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## Dignity Takings in Gangland's Suburban Frontier

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## DIGNITY TAKINGS IN GANGLAND'S SUBURBAN FRONTIER

LUA KAMÁL YUILLE\*

### PREFACE: LOC'D UP, CORNERED, & BANISHED

*The background is idyllic. This encounter must have been captured at what filmmakers call the magic hour; that period shortly before sunset when the light is perfect. The streets are lined with palm trees. Quaint mid-century, middle class houses sit in neatly appointed yards, whose trimmed green lawns belie the state's debilitating water crises. This is why people live in California. The foreground, though, is more menacing. It is not that this corner is occupied by three Black youths that makes it menacing. Indeed, the young man that begins to speak is striking, charismatic, engaging, and confident. "They call me Trezy Loc." What is menacing is the way he surveils the block intently, the conspicuously blue clothes that he wears, the tattoos he displays, the hand symbols he periodically raises, the indecipherable messages he shouts at passersby, and the children's snack food box he wields that appears to conceal a gun. They are standing on the corner claiming their neighborhood. They are occupying the space, both geographic and psychological. And they are occupying it by threat of force.*

*Trezy Loc now sits on the street curb. Four police cars, sirens lit, have surrounded him. Despite the name, he has never been convicted or even charged with a criminal offense. Still, this is not the first time he has been stopped. It is not the tenth time. He has lost count. But he recalls it started when he was about thirteen years old. And he knows what happens next. He is told to take down his pants. He has to lift up his shirt. They call him names, but do not use his name. They toss the content of his backpack on the ground. They pat him down. They stick their hands in his pockets. They manhandle him as he is posed for the photographs they snap of him—half-nude and exposed—on the street. He hangs his head as, in this small town,*

\* Associate Professor, University of Kansas School of Law. For their invaluable comments on the earliest iterations of this project, thanks to Neil Komesar, Heinz Klug, Peter Carstensen, Shubha Ghosh, Guy Uriel Charles, Dorothy Brown, Timothy Lovelace, Bertrall Ross, Karen Bradshaw Schulz and others too numerous to mention. Local government, law enforcement, school administration, and gang member access was facilitated directly and indirectly by Joannie Yuille, George Aikens, Justin Yuille, Steven Gholar, and Ruhiyyih Yuille. Any deficiencies are, of course, my own. As always, a special thanks to the late Frank T. Jansson.



*he sees a classmate pass by; and then his teacher; and finally his grandmother, who calls out that she will call someone to help. She does not stop. She does not want to make things worse. He was just walking home from school. But, the police find what they call contraband: pens and pencils, his school notebook, and the pad he uses to write lyrics and poetry. "Violation," they tell him. "We're keeping these as evidence." He teacher will not accept that excuse. He still wonders what they did with his biology class notes.*

*Now, Trezy Loc sits melancholy in the back of his mother's car. A large duffle bag sits next to him. He does not talk, his charisma and confidence buried under the weight of what happens next. The drive to the airport feels longer than the hour that passes on the clock. The walk through the crowded terminal at Los Angeles International Airport feels lonely. The music that leaks from his Beats by Dr. Dre headphones do not drown out his thoughts. His mother is unsympathetic. "Things will be safer for you in Georgia." She tells him. "You'll be better there." He knows he has no defense. But he feels compelled to say something. So he responds with the truth. "But Georgia isn't home . . . It won't be home." His mother is resigned to this banishment. "We will visit you, Gregory," she calls him by his given name.*

The ideas explored in this article germinated long before Trezy Loc<sup>1</sup> recounted his experiences to me in one of the qualitative interviews on which this article bases its analysis. Though—in many ways—particular and unique, his story is also highly representative of the ambivalent positioning of street gang<sup>2</sup> members. During the formal interview, he was polite and reserved but talked at length about his experiences with the gang injunction to which he was subject and that led him to be sent to Texas for several years. As he left, however, he directed me to the video clip described above. "Please don't judge me," were his last words to me. This ambivalence is a central motivator for this article and the broader project of which it forms one part.<sup>3</sup> Nothing I have learned about gangs since this

1. Not his real name.

2. As has been my practice in previous work, this article and the study on which it is based limits its discussion to contemporary, U.S.-based, street gangs for definitional, conceptual, and practical reasons. While comparisons may be made among street gangs discussed here and U.S. prison gangs, domestic and international organized criminal organizations (i.e. the mafia), and other international and transnational gangs, those variations remain beyond the scope of the present analysis. This distinction is consistent with the practice of a range of gang observers. *See, e.g.,* NAT'L GANG INTELLIGENCE CTR., 2013 NATIONAL GANG REPORT 7–8 (2013), <https://www.fbi.gov/file-repository/stats-services-publications-national-gang-report-2013/view> [<https://perma.cc/P5NN-XKJB>] (distinguishing among street gangs, prison gangs, outlaw motorcycle gangs, and other gangs).

3. For the first article based on this line of inquiry, see Lua Kamál Yuille, *Blood In, Buyout: A Property & Economic Approach to Street Gangs*, 2015 WIS. L. REV. 1049 (2015).



work began has convinced me that they are institutions that the law should shore up or maintain. However, through the process, gangs and their members have been humanized. Law and policy directly and indirectly strips gang members of this fundamental quality, treating them as sub-persons.<sup>4</sup> This project contributes to addressing gangs as *human* institutions.

## I. INTRODUCTION

If you are familiar with popular cinema or television, you are likely familiar with Monrovia, California, though you would not know it. This “gem,”<sup>5</sup> an All America City<sup>6</sup> nestled at the foot of the San Gabriel Mountains, serves as the filming location for scores of stories set in quaint everybody’s America. The city was home to the first McDonald’s hamburger stand (before it was so named);<sup>7</sup> offered opulence on the historic Route 66;<sup>8</sup> and in fact, is the fourth oldest in Los Angeles County.<sup>9</sup> But not everything in Monrovia is so serene. Situated just thirty miles from the heart of America’s gang “epidemic,”<sup>10</sup> Monrovia lies in gangland’s suburban frontier. As a consequence, it has faced a forty-year history with legitimate street gangs. In 2009, the city of Monrovia sought and obtained a public nuisance abatement (commonly known as a gang injunction) to enjoin the activities of the city’s primary gangs, the DuRoc Crips and Monrovia Nuevo Varrio.

