injunctions requires a clear understanding of the injunctions. Anti-gang injunctions usually contain recurrent prohibitions.[78] First, anti-gang injunctions normally restrict gang members from association with each other within defined areas.[79] Gang members effectively are prohibited from associating with each other on their "turf."[80] Second, the anti-gang injunctions normally include a restriction on local movement, *e.g.* being outdoors after dark, fleeing from police, or illegally entering the home of another.[81] Any enjoined gang member who violates this provision of the ordinance will be guilty of criminal contempt, curfew violation, resisting arrest, or tres-

74. *See* CAL. PENAL CODE § 186.21 (1999) ("The State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods").

75. *See Acuna*, 929 P.2d at 601 (describing conduct of street gang).

76. *See id.* at 601-02; *see also infra* note 122 and accompanying text (describing attributes of criminal street gang).

77. *See generally Acuna*, 929 P.2d at 596.

78. *See* Yoo, *supra* note 10, at 221-25 (stating that anti-gang injunctions share five recurrent restrictions).

79. *See id.* at 222.

80. *See id.*

81. *See id.* at 224.

passing.[82] Third, anti-gang injunctions usually contain a restriction on gang clothing and hand gestures.[83] Gang members often wear colors, such as blue or red, to show gang membership.[84] Gang members also commonly use hand gestures to communicate their gang membership to other gang members.[85] Once enjoined, the gang members are subject to criminal contempt for wearing clothing bearing gang colors and from using gang hand gestures within the area specified by the injunction.[86] Fourth, anti-gang injunctions generally prohibit gang members from intimidating, harassing, and annoying local residents.[87] Enjoined gang members who harass and intimidate local residents are subject to criminal contempt sanctions for violating the injunction, as well as prosecution for the substantive crimes.[88]

These restrictions have been attacked on numerous constitutional grounds. Specifically, opponents have focused on the doctrines of vagueness and overbreadth, the First Amendment right to free association, the First Amendment right to freedom of expression, and procedural due process.[89]

A. *Vagueness and Overbreadth*

Some commentators have argued that the provisions of anti-gang injunctions that restrict gang members from associating and prevent them from annoying, harassing, and intimidating residents are invalid under vagueness and overbreadth principles.[90]

1. VAGUENESS

Under vagueness principles, a regulation must be sufficiently clear in defining the conduct that is prohibited.[91] Thus, a regulation is unconstitutionally void for vagueness if it will not be understood by individu-

82. *See id.*

83. *See id.*

84. *See supra* notes 74-75 and accompanying text (discussing attributes of modern street gangs).

85. *See id.*

86. *See* Yoo, *supra* note 10, at 223.

87. *See id.* at 224.

88. *See id.*

89. *See infra* notes 91-214.

90. *See* Matthew Mickle Werdegar, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409, 421-428 (1999) (concluding anti-gang injunction in *Acuna* violated constitutional vagueness principles); Yoo, *supra* note 10, at 249 (cautioning against violations of Vagueness and Overbreadth in anti-gang injunctions); *see also* People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 629-30 (Cal. 1997) (Mosk, J., dissenting) (concluding *Acuna* injunction violated Vagueness and Overbreadth doctrines).

91. *See* Papachristou v. City of Jacksonville, 405 U.S. 156, 165-71 (1972) (applying void for vagueness principles).

als of ordinary intelligence.[92]

Some commentators argue that restrictions on gang member associations are void for vagueness because a "gang member" cannot be defined objectively.[93] These critics conclude that gang members lack sufficient notice of the prohibited associations and the police gain unfettered discretion to determine whether a group of youths constitutes a gang.[94]

These arguments are without merit because a "gang member" can be objectively defined. The California Street Terrorism Enforcement and Prevention Act provides an objective definition of gang membership.[95] The Act defines gangs by examining the intent of the individual.[96] A "gang member" is defined as an individual who *knowingly* belongs to a gang, *i.e.* has specific intent to be a gang member.[97] Under this definition, gang members have sufficient notice of what constitutes a prohibited "gang association"—they must have specific intent to associate with other gang members.[98] Police, therefore, will not have unduly broad enforcement authority because the State must prove specific intent to show a violation of the gang association injunction. Accordingly, courts can restrict the associations of gang members without offending constitutional vagueness principles.

Opponents also argue that restrictions on gang members' annoyance, harassment, and intimidation of residents are void for vagueness because the words "annoy," "harass" and "intimidate" do not sufficiently define the prohibited conduct.[99] This argument is misplaced. Restrictions that define prohibited conduct as a "harassment," "annoyance," or "intimidation," without more, have been struck down under

92. *See* Kolender v. Lawson, 461 U.S. 352, 357-61 (1983) (discussing rationale of vagueness doctrine).

93. *See* Yoo, *supra* note 10, at 248-51 (criticizing associational restrictions of anti-gang injunctions); *see also* Werdegar, *supra* note 90, at 422-24 (arguing against constitutionality of anti-gang injunction in *Acuna*); Malcolm W. Klein, *What Are Street Gangs When They Get to Court?*, 31 VAL. U. L. REV. 515, 516 (1997) ("[E]fforts to determine who is and who is not a gang member . . . have failed, with numbers of false positives and false negatives often approaching the numbers of agreed upon membership").

94. *See* Yoo, *supra* note 10, at 248-51 (analyzing associational restrictions); *accord* People *ex rel.* Gallo v. Acuna 929 P.2d 596, 629-30 (Cal. 1997) (Mosk, J., dissenting) (concluding *Acuna* injunction is unconstitutionally vague).

95. CAL. PENAL CODE § 186.22.

96. *Id.*

97. *Id.*

98. *Accord* People v. Alberto R., 1 Cal. Rptr. 2d 348, 357 (Cal. App. 1991) (upholding provisions of Street Terrorism Enforcement and Prevention Act).