4. See *infra* Section IV.B.2.

5. The city is known as the “Gem City of the Foothills.” Geoff Kelly, *Monrovia is Rooted in Nature and in Family*, L.A. TIMES (June 22, 2003), <http://articles.latimes.com/2003/jun/22/realestate/re-guide22> [https://perma.cc/6AEJ-2B34].

6. In 1995, the city was recognized by the National Civic League as an All-America City to recognize its “innovation, impact, inclusiveness, civic engagement, and cross-sector collaboration to address pressing local challenges.” *Award-Winning City*, CITY OF MONROVIA, CAL., <http://www.cityofmonrovia.org/discover-monrovia/award-winning-city> [https://perma.cc/G4QK-32RK].

7. Richard and Maurice McDonald opened “the Airdrome,” an octagonal food stand, on Route 66 in 1937. Three years later, they moved the restaurant to San Bernardino, California, eventually renaming it McDonald’s. See *History of McDonalds*, WIKIPEDIA, [https://en.wikipedia.org/wiki/History\\_of\\_McDonald%27s](https://en.wikipedia.org/wiki/History_of_McDonald%27s) [https://perma.cc/STU5-A4XL].

8. Architect Robert B. Stacy-Judd purposely misnamed Monrovia’s Aztec Hotel, which is recognized as the first use of the principles of Mayan art and architecture in a contemporary American building. *Aztec Hotel*, NAT’L PARK SERV., [https://www.nps.gov/nr/travel/route66/aztec\\_hotel\\_monrovia.html](https://www.nps.gov/nr/travel/route66/aztec_hotel_monrovia.html) [https://perma.cc/3YSY-XXMN].

9. Founded on December 15, 1887, it was preceded by Los Angeles (April 4, 1850), Pasadena (June 19, 1886), and Santa Monica (November 30, 1886). See Local Agency Formation Commission, WIKIPEDIA, [https://en.wikipedia.org/wiki/Local\\_Agency\\_Formation\\_Commission](https://en.wikipedia.org/wiki/Local_Agency_Formation_Commission) [https://perma.cc/YT9H-Z6VE].

10. Scott H. Decker, *A Decade of Gang Research: Findings of The National Institute of Justice Gang Portfolio*, in *RESPONDING TO GANGS: EVALUATION AND RESEARCH 3* (Winfred L. Reed & Scott H. Decker eds., 2002).

This article examines Monrovia's gang injunction and uses the dignity takings framework developed by Bernadette Atuahene in *We Want What's Ours* to understand the scope of the harms associated with it. Through qualitative analyses of semi-structured interviews, legal documents, and other documents, it demonstrates that the dispossession of identity property associated with suburban gang injunctions, damages identity and feelings of community worth, and dehumanizes enjoined individuals in a way that deprives them of their fundamental right of dignity, constituting a clear example of a dignity taking. Like other developments in the burgeoning dignity takings canon, the article demonstrates the prevalence of dignity takings and illustrates the value of appreciating the dignity harms associated with government action.

## II. INVOLUNTARY PROPERTY LOSS, DIGNITY TAKINGS, & PROPERTY

The concept of involuntary property loss—"when a person, entity, or state confiscates, destroys, or diminishes rights to property without the informed consent of rights holders"<sup>11</sup>—is a broad, varied, but holistically under-theorized vector of property experience. Traditional, constitutional takings under the Fifth Amendment to the United States Constitution represent this kind of property loss. But it also includes property doctrines ranging from adverse possession and partition sale to zoning and defeasible interests in land. Less institutionalized property mechanisms—eviction, foreclosure, or even gentrification—are likewise situated in the category. And the idea can even encompass the loss occasioned by natural disasters when the government directly or indirectly impacts and structures how that loss is experienced.<sup>12</sup>

In her exciting contribution to the takings canon and involuntary property loss discourse, *We Want What's Ours*, Bernadette Atuahene offers what she terms a dignity taking framework. This type of involuntary property loss has occurred when "a state directly or indirectly destroys property or confiscates various property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization."<sup>13</sup> This new conceptualization addresses a central weakness in prevailing involuntary property loss doctrines by confronting the ways they

11. Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171, 173 (2016).

12. *Id.*

13. *Id.* at 178; see also Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework to Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQUIRY 796, 817 (2016).

fail to account for (even when they recognize) circumstances when the loss associated with property deprivation includes social, emotional, political, and cultural values of property that are incommensurate with measurement as a financial commodity. This framework recognizes that taking of identity property—i.e. that property that implicates epistemological, ontological, and vocational humanity—inflicts harm that is erased in dominant discourses on involuntary property loss, especially constitutional takings doctrine. The nature of these unappreciated unquantifiable harms render dignity takings an extraordinary class of egregious takings.

A growing cadre of scholars have engaged Atuahene's framework to "demonstrate[] that dignity takings have been a standard and ongoing process . . . of the normal working of property systems."<sup>14</sup> Nonetheless, as currently conceptualized the dignity takings framework is circumscribed in three very important ways. Though not articulated in these terms, dignity takings center on property deprivations in recognition of property's special value as a resilience building institution. That is property allows people to confront, adapt to, ameliorate, compensate for, or contain their inherent, constant condition of vulnerability stemming from their unalterable condition as humans.<sup>15</sup> Property is personhood.<sup>16</sup> Property is entrance into a community.<sup>17</sup> Property is human flourishing.<sup>18</sup> Property is status.<sup>19</sup> Property is freedom.<sup>20</sup> Property is independence and, thus, democracy.<sup>21</sup> Property

14. Alexandre Kedar, *Dignity Takings and Dispossession in Israel*, 41 LAW & SOC. INQUIRY 866, 868 (2016).

15. To engage the growing literature exploring the human condition of vulnerability, see Martha Albertson Fineman, *Beyond Identities: The Limits of an Antidiscrimination Approach to Equality*, 92 B.U. L. REV. 1713, 1718–19 (2012); Martha Albertson Fineman, *Feminism, Masculinities, and Multiple Identities*, 13 NEV. L.J. 619, 634–35 (2013); Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 9 (2008); Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 267–70 (2010). For further examples of vulnerability theory, see generally VULNERABILITY: REFLECTIONS ON A NEW ETHICAL FOUNDATION FOR LAW AND POLITICS (Martha Albertson Fineman & Anna Grear eds., 2013); *Vulnerability and the Human Condition Initiative: Publications*, EMORY UNIV., <http://web.gs.emory.edu/vulnerability/resources/Publications.html> [https://perma.cc/8HZJ-RT8X] (collecting resources regarding vulnerability theory). An articulation of the role of property in fostering resilience can be found in Lua K. Yuille, *Property as Resilience* (May 21, 2016) (unpublished manuscript) (on file with author).