99. *See* Werdegar, *supra* note 90, at 422-23 (arguing against the constitutionality of anti-gang injunctions); *see also Acuna*, 929 P.2d at 631 (Mosk, J., dissenting) (concluding certain provisions of *Acuna* injunction are unconstitutionally vague).

vagueness principles.[100] However, the California Supreme Court in *Acuna* correctly noted that it is well established that such terms are not unconstitutionally vague when they are defined within a statute or by the contextual application of the restriction.[101]

Restrictions on gang members' harassment, intimidation and annoyance of local residents are not unconstitutionally vague. Taken in context, gang members and police officers know precisely what constitutes an annoyance, harassment, and intimidation of residents – *i.e.*, violence and threats of violence against residents suspected of reporting gang activity to the police.[102] Given the clarity and legitimacy of this objective, anti-gang injunctions are not unconstitutionally vague.

2. OVERBREADTH

A regulation is unconstitutionally overbroad if it burdens a substantial amount of constitutionally protected activity while purporting to restrict only unprotected activity.[103] The same principle is applicable to injunctions.[104] Some commentators have argued that restrictions on gang members' harassment of residents is unconstitutionally overbroad because protected forms of conduct may fall within the scope of the restriction.[105] An application of overbreadth principles indicates the contrary.

As noted above, restrictions on gang members' annoyance, harassment and intimidation of residents have specific connotations in the context of gang activity, *i.e.*, a prohibition of the use of violence or threats of violence against residents suspected of reporting the gang's illegal activities to the police.[106] The injunction does not encompass protected

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100. *See, e.g.*, Coates v. City of Cincinnati, 402 U.S. 611, 614-16 (1971) (rejecting constitutionality of restriction on annoying, harassing, intimidating or threatening residents); *see also* M. Katherine Boychuk, *Comment: Are Stalking Laws Unconstitutionally Vague or Overbroad?*, 88 NW. U. L. REV. 769, 784 (1994) (applying vagueness principles to stalking laws).

101. *See Acuna*, 929 P.2d at 612 (holding anti-gang injunction not unconstitutionally vague where defined by context); State v. Smith, 737 P.2d 723, 725 (Wash. App. 1988) (holding restriction of "harassment" not unconstitutionally vague where prohibited conduct defined by statute); People v. Whitfield, 498 N.E.2d 262, 266-67 (Ill. App. 1986) (holding that "harass" not unconstitutionally vague when applied to context).

102. Nick Anderson, *S.J. Makes Move to Reclaim Gang Territory*, SAN JOSE MERCURY NEWS, Mar. 10, 1993, at 1A (reporting traditional police methods have proven insufficient to control gang activity in San Jose); Richard L. Colvin, *Judge Issues Sweeping Injunction Against Gang*, L.A. TIMES, Apr. 8, 1993, at B1 (home ed.) (reporting deficiencies of traditional police techniques against gangs in Van Nuys).

103. *See* Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973) (applying overbreadth principles).

104. *See* Madsen v. Woman's Health Ctr., Inc., 512 U.S. 753, 774 (1994).

105. *See e.g.*, People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 630 (Cal. 1997) (Mosk, J., dissenting) (concluding *Acuna* injunction is unconstitutionally vague and overbroad).

106. *See supra* note 102 and accompanying text (concluding anti-gang injunctions' restriction on gang harassment of residents has specific connotations by reference to context).

conduct, such as approaching and confronting residents for the purpose of soliciting signatures on a petition or attempting to hand out fliers to residents. In short, the only types of annoying, harassing or intimidating conduct that lie within the scope of the restriction are violence and threats of violence. As such, anti-gang injunctions comply with both vagueness and overbreadth principles.

B. *First Amendment Right to Free Association*

Many commentators have argued that the First Amendment right to free association provides gang members with the right to congregate in the streets, at least when they congregate peaceably.[107] According to these commentators, the state may prohibit the gang from engaging in activity that is otherwise criminal, such as selling drugs or carrying illegal weapons. On the other hand, the state may not prohibit gang members simply from associating with each other.[108]

Such arguments take gang associations for more than their worth. The right to free association under the First Amendment includes no cognizable right for gang members to congregate in the streets, even if they congregate peaceably. There is no general right of association.[109] Only certain designated categories of association implicate constitutional protection. The categories are limited to "intimate associations,"[110] "expressive associations,"[111] and the right of freedom from so-called "guilt by association."[112] Association among gang members does not implicate any of these rights.

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107. *See* Terrence R. Boga, *Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space*, 29 HARV. C.R.-C.L. L. REV. 477, 496 (1994) (concluding anti-gang injunctions violate constitutional right to free association); Stewart, *supra* note 35, at 2276 (expressing concerns regarding restrictions on gang members' association); Werdegar, *supra* note 90, at 432-33 (concluding anti-gang injunctions violate Constitution); *see also* Christopher S. Yoo, *supra* note 10, at 236 (cautioning against violating gang members' rights to free association).

108. *See id.*

109. *See* New York State Club Ass'n v. City of New York, 487 U.S. 1, 13 (1988) (noting "[t]he close nexus between the freedoms of speech and assembly" does not indicate "that in every setting in which individuals exercise some discrimination in choosing associates, their selective process of inclusion and exclusion is protected by the Constitution"); *see also* City of Dallas v. Stanglin, 490 U.S. 19, 25 (1989) (rejecting general right to association).

110. *See generally* Kenneth L. Karst, *The Freedom of Intimate Association*, 89 YALE L.J. 624 (1990) (explaining First Amendment right of free association).

111. *See* Griswold v. Connecticut, 381 U.S. 479 483 (1965) (holding right to association is peripheral right under the First Amendment); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 460 (1958) (holding right to expressive association exists under Fourteenth Amendment).