16. See, e.g., Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

17. See, e.g., Eduardo Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889 (2005).

18. See generally GREGORY S. ALEXANDER, *THE GLOBAL DEBATE OVER CONSTITUTIONAL PROPERTY: LESSONS FOR AMERICAN TAKINGS JURISPRUDENCE* (2006).

19. See, e.g., Nestor M. Davidson, *Property and Relative Status*, 107 MICH. L. REV. 757 (2009).

20. See, e.g., D. Benjamin Barros, *Property and Freedom*, 4 N.Y.U. J.L. & LIBERTY 36 (2009) (exploring the legal and discursive relationship among property and freedom).

21. See generally Joseph W. Singer, *The Anti-Apartheid Principle in American Property Law*, 1 ALA. C.R. & C.L. L. REV. 913 (2011); Joseph William Singer, *Property Law as the Infrastructure of Democracy*, in 11 POWELL ON REAL PROPERTY (Michael Allan Wolf ed., 2011); GREGORY S.

is power.<sup>22</sup> But the property with which the dignity takings framework is primarily occupied is narrowly conceived. It is exclusion-centric.<sup>23</sup> It is possessive. It is in rem.<sup>24</sup> And it is positive.<sup>25</sup>

There is undeniable value in disciplining the dignity takings framework. It has the potential to become so expansive that it loses analytical value. However, as will be developed below, there is room to capture a broader conception of property, which better reflects the lived-experience of the subjects of this study.

### III. GANGS, IDENTITY PROPERTY & THE MONROVIA GANG INJUNCTION

After the glitz and glamour of Hollywood, Los Angeles, California, is known as birthplace of the modern criminal street gang. There, the impact of the post-industrial era on and the introduction and popularization of crack cocaine in working class urban minority communities catalyzed an opportunistic evolution in networked juvenile delinquency.<sup>26</sup> Perhaps because of the proximity, neither romanticized, like Michael Corleone,<sup>27</sup> nor aggrandized, like Tony Montana,<sup>28</sup> Los Angeles's street gangs have been

ALEXANDER, COMMODITY & PROPRIETY: COMPETING VISIONS OF PROPERTY IN AMERICAN LEGAL THOUGHT 1776–1970, at 30–33 (1997).

22. See, e.g., Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).

23. See, e.g., Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730 (1998).

24. See, e.g., Thomas W. Merrill & Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 YALE L.J. 357, 358 (2001) (defining the in rem character as the “distinctive type of right to a thing, good against the world”).

25. DAVID SCHULTZ, PROPERTY, POWER, AND AMERICAN DEMOCRACY 43 (1992) (quoting Blackstone as saying “a conventional institution created by law, habit, or the passage of time . . . . [The] rules prescribing its use and transfer were determined by society.”); see also JENNIFER NEDELSKY, PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM 248 (1994) (“[P]roperty is, of all the basic rights, perhaps, most obviously the creation of the state.”).

26. See, e.g., John Hagedorn, *Gangs as Social Actors*, in THE ESSENTIAL CRIMINOLOGY READER 141, 143–46 (Stuart Henry & Mark Lanier eds., 2006); John Hagedorn, *Gang Violence in the Post-Industrial Era*, in 24 CRIME AND JUSTICE: A REVIEW OF RESEARCH: YOUTH VIOLENCE 365, 389–90 (Michael Tonry & Mark H. Moore eds., 1998).

27. THE GODFATHER (Paramount Pictures 1972).

28. See, e.g., Bernard Beck, *The Myth That Would Not Die: The Sopranos, Mafia Movies, and Italians in America*, MULTICULTURAL PERSP., Apr. 2000, at 24, 26; Arthur Knight, *Nearer, My Godfather, to Thee*, SATURDAY REV., Mar. 25, 1972, at 16 (“*The Godfather* elevates the gangster movie to a new and impressive level. . . . In *The Godfather*, we are dealing with people—home-loving, tightly knit, folksy people—who also happen to kill a lot. If we are to understand their mores, we must also accept this peculiar penchant of theirs.”); Pauline Kael, *Everyday Inferno*, NEW YORKER, Oct. 8, 1973, at 157 (“Was the audience envying them their close family ties and the vitality of their lawlessness? Was it envying their having gotten used to a sense of sin?”); Edward LiPuma, *Capitalism and the Crimes of Mythology: An Interpretation of the Mafia Mystique*, J. ETHNIC STUD., Summer 1989, at 1, 1 (quoting Dwight C. Smith, *The Mafia Mystique*, in AN INQUIRY INTO ORGANIZED CRIME (Luciano J. Iorizzo ed., 1971)). These positive connections do not ignore the sustained critique, especially by

consistently derided by the city's Hollywood neighbor as a blight on urban communities.<sup>29</sup> This fatalistic and intractable image dominates law and policy: Gangs are "poison."<sup>30</sup> Gangs are "brutal outlaws."<sup>31</sup> Gangs are so unfathomably bad that even law enforcement "don't know what the hell to do about it."<sup>32</sup>

The reputation is so powerful that Los Angeles's Crip and Blood gangs have achieved national penetration and international notoriety,<sup>33</sup> putting the city at the forefront of anti-gang law enforcement innovation. Growing out of this experimentation, nearly thirty years ago, the city sought the world's first civil injunction against the Playboy Gangster Crips, as an unincorporated entity, whose activities it claimed constituted a public nuisance.<sup>34</sup> A decade later, the Supreme Court of California sanctioned Los Angeles's innovative practice by then known as a civil gang abatement action.<sup>35</sup> Despite heavy criticism,<sup>36</sup> judicial imprimatur permitted the practice to evolve into the gang injunctions seen today, and such civil remedies have become a principal tool in addressing gang activity not only across California but in jurisdictions across the country and internationally.<sup>37</sup>

Italian-American groups of the image of Italian criminality. However, it highlights glorification/denigration dichotomy among organized crime films.