112. *See* NAACP v. Claiborne Hardware Co., 458 U.S. 886, 918-19 (1982); Keyishian v. Board of Regents, 385 U.S. 589, 594 (1967) (discussing guilt by association).

1. INTIMATE ASSOCIATION

The United States Supreme Court has defined intimate associations as "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."[113] The Supreme Court has looked to the size, selectivity, and purpose of the association in determining whether the association is intimate.[114] Thus, familial associations are intimate associations protected by the Constitution.[115] By contrast, organizations such as Rotary Clubs are not.[116]

Street gangs do not fall within the Supreme Court's definition of intimate associations. They are neither composed of a small number of people, selective in membership, nor established for an intimate purpose.[117] The membership of street gangs is large and fluid.[118] Modern urban street gangs commonly are composed of hundreds of members, each having varying degrees of involvement in gang activities and not all of whom know each other.[119] Because this large and fluid membership is not limited to an intimate group of individuals, the congregation of street gangs is not protected as an intimate association.

Some commentators also have asserted that the impetus for the formation of street gangs lies in the gang members' need for togetherness in the face of a dearth of social institutions in which they can participate.[120] Whether or not this is true is irrelevant. Regardless of the psychological reasons for the formation of gangs, the fact remains that gangs do not operate for any legitimate purpose, let alone an intimate purpose.[121] On the contrary, the activities of street gangs turn on territo-

113. Board of Directors Rotary Int'l v. Rotary Club, 481 U.S. 537, 545 (1987) (quoting Roberts v. United States Jaycees, 468 U.S. 609, 620 (1984)).

114. *See Rotary Club*, 481 U.S. at 546 (analyzing right to association in context of Rotary Club).

115. *See* Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984) (discussing limits of First Amendment associational right).

116. *See Rotary Club*, 481 U.S. at 545 (denying free association right of First Amendment to Rotary Club).

117. *See* Stewart, *supra* note 35, at 2273-75 (discussing characteristics of American street gangs).

118. *See id.* (describing various levels of gang membership).

119. *See id.* at 2275 (discussing characteristics of American street gangs).

120. *See* Boga, *supra* note 107, at 487 (discussing motive for poor youths in joining street gangs); Stewart, *supra* note 35, at 2278 (arguing gang members resort to gang activities due to lack of social institution in lower income urban areas); *see generally* MARTIN SANCHEZ JANKOWSKI, ISLANDS IN THE STREET (1991).

121. Even the opponents of anti-gang injunctions cannot deny the illicit nature of street gangs' activities. *See, e.g.*, Stewart, *supra* note 35, at 2249 ("members of neighborhood gangs are holding an alarming number of innocent citizens 'hostages in the hood'"). Indeed, the criminal aspects of modern street gangs are disquieting. *See* DeNeen L. Brown & Ruben Castenada, *Police*

rial control carried out with violence and threats of violence.[122] Thus, even if gang members are satisfying subconscious needs for togetherness, gang activity remains overtly illicit. In short, gangs are characterized by a large, fluid membership and a criminal purpose. As such, they are not "intimate associations" as defined by the Supreme Court.

2. EXPRESSIVE ASSOCIATION

The Supreme Court has taken an increasingly restrictive view of expensive associations by refusing to hold that the right to expressive association includes the right to social association.[123] The Court requires a *meaningful* expression, *e.g.*, an expression of political, social, economic, educational, religious, or cultural viewpoints.[124] For example, in *City of Dallas v. Stanglin*,[125] the Supreme Court refused to hold that the association was a protected expressive association because the association of teenagers at a dance-hall lacked a sufficiently expressive purpose.[126] The Court wrote:

> It is possible to find some kernel of expression in almost every activity a person undertakes – for example, walking down the street or meeting one's friends at a shopping mall – but such a kernel is not sufficient to bring the activity within the protection of the First Amendment. We think the activity of these dance-hall patrons – coming together to engage in recreational dancing – is not protected . . . as a form of "expressive association . . . ."[127]

A plain examination of the attributes of urban street gangs reveals that they do not advance any expressive purpose. Even the opponents of anti-gang injunctions cannot deny that the activities of street gangs are illicit.[128] Gang members congregate for the unlawful purpose of estab-

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Say Turf Wars Fueled Day of Violence, WASH. POST, Sept. 27, 1993, at A1; Larry Gordon, *Gang Bullets Kill Child in Mother's Car*, L.A. TIMES, Nov. 21, 1993, at A1.

122. *See supra* note 121 (discussing gang members' apologists concessions of illicit nature of street gangs).

123. *See* City of Dallas v. Stranglin, 490 U.S. 19, 25 (1989) (rejecting general right to association); *see also* New York State Club Ass'n v. City of New York, 487 U.S. 1, 13 (1988) ("[t]he close nexus between the freedoms of speech and assembly" does not indicate "that in every setting in which individuals exercise some discrimination in choosing associates, their selective process of inclusion and exclusion is protected by the Constitution.")

124. *See Stranglin*, 490 U.S. at 28 (rejecting teenagers' right to free association in dance halls); *see also* Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984) (discussing First Amendment right to association).

125. 490 U.S. at 25 (1989).

126. *See id.* at 23-25.

127. *See id.* at 25.

128. *See also* Boga, *supra* note 107, at 489 ("[c]ontrol over lucrative drug markets fuels gang aggression as much as the desire to defend a self-declared turf from encroachment by rivals"); *see generally* MALCOLM W. KLEIN, THE AMERICAN STREET GANG (1995).

lishing a neighborhood as their "turf."[129] Once a neighborhood is claimed to be gang turf, it is subject to the lawless activities of the street gang, which frequently include drug trafficking and violence.[130] Thus, gang activities may not be classified as expressive of any meaningful viewpoints.[131]

The Supreme Court has refused to hold that an association advancing unlawful activity is a protected expressive association, even when the association is enmeshed with expressive activity.[132] In *Madsen v. Women's Health Center, Inc.*,[133] the Supreme Court held that an anti-abortion group that harassed and intimidated the patients and employees of abortion clinics was not a protected association.[134] Although the activities of the anti-abortion group contained expressive activity—espousing the viewpoint that abortion is wrong—the Court held that the anti-abortion group was not protected as an expressive association because its purpose was primarily illegitimate.[135]

Like the abortion protesters in *Madsen*, gang members congregate for primarily illicit purposes.[136] Unlike the abortion protesters, however, the associations of gang members do not advance any cognizable expressive viewpoint.[137] Thus, street gangs are not protected expressive associations under an application of Supreme Court precedent.

3. GUILT BY ASSOCIATION

The Supreme Court has held that the doctrine of guilt by association precludes an individual from being held liable for mere association with another.[138] Under this concept, individual members of an association cannot be held liable for the association's illegal activities unless

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129. *See generally* KLEIN, *supra* note 128 (explaining territorial aspects of American street gangs).

130. *See id.; see also* People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 601 (Cal. 1997) (describing illicit activities of street gang in Rocksprings).

131. *See* KLEIN, *supra* note 128, and accompanying text (discussing illicit nature of street gangs).

132. *See* Madsen v. Women's Health Ctr., 512 U.S. 753, 776 (1994) (declining to hold association for purpose of harassment and intimidation is protected by First Amendment); *see also* Wisconsin v. Mitchell, 508 U.S. 476, 484 (1993) ("[A] physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment").

133. 512 U.S. 753 (1994).

134. *See id.* (detailing anti-abortion group's activities).

135. *See id.*

136. *Cf. id.* at 2532; *see also supra* notes 58-77 and accompanying text (examining lack of expressive purpose of street gangs).

137. *See supra* notes 58-77 and accompanying text (examining lack of expressive purpose of street gangs).

138. *See* NAACP v. Claiborne Hardware Co., 458 U.S. 886, 920 (1982) (declining to enjoin civil rights protesters); *see also* 16 AM JUR 2D *Constitutional Law* § 539 (summarizing Supreme Court's guilt by association decisions).

each member necessarily has specific intent to further the illegal activities of the association.[139] This doctrine is depicted by the contrast between *NAACP* v. *Claiborne Hardware*,[140] in which the Court invalidated an injunction issued against civil rights protesters,[141] and *Madsen* v. *Woman's Health Center, Inc.*,[142] in which the Court upheld an injunction issued against a group that intimidated and harassed the patients and employees of an abortion clinic.[143]

In *Claiborne Hardware*, Afro-American civil rights protesters boycotted various white merchants.[144] Although some of the civil rights protesters demonstrated peacefully, the protests became disorderly because many of the participants committed violent crimes during the protests.[145] In response to the protesters, the merchants successfully sought an injunction that precluded all the protesters from further demonstrations.[146] The Supreme Court struck down the injunction, noting that, although many of the civil rights protesters committed crimes, it could not be established that each protester necessarily had a specific intent to commit crime.[147] The injunction violated the guilt by association doctrine because it restricted the entire group of protesters, not all of whom had a criminal intent.[148]

In *Madsen*, abortion protesters harassed and intimidated patrons and employees of an abortion clinic in an attempt to block access to the clinic.[149] Whereas the civil rights protesters in *Claiborne Hardware* did not all share an unlawful purpose, all of the abortion protesters in *Madsen* attempted to unlawfully block access to the abortion clinic by harassment and intimidation.[150] Therefore, in *Madsen*, the Supreme Court held that freedom of association "does not extend to joining, with others for the purpose of depriving third parties of their lawful rights."[151]

The question thus becomes whether each member of a street gang necessarily has a specific intent to further the illegitimate purpose of the gang. The answer here is in the affirmative. As set forth above, like the

139. *Compare Claiborne Hardware Co.*, 458 U.S. at 919 (refusing to issue injunction against civil rights protesters), *with* Madsen v. Women Health Care Center, 512 U.S. 776 (1994) (upholding injunction against association that threatened and intimidated abortion clinic).

140. 458 U.S. 886 (1982).

141. *Id.* at 911.

142. 512 U.S. 776 (1994).

143. *See id.* at 786.

144. *See Claiborne Hardware*, 458 U.S. at 897-900.

145. *See id.*

146. *See id.* at 899.

147. *See id.* at 920.

148. *See id.*

149. *See Madsen*, 512 U.S. at 757-8.

150. *See id.*

151. *Id.* at 776.

protesters in *Madsen*, street gangs have no legitimate purpose, and exist solely for the purpose of committing crime.[152] Each gang member, in joining his fellow gang members on the "turf," knowingly furthers the gang's criminal purpose by providing additional strength to the presence of the gang. In contrast to the protesters in *Claiborne,* gang members are intentionally contributing to gang problems rather than attempting to convey a social message.

To be sure, some commentators have argued that the large, fluid nature of gangs precludes the gang from having any central purpose, and thus precludes each member from necessarily sharing a criminal purpose.[153] Gangs are loosely connected groups with a fluid membership and have been known to have hundreds of members.[154] One commentator has noted that street gangs typically have several levels of membership.[155] First, there is the hardened core of members who are, essentially, the gang's leaders. This level typically represents about one-half of the gang's membership and has an active role in determining gang activities.[156] Second, a gang has a peripheral class of members.[157] Although peripheral members do not have a leadership status, they nonetheless participate in gang activities.[158] Third, a gang has a "wannabe" class — individuals who are not actually members but who roam the streets wearing gang colors and proclaiming gang membership.[159]

Notwithstanding the size and diversity of gang membership, however, gang members all share at least one characteristic—knowingly promoting the territorial street crimes of the gang itself. Each gang member knows that appearing on gang "turf" while wearing gang colors reinforces the gang's illicit purposes by making the gang appear stronger and more intimidating to local residents.[160] Thus, street gangs can be enjoined without offense to the guilt by association doctrine because each gang member has the specific intent to further the gang's crimes.[161]

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152. *See supra* note 121 and accompanying text (discussing nature and purpose of street gangs).