29. Including such films as *AMERICAN ME* (Universal Pictures 1992), *NEW JACK CITY* (Warner Bros. Pictures 1992), and *MI VIDA LOCA* (Sony Pictures Classics 1994). The gang genre and other "hood" films have been thoroughly critiqued by commentators from diverse academic orientations. Interestingly, among the critiques are claims that the films glorify criminality in precisely the way mafia movies do. See, e.g., Chris J. Przemieniecki, *Gang Behavior and Movies: Do Hollywood Gang Films Influence Violent Gang Behavior?*, 12 J. GANG RES., Winter 2005, at 41, 58–59. The positive impact of these films, including opening space in which debates about people living in marginalized communities could direct the debate over the issues they face, has also been explored. See Cameron McCarthy et al., *Danger in the Safety Zone: Notes on Race, Resentment, and the Discourse of Crime, Violence, and Suburban Security*, in *POWER/KNOWLEDGE/PEDAGOGY: THE MEANING OF DEMOCRATIC EDUCATION IN UNSETTLING TIMES* 211 (Dennis Carlson & Michael W. Apple eds., 1998).

30. *Gangs*, FED. BUREAU OF INVESTIGATION, [http://www.fbi.gov/about-us/investigate/vc\\_majorthefts/gangs](http://www.fbi.gov/about-us/investigate/vc_majorthefts/gangs) [https://perma.cc/S8LN-Y93D].

31. ACLU FOUND. OF S. CAL., FALSE PREMISE/FALSE PROMISE: THE BLYTHE STREET GANG INJUNCTION AND ITS AFTERMATH I (1997) (quoting then-Los Angeles City Attorney Hahn).

32. Susan L. Burrell, *Gang Evidence: Issues for Criminal Defense*, 30 SANTA CLARA L. REV. 739, 739 (1990) (quoting then-Los Angeles police chief Daryl F. Gates).

33. "The competition between the Bloods and the Crips has assumed almost legendary status." Joan W. Howarth, *Representing Black Male Innocence*, 1 J. GENDER RACE & JUST. 97, 109 (1997) (citing IRVING SPERGEL, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, GANG SUPPRESSION AND INTERVENTION: AN ASSESSMENT 33 (1993)). For a description of these notorious gangs, see, e.g., ALEJANDRO A. ALONSO, TERRITORIALITY AMONG AFRICAN-AMERICAN STREET GANGS IN LOS ANGELES (1999); R. D. Flores, *Crips and Bloods*, CRIME & JUST. INT'L, Oct. 1997, at 6.

34. *Id.* at 320.

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

36. First Amendment, Fourth Amendment, Equal Protection, and Due Process challenges to these injunctions failed to gain any real traction.

37. MATTHEW D. O'DEANE, GANG INJUNCTIONS AND ABATEMENT: USING CIVIL REMEDIES TO CURB GANG-RELATED CRIMES 441–49 (2012); *Gang Injunctions: Problem or Solution?*, NAT'L RADIO



In the same period during which gang injunctions evolved, a confluence of factors (including, no doubt, the success of urban gang injunctions) led to the entrenchment of legitimate gang activity in suburban communities. Faced with urban problems, those communities have turned to urban solutions, and in the past several years, gang injunctions have been deployed in small suburban outposts. Monrovia, California, is one such community.

This brief account presents gangs as criminal organizations and gang injunctions as law enforcement tools, which is consistent with dominant discourse. That perspective would suggest that—even if gang injunctions are the “racist, draconian mallets”<sup>38</sup> many see them as—the dignity takings framework is inapposite.<sup>39</sup> However, properly understood, both gangs and gang injunctions present and engage property issues. Specifically, gangs are engines for the development of identity property, and gang injunctions are, essentially, land use management tools designed to destroy or repossess that identity property and banish its owners from the community.

#### *A. Gangs & Identity Property*

Despite the terroristic image of gangs and gang violence that dominates popular legal consciousness, there is an interdisciplinary scholarly consensus, which has deepened and extended since gangs were first studied in the 1920s,<sup>40</sup> holding that gangs are caused by the absence or breakdown of community institutions (family, school, church and local government) that transmit mainstream social norms.<sup>41</sup> These norms take the form of capital, or resources, that individuals use to facilitate either their acquisition of additional capital or social mobility.<sup>42</sup> Gangs fill this institutional gap

PROJECT (Dec. 13, 2011), <https://www.radioproject.org/2011/12/gang-injunctions-problem-or-solution/> [<https://perma.cc/79C4-MGR2>]; Dominic Casciani, *Gang Injunctions Launched in England and Wales*, BBC NEWS (Jan. 31, 2011), <http://www.bbc.com/news/uk-12311184> [<https://perma.cc/T3AW-PAUY>].

38. Yuille, *supra* note 3, at 1055.

39. Whether a principled, logical, and meaningful expansion of the framework to contexts not involving involuntary property loss is beyond the scope of the present study.

40. FREDERIC M. THRASHER, *THE GANG: A STUDY OF 1,313 GANGS IN CHICAGO* (1927).

41. See, e.g., Irving Spergel & G.D. Curry, *The National Youth Gang Survey: A Research and Development Process*, in *THE GANG INTERVENTION HANDBOOK* 359–400 (Arnold P. Goldstein & C. Ronald Huff eds., 1993). Terence P. Thornberry et al., *The Antecedents of Gang Membership*, in *THE MODERN GANG READER* (Malcolm W. Klein et al. eds., 1995).

42. Pierre Bourdieu taxonomized as economic, social, cultural and symbolic capital. Pierre Bourdieu, *The Forms of Capital*, in *HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION* (John G. Richardson ed., 1986). For a brief intellectual history of the “plethora of capitals,” see Michael Woolcock, *Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework*, 27 *THEORY & SOC’Y* 151, 155 (1998); Kay Kei-Ho Pih et al., *Different Strokes for Different Gangs? An Analysis of Capital Among Latino and Asian Gang Members*, 51 *SOC. PERS.*

not only by providing alternative avenues to pursue the kinds of capital to which its members have limited access but by creating alternative forms of capital that has purchase in spaces and contexts gangs develop for their deployment.