153. *See* Stewart, *supra* note 35, at 2276 (expressing concerns regarding restrictions on gang members' association); Werdegar, *supra* note 90, at 432-33 (concluding anti-gang injunctions violate Constitution); *see also* Yoo, *supra* note 10, at 236 (cautioning against violating gang members' rights to free association).

154. *See* Stewart, *supra* note 35, at 2275; Werdegar, *supra* note 90, at 431; *see generally* KLEIN, *supra* note 128 (describing attributes of street gangs).

155. *See* Stewart, *supra* note 35, at 2275 (describing various levels of gang membership).

156. *See id.*

157. *See id.*

158. *See id.*

159. *See id.*

160. *See* People v. Vario Posole Locos, No. N76652 (Cal. Super. Ct., San Diego Co., Nov. 19, 1997).

161. *Accord* Bergen Herd, *Injunctions as a Tool to Fight Gang-Related Problems in California*

Neither the doctrine of intimate association, expressive association, nor guilt by association shields gangs from an injunction. Accordingly, the First Amendment right to free association does not preclude enjoining gangs as a public nuisance.

C. *Free Speech*

Gang members commonly wear colors, such as blue or red, to show gang membership.[162] Gang members also frequently use hand gestures to communicate their gang membership to other members.[163] Once enjoined, street gang members may be subject to criminal contempt for wearing clothing bearing gang colors and for using gang hand gestures within the area specified by the injunction.[164] At least one commentator has argued that such restrictions violate the First Amendment right to freedom of speech.[165]

Given the limited authority on these issues, an analysis of the constitutionality of restrictions on gang hand gestures and clothing requires a novel application of First Amendment principles. The Supreme Court has held that the level of scrutiny applicable to restrictions on speech and expression depends on the nature of the restriction itself.[166] The First Amendment is not implicated by restrictions on speech or conduct that lack an expressive element.[167] A restriction on conduct with an expressive element is valid if the restriction is related to an important state interest that is unrelated to the suppression of a message's viewpoint.[168] A restriction on speech is valid if it is content-neutral in time, place, and manner[169] or if it is narrowly tailored to a compelling state interest.[170] Thus, the applicable standard for anti-gang injunctions

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After People *ex rel.* Gallo v. Acuna*: A Suitable Solution?*, 28 GOLDEN GATE U. L. REV 629, 672-73 (1998) (arguing each member of street gang implicitly furthers collective purpose of street gang).

162. *See supra* notes 74-76, 121 and accompanying text (discussing attributes of modern street gangs).

163. *See id.*

164. *See* Yoo, *supra* note 10, at 221.

165. *See* Yoo, *supra* note 10, at 242 (concluding injunction against the use of gang hand gestures and the wearing of gang clothing seems to violate gang members' First Amendment rights).

166. *See infra* notes 167-88 and accompanying text (discussing limits of First Amendment's protection of free speech).

167. *See* City of Dallas v. Stanglin, 490 U.S. 19, 25 (1989) (declining to extend First Amendment protections to activity containing only "kernel" of expression).

168. *See* Spence v. Washington, 418 U.S. 405, 409 (1974); United States v. O'Brien, 391 U.S. 367, 376-77 (1968) (explaining constitutional standard applicable to regulations on expressive conduct).

169. *See* Perry Educ. Ass'n. v. Perry Local Educ's Ass'n., 460 U.S. 37, 45 (1983) (addressing the time, place, and manner restriction on protected speech).

170. *See, e.g.*, R.A.V. v. City of St. Paul, 505 U.S. 377, 395 (1992); *see also* Hines v. City of

depends on whether a restriction on gang hand gestures and clothing is a restriction of activity not protected by the First Amendment, a restriction on conduct with an expressive element, or a restriction on fully protected speech.[171]

The absence of an expressive message in gang hand gestures and clothing places them beyond the scope of the First Amendment.[172] An examination of the policies underlying the First Amendment indicates that an expressive element of a communication is a prerequisite to First Amendment protection.[173] Specifically, the general policies underlying the freedom afforded by the First Amendment are threefold: the "Marketplace of Ideas" the "Democratic Forum" and "Self-Realization."[174]

1. THE MARKETPLACE OF IDEAS POLICY

Justice Holmes referred to the consideration that truth emerges from the unfettered exchange of thoughts as the "Marketplace of Ideas" policy.[175] Under the "Marketplace of Ideas" approach, any communication expressing a cognizable idea is protected speech.[176] By contrast, any communication or conduct that does not contain a cognizable idea is not entitled to First Amendment protection. At least one commentator has argued that gang hand gestures and clothing involve the communication of expressive ideas because both gang hand gestures and gang clothing convey a signal to other gang members.[177]

Oradell, 425 U.S. 610, 616-17 (1976) (holding that narrowly drawn ordinance may regulate solicitation to protect citizens from crime and annoyance).

171. *See* Robert Teir, *Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging*, 54 LA. L. REV. 285, 320 (1993) (summarizing various possible constitutional standards applicable to begging prohibitions).

172. *Accord id.* at 323 (discussing Framers' intent underlying First Amendment). Teir notes that the determination of the level of free speech protection afforded to begging turns on the question of what constitutes a message. *Id.* at 322.