In the types of gangs subject to gang injunctions, violence, criminality, and entrepreneurialism<sup>43</sup> are secondary or tertiary undertakings.<sup>44</sup> Instead, much gang capital creation is undertaken through expressly legal or unregulated means.<sup>45</sup> This more central focus of gangs is pursued primarily through the provision of surrogate sources of identity solidarity. Such identity becomes a valuable resource because the gang fills gaps left by other socio-cultural institutions.<sup>46</sup> That gap filling results in the formation of a shared normative community (distinct from the mainstream normative community in which gang members are situated) in which alternative gang capital has purchase and cachet.

Gangs engage in a range of activities the core function of which is the pursuit of identity formulation and capital creation. The most salient of those activities is gangs' use of the colors, signs, and symbols.<sup>47</sup> The display of gang symbols through hand signs and unique identifying graffiti communicates a gang's presence in and claim of dominance over a geographic space.<sup>48</sup> The borders of a gang's geographic territory are clearly charted by its distinctive graffiti.<sup>49</sup> By deploying a gang's symbols—wearing distinctive clothing and colors, physically marking their body with gang tattoos, incorporating gang symbols into their personal belongings, and adopting gang vernacular—members occupy space in the community's consciousness, which accords them respect and status within the physical space to which they lay claim.

473 (2017) (citing Bourdieu). The Bordieuan construct is not directly addressed in most relevant literature, but the substantive insight is consistent with his capital taxonomy.

43. See, e.g., James C. Howell, *Menacing or Mimicking? Realities of Youth Gangs*, JUV. & FAM. CT. J., Spring 2007, at 39; MALCOLM W. KLEIN, *THE AMERICAN STREET GANG: ITS NATURE, PREVALENCE, AND CONTROL* (1995).

44. See GEORGE W. KNOX, *AN INTRODUCTION TO GANGS* (6th ed. 2006) (citing sources exploring gang typologies).

45. *Id.* at 301 (discussing the social, economic, and symbolic functions of gangs); Brenda C. Coughlin & Sudhir Alladi Venkatesh, *The Urban Street Gang After 1970*, 29 ANN. REV. SOC. 41, 44 (2003) (citing articles creating a general "consensus" that identity construction is the primary function of gangs).

46. *Distribution and Structures of Gangs*, in *THE MODERN GANG READER* (Arlen Egley et al. eds., 3d ed. 2006).

47. KNOX, *supra* note 44; see also ARNOLD P. GOLDSTEIN & DONALD W. KODLUBOY, *GANGS IN SCHOOLS: SIGNS, SYMBOLS, AND SOLUTIONS* (1998).

48. GOLDSTEIN & KODLUBOY, *supra* note 47.

49. Cf. David Ley & Roman Cybrinsky, *Urban Graffiti as Territorial Markers*, 64 ANNALS ASS'N AM. GEOGRAPHERS 491, 501 (1974).

Gang symbology is symbiotically connected to gang territoriality. Gangs create physical and psychological territories in which their identity has normative force and the capital associated with that identity has positive value. Gang territoriality itself is also a key aspect of the development of gang capital.<sup>50</sup> Most gang activity is at least indirectly related to such territoriality. For example, gangs physically occupy public and private spaces in their claimed geographic territory to reinforce the symbolic territorial markings of graffiti.<sup>51</sup> Within secured territories,<sup>52</sup> gang members often perform traditional functions of owners. They determine access. They control markets. They perform protective functions for community members.<sup>53</sup> They disaggregate, cede, and transfer their claims.

This territoriality is, in turn, reinforced by the way gangs deploy their personal property, which they imbue with important symbology. The expressive function of gang regalia is a topic of inconclusive debate. But, where access to other legitimate forms of identity property is limited, such personal property plays a very important role as identity property, by claiming interest in and exclude others from an intangible, intellectual space where the gang's symbology is recognized.<sup>54</sup>

Re-centered around its core functions, it is clear that the gang capital project sketched above constitutes a transgressive engagement not just with property, but with identity property, a category of property meriting and granted heightened protection or deference because of its close association to proper self-development. Gangs are pursuing traditional property values—they find their place in the world in relationship to their control of property—but it is in an alternative property system. Even a cursory examination of the politics and practicalities of gang injunctions demonstrates that injunctions target precisely the identity property function of gangs.

50. This is evidenced, for example, in by the sheer number of gangs whose names are related to the geographic territory they claim. Olivier Bangerter, *Territorial Gangs and Their Consequences for Humanitarian Players*, 92 INT'L REV. RED CROSS 387, 396 (2010).

51. Hagedorn, *supra* note 26.

52. In unstable or contested spaces, territorial claims may be enforced (or charted) through force.

53. George Knox cites gangs that have implemented litter clean up regimes, organized community social events, and doled out largess to incapacitated members. Knox also reports that host community members themselves may solicit the gang's exercise of such ownership functions. KNOX, *supra* note 44, at 23–24.

54. Benjamin Barros has explored distinction between idea of home and the physical location through different means and toward different ends. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 256 (2006) (arguing that only certain types of homes merit the special treatment generally accorded to homes in the law).

### *B. Gangs Injunctions as Property Tools*

Proponents of gang injunctions frame the gang problems directly addressed by gang injunctions as protecting the property interests of community members against criminal usurpation by gangs.

One consistent theme underlying such justifications for gang injunctions is blight, which is inextricably related to the ways real property is understood and valued as a “placeholder” for a broader and different set of resources and normative aspirations that results in property owners becoming “much less interested in the on-site attributes of real estate than in the people things, services, and conditions lying beyond . . . the property’s boundaries.”<sup>55</sup> The California Supreme Court described such gang blight as the “display [of] casual contempt for notions of law, order, and decency”<sup>56</sup> primarily because gang members engage in everyday conduct in an “offensive and disruptive manner.”<sup>57</sup> In Monrovia, one city council member explained that the gang injunction would “go a long way toward cleaning up some specific problems in our affected neighborhoods.”<sup>58</sup> Another explained: “It’s going to mean safer and quieter streets.”<sup>59</sup>

Similarly, the conduct uniquely targeted by gang injunctions constrains behaviors that injunction advocates claim impinges on the property interests of community members. The relevance to property interests of restrictions on carrying instruments capable of defacing property is clear, but the property theme is more generally prevalent. For example, the only direct harm caused by conduct like trespass, playing loud music, and graffiti is its attack on private property interests.<sup>60</sup> Loitering and obstructing thruways are associated with public property. The primary harm of the expressive and associational activity restricted by gang injunctions is that such activity facilitates or protects gang members’ ability to use public, private, and common property as they choose, which uses are deemed aes-

55. Lee Anne Fennell has explored this concept from several perspectives in her discussion of the ways property “has come unbound from the four corners of the owned parcel.” LEE ANNE FENNEL, *THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES* 2 (2009).

56. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 601 (1997).

57. *People ex rel. Totten v. Colonia Chiques*, 67 Cal. Rptr. 3d 70, 74, 86 (Ct. App. 2007) (upholding the gang injunction issued against the Colonia Chiques gang).

58. *What the City Council Had to Say*, CITY OF MONROVIA, CAL., <http://www.cityofmonrovia.org/police/page/what-city-council-had-say> [https://perma.cc/MDL8-MNXL].

59. *Id.*

60. For a detailed treatment of the harm of trespass, see, e.g., Thomas H. Merrill, *Trespass, Nuisance, and the Costs of Determining Property Rights*, 14 J. LEGAL STUD. 13 (1985).

thetically objectionable. For example, wearing gang apparel<sup>61</sup> causes no direct harm, but it purportedly guarantees that gang members will not be disturbed while engaging in property-related activity like loitering or blocking the streets.

Finally, even though it is most obviously connected to order and maintenance policing, gang injunctions function as a land use management tool.<sup>62</sup> In his well-known article on street order,<sup>63</sup> Robert Ellickson justified his attention on certain “problems”<sup>64</sup> presented by homelessness, like panhandling and skid rows, with the intuitive but underexplored assertion that “a specialist in property law approaches the issue of street order as a problem not of speech or of crime, but of land management.”<sup>65</sup> Nicole Steele Garnett has developed and engaged the connection between land use planning and street order. Through several pieces, she has created the most coherent framework for reinterpreting order-maintenance policy as land use policy.<sup>66</sup>

In this context, gang injunctions may be properly seen as a property law corollary to broken windows policing. The most overt tools of an order-maintenance policy orientation pursue this aim through strategies that directly or indirectly regulate property uses. An anti-loitering ordinance, for example, indirectly dictates acceptable uses for covered public spaces. Conversely, property regulation through land use policy itself can manifest order-maintenance ideals. Gang injunctions work this way.

A gang injunction is a broad tool used by municipalities to enjoin activities in which gangs or a gang’s members are believed to be engaged. Based on a list of undesirable activities, the city sues a gang itself as an

61. This restriction is itself a restriction on traditional forms property, as are many other typical provisions.

62. This property function is also a central task of municipal government, which opens space for local development of criminal law through these mechanisms.

63. See, e.g., Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165 (1996).

64. Ellickson can be and has been criticized for failing to support his normative conclusion that panhandling and skid rows themselves properly constitute problems with which local government should be concerned. See, e.g., Stephen R. Munzer, *Ellickson on “Chronic Misconduct” in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 HARV. C.R. & C.L. L. REV. 1, 33 (1997).

65. Ellickson, *supra* note 63, at 1166.

66. See Nicole Stelle Garnett, *The Order-Maintenance Agenda as Land Use Policy*, 24 NOTRE DAME J.L. ETHICS & PUB. POL’Y 131 (2010); Nicole Stelle Garnett, *Governing? Gentrifying? Seceding? Real-Time Answers to Questions About Business Improvement Districts*, 3 DREXEL L. REV. 35 (2010); Nicole Stelle Garnett, *Save the Cities, Stop the Suburbs?*, 116 YALE L.J. POCKET PART 192 (2006); Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075, 1077–78 (2005) [hereinafter Garnett, *Relocating Disorder*]; Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1, 4 (2004).

unincorporated entity—not specific individuals<sup>67</sup>—to prevent members from engaging in those activities, within a defined geographic area. The complaints forming the basis of a gang injunction have become standardized, drawing heavily on a civil and criminal public nuisance statute, which has both civil and penal components and defines nuisance broadly: “[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property” constitutes a nuisance.<sup>68</sup> A nuisance becomes public when it “affects at the same time an entire community or neighborhood or any considerable number of persons,”<sup>69</sup> and it becomes criminal when it has a “distinctively public quality.”<sup>70</sup> The public nuisance law offers three consequential paths for each injunction violation: (a) misdemeanor public nuisance charges, which involve criminal prosecutions, (b) civil contempt of court, subjecting injunctees to monetary fines up to \$1000, or (3) criminal contempt of court, subjecting injunctees to a maximum of six months in jail.

Monrovia’s gang injunction closely follows the standard form, targeting a wide range of conduct not otherwise prohibited in California Penal Code.<sup>71</sup> More important, the full range of behaviors in which gang members might to generate or sustain identity property are flexibly proscribed by the gang:

1. standing, sitting, walking, driving, gathering, bicycling or otherwise appear in the public view with any known gang member;
2. “marking substances” that could be used to deface real or personal property (i.e. pens);
3. using words, phrases, physical gestures or symbols (i.e. gang signs), or engaging in other forms of communication that describe or refer to the gang; and
4. wearing gang clothes.<sup>72</sup>

67. A key component of gang injunctions is their reliance on California’s “time-honored equitable practice applicable to labor unions, abortion protestors or other identifiable groups” of pursuing equitable remedies against identifiable groups (regardless of their incorporation status) because “such groups can act only through the medium of their membership. To effect this principle, at least some specific gang members are named as representatives of the named gang. Then, the gang, through those representatives (and other gang members who step forward to speak for the gang), is given the opportunity to challenge the injunction, generally, and its particular provisions, specifically, according to procedures applicable to any other civil injunction. The named gang members may also challenge their inclusion in the proposed injunction. *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (1997).

68. CAL. CIV. CODE § 3479 (West 2016) (specifically including drug dealing).

69. *Id.* § 3480.

70. *Gallo*, 929 P.2d at 604.