173. *See* Teir, *supra* note 171, at 323 (concluding spoken words must contain message to be afforded First Amendment protections); *see also infra* notes 174-88 and accompanying text (discussing First Amendment policies).

174. *See* Helen Hershkoff & Adam S. Cohen, *Begging to Differ: The First Amendment and the Right to Beg*, 104 HARV. L. REV. 896, 898-904 (1991) (identifying free speech policies as Enlightenment Value, Democratic Governance Value and Self-Realization Value).

175. Abrams v. United States, 250 U.S. 616, 630 (1919); *see also* Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 762-765 (1976) (emphasizing the exchange of ideas as a fundamental free speech policy); *see generally* Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 DUKE L.J. 1 (explaining Marketplace of Ideas policy); Baker, *Scope of the First Amendment Freedom of Speech*, 25 UCLA L. REV. 964, 967-981 (1978) (explaining importance of free speech); Blasi, *The Checking Value in First Amendment Theory*, 1977 AM.B. FOUND RES. J. 523, 551.

176. *See generally* Ingber, *supra* note 175.

177. *See* Yoo, *supra* note 10, at 240 (citing Spence v. Washington, 418 U.S. 405, 410-11 (1974) and concluding that restriction on gang hand gestures and clothing violate First Amendment). Concededly, Yoo is correct at first glance. The United States Supreme Court has

Gang hand gestures and clothing, however, involve no meaningful idea. A street gang does not seek to advance any religious, political, social, cultural, or economic values.[178] On the contrary, the gang's primary purpose is criminal and devoid of expressive value.[179] Just as all other gang activities are directed towards illicit purposes that are devoid of social value, gang hand gestures and clothing are directed towards these purposes as well. When a gang member wears gang clothing and uses gang hand gestures, he is displaying the gang's force over the neighborhood and communicating that this neighborhood belongs to the gang. Such conduct has no value in the "Marketplace of Ideas" envisioned by Justice Holmes.

2. THE DEMOCRATIC FORUM POLICY

Professor Meiklejohn observed that people in a democratic society have a duty to "think their own thoughts, to express them, and to listen to the arguments of others."[180] Justice Holmes observed, "[I]t is . . . not free thought for those who agree with us, but freedom for the thought we hate."[181] In short, under the "Democratic Forum" policy, words or conduct that express any thought or opinion are protected speech.[182]

As applied to street gangs, a democratic duty to tolerate gang hand gestures and clothing would arise if their use expressed any meaningful idea. As noted above, however, gang hand gestures and clothing only further the illicit activities of the gang.[183] Therefore, a restriction on gang hand gestures and clothing does not implicate the duty to tolerate diverse ideas, nor does such a restriction preclude any gang member from expressing *meaningful* views. Anti-gang injunctions thus do not offend the Democratic Forum policy.

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held that the test for whether conduct falls within the ambit of First Amendment protection is whether "an intent to convey a particularized message was present" and whether "the likelihood was great that the message would be understood by those who viewed it." *See Spence*, 418 U.S. at 410-11. The *Spence* test, however, does not resolve the issue. A communication, alone, does not place an expression into the protections of the First Amendment. The expression itself must be protected. *See infra* notes 178-88 and accompanying text (analyzing limits of First Amendment). A gang's message, like other aspects of street gangs, are inseparable from the gang's criminal activities and does not advance any meaningful expression. Thus, gang hand gestures and clothing are not a "particularized message" as contemplated in *Spence* and are not, in any event, protected by the First Amendment. *See id.*

178. *See supra* notes 74-77, 121 and accompanying text (discussing nature of street gangs).

179. *See supra* notes 74-77 and accompanying text (discussing characteristics of street gangs); *cf.* KLEIN, supra note 93 (discussing attributes of street gangs).

180. A. MEIKLEJOHN, POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE 24 (1965) (explaining free speech protections).

181. United States v. Schwimmer, 279 U.S. 644, 654-655 (1929) (Holmes, J., dissenting).

182. See Hershkoff & Cohen, *supra* note 174, at 900 (analyzing policies underlying First Amendment).

183. *See supra* note 74-77, 121 and accompanying text (discussing attributes of street gangs).

3. THE SELF-REALIZATION POLICY

The inherent human need to express one's thoughts is the justification for the "Self Realization" policy.[184] People must "express their opinions on matters vital to them if life is to be worth living."[185] Thus, under the "Self-Realization" policy, any communication that involves the need to convey one's opinions, feelings, or impressions is protected speech.[186]

The inherent human need to express meaningful ideas is not satisfied by the use of gang hand gestures and clothing. On the contrary, the use of gang hand gestures and clothing, as well as all other gang activities, stems from the destructive desire to dominate a neighborhood and intimidate the other inhabitants of that neighborhood.[187] In the words of "Monster Kody," a Crip gang member in Los Angeles:

> I lived for the power surge of playing God, having the power of life and death in my hands. Nothing I knew could compare with riding in a car with three other homeboys with guns, knowing that they were as deadly and courageous as I was. To me, at that time in my life, this was power.[188]

Such words are far removed from the human desire to express one's creative feelings and opinions. The fact that this desire manifests itself in clothing and hand gestures does not place such activities within the ambit of the "Self-Realization" policy, nor any other policy underlying the First Amendment.

Both gang hand gestures and clothing are inseparable from other elements of gang activity. The purpose of gang gestures and clothing, like other types of gang activity, is to assert the power of the gang on the surrounding neighborhood at the expense of the rights of other inhabitants. Because the policies that underlie the First Amendment are not served by such activities, gang hand gestures and clothing are beyond the ambit of the First Amendment. Accordingly, gang hand gestures and clothing can be restricted without First Amendment implication.