71. EDWARD L. ALLAN, CIVIL GANG ABATEMENT: THE EFFECTIVENESS AND IMPLICATIONS OF POLICING BY INJUNCTION (2004).

72. O’DEANE, *supra* note 37, at 59, 137, 404, 541.

The Monrovia injunction specifically targets *residents* not only of the city of Monrovia but of the adjacent unincorporated areas and the neighboring town, Duarte, which expressly rejected Monrovia's invitation to participate in its gang injunction claim. The injunction also applies to a very large "safety zone" that includes the entire unincorporated area adjacent to the city, and—more important—covers approximately eighty percent of the city itself, including all business districts and all but one school and excluding only the richest part of town. Considered in the context of the injunction's expansive spatial application, the consequences of targeting residents are clear. A gang injunction targeting non-residents leaves an enjoined gang member free to go home. Where is the resident injunctee free to go?

Gang injunctions have been deployed with considerable variation.<sup>73</sup> Some jurisdictions use injunctions to reduce the number of gang members on the street at any given moment by performing gang sweeps.<sup>74</sup> Other jurisdictions report that police officers "get more mileage from the gang injunctions by using them as a negotiating tool to gain information on the streets."<sup>75</sup> Gang injunctions also impose indirect but significant practical consequences on injunctees that are unrelated to the enforcement of the gang injunction. For example, the injunction will be revealed in any background check, which limits injunctees' access to legitimate employment and both public and private housing.<sup>76</sup>

Through this lens, gang injunctions fit squarely within the land use management analytical category.<sup>77</sup> Garnett describes "neighborhood-exclusion zone" policies that use zoning and trespass principles to affect the same sort of first generation change at which gang injunctions aim.<sup>78</sup> While the latter land use policies manifest order-maintenance ideals, gang injunction order-maintenance policies manifest land use planning principles.<sup>79</sup>

73. GANG INJUNCTION COMM., MANAGEMENT AND AUDIT OF GANG INJUNCTIONS, in 2003–2004 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT 169 (2004), [http://grandjury.co.la.ca.us/gjury03-04/LACGJFR\\_03-04.pdf](http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf) (demonstrating that gang injunctions result in relatively few arrests and even fewer direct or formal legal sanctions).

74. O'DEANE, *supra* note 37, at 71.

75. *Id.*

76. Lindsay Crawford, *No Way Out: An Analysis of Exit Processes for Gang Injunctions*, 97 CALIF. L. REV. 161, 180 (2009).

77. Gang injunctions also resemble sex offender residency programs, which have been explicitly and implicitly recognized as land use management policies. *See, e.g.,* Asmara M. Tekle, *In the Zone: Sex Offenders and the Ten-Percent Solutions*, 94 IOWA L. REV. 610 (2009).

78. Garnett, *Relocating Disorder*, *supra* note 66, at 1092.

79. To use Ellickson's proposed model, the definition of the target or safety zone defines the boundaries of an implicit red zone (i.e. an area with high levels of chronic disorder) that the city is using

That many gang injunction provisions are not directly related to land does not detract from the point. From the city's perspective, the personal property and liberty restrictions that dominate gang injunctions are instrumental substitutes for and complements to the real property decisions codified therein. Moreover, the link between real property and personal "identity property"<sup>80</sup> in the gang context transforms personal property into a realty proxy for gang members marginalized from access to such property in their communities.

#### IV. GANG INJUNCTIONS AS DIGNITY TAKINGS: A STUDY<sup>81</sup>

The admixture of prevailing sociological understandings of gangs and the critical synthesis of property theory forms an apt springboard from which to launch an argument that gang injunctions constitute dignity takings. This article does not engage that self-evident theoretical exercise. Instead, it engages in a dignity takings analysis of the data collected in an empirical study of the Monrovia Gang Injunction. That qualitative analysis indicates that the Monrovia Gang Injunction does effect dignity takings.

##### *A. Methods, Data, and Limitations*

The gang injunction study examined the experiences of public officials, community members, and individuals subject to the Monrovia Gang Injunction. Among the primary hypotheses tested was that the effect of gang injunctions on the injunctees is to intensify their experience of marginalization. The human subjects research took place only after several years of (non-continuous) background research concerning gangs, gang injunctions, the cities of Monrovia and Duarte, California, and the history of gangs in the two cities, as well as elsewhere in suburban Los Angeles and Orange Counties, California. The initial research period included the collection of local histories and the development of relevant community contacts.

To answer the primary research questions, I conducted in-depth, semi-structured interviews with thirty-five injunctees, ten current and former

the gang injunction to turn yellow (i.e. occasional but not chronic disorder is permissible). Ellickson, *supra* note 63, 1220–23.

80. For an elaboration of this idea, which refers to that property that implicates an individual or group's vocational humanity, ontological humanity and epistemological humanity, or their identity, see Yuille, *supra* note 3.

81. A full report of the study—conducted only after a required review by the institutional review board at the University of Kansas—and its findings will be made available in one or more subsequent publications.





public officials, and twelve community members.<sup>82</sup> Each interview, the majority of which were conducted during June and July 2016, lasted between sixty and ninety minutes. The interviews were audio taped and transcribed, and the interviewees were given the promise of confidentiality (all the names used in this article are pseudonyms, and biographical data have been obscured to protect the identity of the respondent). At the outset of each interview, the interviewee was given a demographic survey in which they provided standard demographic data and, as relevant, indicated whether they had ever been affiliated with gang. The majority of interviews were conducted one person at a time, in person. In a few instances, I conducted focus group style interviews. Generally, only the interviewee and I were present for the interviews. In a significant minority of cases, a co-investigator was present. The enlistment of co-investigators, became necessary to obtain access to several injunctees who initially expressed reluctance to participate in the study. My co-investigators were both local community members. They did not ask any questions or participate in interviews with injunctees with whom they had previously been acquainted.

To gain access to the injunctees, I relied on existing community relationships with individuals who were able to share contact information of the individuals named in the gang injunction. Those names were publicly available. My reliance on community connections limited the injunctee population to which I ultimately had access to, primarily, Black male injunctees.<sup>83</sup> No females have been subject to the Monrovia Gang Injunction. I deemed it prudent to exclude from the study (a) minors and (b) incarcerated individuals. Notwithstanding these limitations, an appreciable percentage of Black individuals subject to the Monrovia Gang Injunction eventually participated in the study.