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184. *See* Hershkoff & Cohen, *supra* note 174, at 903; Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 591 (1982).

185. *Accord* L. TRIBE, AMERICAN CONSTITUTIONAL LAW, §12-I at 786 (2d ed. 1986) (asserting "cry of impulse" is protected speech).

186. See Hershkoff & Cohen, *supra* note 174, at 903 (describing Self-Realization approach to First Amendment).

187. The desire to intimidate and hurt others is a common motive for gang activity. *See* Boga, *supra* note 107, at 491 (pointing to gang member's words reflecting desire to scare and harm others).

188. *Id.* at 488.

D. *Procedural Due Process*

The unique nature of the anti-gang injunction also has raised concerns that anti-gang injunctions violate the procedural due process rights.[189] Some commentators note that anti-gang injunctions, like other public nuisance injunctions, are *civil* proceedings.[190] A gang member who violates the injunction, however, is held in *criminal* contempt and may be subject to fines or jail.[191] These commentators conclude that anti-gang injunctions impose criminal liability on gang members while circumventing the requisite criminal due process requirements, including the right to court-appointed counsel.[192] Other commentators argue that gang members do not frequently attend the injunction hearing because they do not understand the legal process.[193] These commentators argue that anti-gang injunctions are essentially an *ex parte* process.[194]

Both of these arguments have been appropriately rejected by California courts.[195] The enjoined gang members are not subject to any fine or sentenced to any time in jail.[196] The anti-gang injunction is not even entered on their criminal records.[197] On the contrary, gang members will not be subject to any criminal liability if they abide by the terms of the civil injunction.[198]

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189. *See* Yoo, *supra* note 10, at 253 (questioning adequacy of procedural protections afforded gang members by anti-gang injunctions); Werdegar, *supra* note 90, at 433-34 (arguing anti-gang injunctions violate procedural due process); *cf.* Jonathan I. Charney, *The Need for Constitutional Protections for Defendants in Civil Penalty Cases*, 59 CORNELL L. REV. 478, 482 (1974) (cautioning against the use of civil remedies with penal effects); FELIX FRANKFURTER & NATHAN GREENE, THE LABOR INJUNCTION 107 (1963) ("[T]o make the infraction of a criminal statute also a contempt of court is essentially an invention to evade the safeguards of criminal procedure and to change the tribunal for determining guilt").

190. *See generally* 58 AM. JUR 2D *Nuisance* (defining attributes of actions to abate nuisances).

191. *See* Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 HASTINGS L.J. 1325, 1364-69 (1991) (discussing criminal contempt sanctions for violation of civil injunction); Yoo, *supra* note 10, at 254-55 (discussing criminal aspects of anti-gang injunctions).

192. *See* Yoo, *supra* note 10, at 253 (concluding use of anti-gang injunction as a civil remedy violates procedural due process); Werdegar, *supra* note 90 (stating anti-gang injunctions violate procedural due process).

193. *See* Werdegar, *supra* note 90, at 434-35 (pointing out reluctance of gang members to attend anti-gang injunction proceedings).

194. *See id.* at 435-36; Yoo, *supra* note 10, at 243-44.

195. *See* People v. 18th St. Gang, No. BC-190334 (Cal. Super. Ct. Los Angeles County, Sept 10, 1998) (denying motion by public defender to appoint counsel for defendant gang members in civil suit to enjoin gang as public nuisance); *see generally* Rebecca Porter, *In California, Motion Denied for Gang Member Counsel*, 34 NOV TRIAL 112 (1998) (discussing trial court's denial of public defenders motion).

196. *See generally* Porter, *supra* note 195 (discussing trial court's reasoning in finding no constitutional right to court-appointed counsel for anti-gang injunctive proceedings).

197. *Cf.* People *ex rel* Gallo v. Acuna, 929 P.2d 596 (Cal. 1997).

198. *Cf. id.*

To be sure, a gang member who violates the terms of an anti-gang injunction is guilty of criminal contempt, which may result in criminal liability.[199] Upon being charged with criminal contempt, gang members do receive full criminal procedural protections, including the right to counsel and the right to a trial.[200] Thus, criminal procedural issues are not implicated by the imposition of an anti-gang injunction. The initial anti-gang injunction entails only a *civil* remedy that restricts the ability of gang members to congregate in the streets and commit crime.

In *Mathews v. Elderidge*,[201] the United States Supreme Court set forth a three-part balancing test to determine the appropriate level of process required where there has been a deprivation of a right in a civil proceeding.[202] This test requires the court to weigh: (1) the nature of the individual right at stake; (2) the risk of an erroneous deprivation of the right; and (3) the State's interest in expedience.[203] The most frequent result under the *Mathews* balancing test is that the defendant being deprived of a right is entitled to notice and a pre-deprivation hearing.[204] Where the State's interest in expedience is substantial, however, such as a seizure of movable property that a defendant may conceal if he is afforded pre-deprivation notice, courts generally hold that a defendant only has a right to notice and a *post*-deprivation hearing.[205] Conversely, where the nature of the individual right is substantial, courts hold that the defendant is entitled to the right to counsel.[206] In the absence of a deprivation of a substantial right, courts have been reluctant to hold that indigent defendants are entitled to court-appointed attorneys in civil actions.[207]

The frequent failure of gang members to attend their hearings and the non-appointment of counsel for indigent gang members not violate

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199. *See* Yoo, *supra* note 10, at 254 (pointing to criminal nature of anti-gang injunctions); *see generally* Werdegar, *supra* note 90 (discussing punitive aspects of anti-gang injunctions).

200. *See* Yoo, *supra* note 10, at 266 (discussing criminal contempt proceedings).

201. 424 U.S 319 (1976).

202. *See id.* at 334-335.

203. *See id.* at 335.

204. *See generally* Cleveland Bd. of Educ. v. Loudermill, 105 S.Ct. 1487, 1495 (1983) (concluding due process principles required notice and opportunity to respond at hearing).

205. *See, e.g.*, Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 679 (1974) (holding seizure of yacht was subject to notice and post-deprivation hearing because of risk of defendant taking yacht before hearing).

206. *See* Lassiter v. Dept. of Social Servs., 452 U.S. 18, 20-24 (1981) (holding indigent defendant was entitled to court-appointed counsel in parental termination proceedings).

207. *See* Cloutterbuck v. Cloutterbuck, 556 A.2d 1082, 1085-87 (D.C. App. 1989) (rejecting right to counsel in context of civil protection order); Resek v. State, 706 P.2d 288, 293 (Alaska 1985) (rejecting right to counsel in context of civil forfeiture action); *see also* Kevin W. Shaughnessy, Note, *Lassiter v. Department of Social Services: A New Balancing Test for Indigent Civil Litigants*, 32 CATH. U. L. REV., 261, 285 (1982) (indicating that *Lassiter* would be "eviscerated" by cases rejecting right to counsel).

the procedural due process standard announced in *Mathews* and its progeny. Anti-gang injunctive proceedings afford gang members notice and a pre-deprivation hearing. Each gang member may attend the hearing to explain why the proposed injunction would be erroneous.[208] The fact that most gang members choose to ignore the hearing does not render the hearing *ex parte*, nor does it have any bearing on the due process question. Any resemblance that anti-gang injunctive hearings may have to be an *ex parte* hearing is attributable to the gang member's choice not to attend.

The lack of court-appointed counsel at anti-gang injunctive proceedings also complies with procedural due process requirements. Courts are unwilling to recognize a right to counsel for any anti-gang injunctive hearings because associations of gang members simply are not fundamental rights.[209] This assertion can be illustrated by considering the worst case scenario. If a court issued an erroneous injunction against a group of youths that it mistakenly believed to be a street gang, the right to congregate in the street has been lost. This right is not analogous to the rights involved in cases where courts recognize the right to counsel, *e.g.* actions to terminate parental rights[210] or actions to involuntarily commit an individual to a psychiatric institution.[211]

Thus, gang members have fair notice, an opportunity to respond, and no cognizable right to court appointed counsel. As a result, no due process rights are violated by these injunctions. Nor are the First Amendment right to free association, the First Amendment right to free expression, or the vagueness and overbreadth doctrines capable of being read so expansively as to preclude the injunction of criminal street gangs.[212] Anti-gang injunctions are an effective remedy for the otherwise uncontrollable egregious acts of lawlessness committed by street gangs.[213] In the face of the flagrant disorder unleashed by street gangs on local communities, it becomes the duty of the state to fight back by tailoring the appropriate solution.[214] The anti-gang injunction is an

208. *See generally* Daniel J. Sharfstein, *Gangbusters, Enjoining the Boys in the "Hood"*, Am. Prospect, May-June 1997 (discussing lack of resistance to injunctions by gang members).

209. *See supra* notes 201-07 and accompanying text (explaining case law interpreting due process right to court appointed counsel).

210. *See* Lassiter v. Dept. of Social Servs., 452 U.S. 18, 31-32 (1981) (upholding right to counsel for parental termination proceedings).

211. *See* Vitek v. Jones, 445 U.S. 480, 500 (1980) (upholding right to counsel for involuntary commitment).

212. *See supra* notes 78-188 and accompanying text (addressing whether anti-gang injunctions violate substantive constitutional rights of gang members).

213. *See supra* note 34 and accompanying text (discussing success of anti-gang injunctions).

214. *See supra* notes 63-64 and accompanying text (discussing duty of State to take reasonable steps to ensure order); *see also Acuna*, 929 P.2d at 618 ("[P]reserving the peace is the first duty of

effective remedy that defends the rights of the many and does not violate the constitutionally protected rights of the individual.

CONCLUSION

Unique problems demand unique solutions. The English nobles of King Richard's era, who framed the concept of a public nuisance, could not have known that they were creating a vehicle that would combat problems of urban street gangs centuries later. Nonetheless, the principle remains the same – *sic utere tuo ut alienum non laedus*, or *one must use his own right as not to infringe on the rights of others.*[215] Street gangs, like traditional public nuisances, pose a substantial and unreasonable interference to public rights.

Several states have passed legislation criminalizing gang activities.[216] Such legislation also could declare gang activities a nuisance *per se* and provide a procedure for city attorneys, district attorneys, or the state attorneys general to abate the nuisance and obtain compensatory damages for the benefit of the local community.

The new problems confronting America require more than the application of conventional law enforcement techniques with brute force. They require the adaptation of old principles of law to new and unique problems. As America is confronted with more complex problems, the several states and their citizens must continue to act resourcefully in finding creative solutions. Anti-gang injunctions are one of the most promising methods of curbing urban violence.

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government, and it is for the protection of the community from the predations of the idle, the contentious and the brutal that government was invented").

215. *See* Richardson v. Kiev, 34 Cal. 63, 73 (1867) (stating general maxim underlying public nuisance actions).

216. *See* CAL. PENAL CODE § 186.20 (1997); FLA. STAT § 870.04 (1997); ARIZ. STAT § 13-105, subd. 7, 8. The Racketeering Influenced and Corrupt Organizations Act, commonly known as the RICO Act, has also been found to render gang activity a federal crime. *See* 18 U.S.C. §§ 1961-68 (1994) (providing that use of any income from, acquisition of any interest in, or conducting enterprise through, a pattern of racketeering activity is unlawful); United States v. Bates, 843 F. Supp. 437, 440-41 (N.D. Ill. 1994) (holding certain activities of the El Rukn street gang are prohibited by RICO Act).