Community actors were also able to provide direct contact information for public officials, which included present and former members of city council (including three mayors) and other city employees, school administrators, and law enforcement (including the police chief). Participants were

82. Interviews began with one of the following questions, as appropriate:

I am interested in understanding what gang injunctions mean to the real people they are imposed on. Tell me about what you experienced being subject to the gang injunction.

I am trying to understand what motivates a city to [seek] [enforce] a gang injunction. Please tell me about your role in the [implementation] [enforcement] of the gang injunction? What [do] [did] you hope it would accomplish?

I am interested in understanding how gang injunctions impact communities where they are used. Tell me about what you experienced having a gang injunction in your [neighborhood] [city].

83. All Monrovia injunctees are male and either Black or Hispanic (as described in the city's records).

also solicited via Institutional Review Board-approved emails, which were distributed through community contacts.

In addition to the interviews, I consulted a range of sources such as government documents, court documents, social media, and newspapers. As outlined above, I also relied on the academic literature to frame my analysis.

This study is the first to comprehensively (both vertically and horizontally) engage the human impacts of a gang injunction. It is also the first study to examine a suburban gang injunction. Nevertheless, it has several limitations.

First, as noted above, injunctee interviewees skewed Black and male. However, two-thirds of the individuals enjoined by the Monrovia Gang Injunction were identified by law enforcement as belonging to or being associated with the Latino gang Monrovia Nuevo Varrio. Unlike the Black injunctee interviewees, none of the Latino injunctee interviewees admitted membership in that or any other gang. Whether the trends identified for Black injunctees would hold with the broader group is wholly unpredictable.

The study design and approach also neglected to systematically account for the experience of females (and non-enjoined males) who may have been closely related to and therefore significantly impacted by the gang injunction. The study identified three family groups for whom this was clearly a distinct possibility. Thus, the conclusions drawn are necessarily under-inclusive.

The study is also inherently limited by its interview methodology. The validity of interview data is undermined when interviewees give false, misleading, or inaccurate information. The reasons such information might be provided include embarrassment, concern about confidentiality, and misremembering. All of these are significant to this study. Interviews were designed to minimize these risks, especially for the injunctees who were never asked about their actual gang affiliation except in the anonymous survey they completed at the outset.

Finally, I myself constitute a limitation (and a strength) of this study. There is no such thing as neutral information. In qualitative data of the nature gathered in this study, that fact is less obscured than in other areas. Nevertheless, it is important to clearly delineate the ways I, as an individual, am injected into the results. Not only is the design and reporting of the data collection a product of the lenses with which I view the world, but my status as a (relatively) young, Black, third-generation Monrovia from a fairly prominent local family also impacted the data I was able to collect.

For example, among the most common responses to questions I asked of Black interviewees, especially those that could be interpreted as implicating race, was “you know.” Interviewees were also easily familiar with me as they described landmarks, history, and local cultural settlements. Therefore, I read the data with the gloss of common understanding and culture. I consider these implications of my positionality strengths of the study.<sup>84</sup> Whether my position constitutes a strength or limitation is much harder to predict with respect to local officials. Coming from a prominent family undoubtedly facilitated access to the local officials I interviewed (none of whom I previously knew personally). However, I cannot measure the impact of my Blackness on the candor of public officials, especially since a significant faction of the city opposed the Monrovia Gang Injunction as a racist mechanism.<sup>85</sup> The limitations I identify present practical and analytical challenges, but they do not undermine the empirical value of the study or substantially impede the robust analysis of gang injunctions as dignity takings.

### *B. Discussion*

As outlined above, dignity takings constitute a special extraordinary class of involuntary property loss. To qualify, two (broadly construed) elements must be met. First, there must be an involuntary loss of property: “A state directly or indirectly destroys or confiscates property from owners or occupiers . . . .”<sup>86</sup> Second, the taking must inflict sub-personhood on the dispossessed: “whom it deems to be sub persons.”

The theoretical analysis outlined above and elaborated in prior scholarship builds a strong case that gang injunctions inflict a dignity taking on

84. I also found it beneficial that neither I nor my family who still live in Monrovia were directly impacted by the Monrovia gang injunction itself. I myself, however, was directly impacted by at least one of the events that is seen as a catalyst for the eventual adoption of the gang injunction. I did not, nevertheless, learn about or have any involvement with the injunction until it became the subject of the predicate studies.

85. Several local official and community member respondents reported that the city was forced to hold community fora at important Black churches specifically to address these issues. Government officials also reported public communications being carefully crafted (and redrafted) to avoid telegraphing racist intent. Except for Monrovia city officials, who uniformly rejected the idea that race played any role in the injunction, respondents displayed varying opinions on the matter. They, however, uniformly reported that the neighboring city of Duarte refused to join the injunction because that city interpreted the mechanism as imposing unacceptable racial costs.

86. As noted above, originally the analysis required that the taking occurred without paying just compensation or without a legitimate public purpose. As the framework has developed, these elements have been called into question. In the present context, the consideration of these elements would complicate the dignity taking analysis but not defeat the finding of a dignity taking. Since the conceptual usefulness of these elements has been challenged elsewhere, the present article will not undertake such an analysis.

injuntees. The gang injunction study provides empirical support for this conclusion.

1. Involuntary Property Loss: “A State Directly or Indirectly Destroys or Confiscates Property from Owners or Occupiers . . . .”

That the Monrovia Gang Injunction inflicts a direct deprivation by the government of the property of injuntees is beyond question. By its explicit terms, this is what—at least in part—the gang injunction does. The deprivation—re-borrowing from the constitutional takings framework from which it evolved—is primarily regulatory in character. That is, the material or physical property of the injuntees is not necessarily confiscated nor destroyed via gang injunction, but the nature of the gang injunction deprives the injuntees of core rights associated with property, including the right to possess and the right to use. Those property rights *are* confiscated. And, with respect to the property at issue, those deprivations effectively leave the dispossessed with nothing. Of course, the gang injunction also indirectly authorizes the direct confiscation of the physical property of gang injuntees, who reported having clothing, personal items, and school supplies confiscated by police as evidence of gang injunction violations. The gang injunction even constituted part of a government-designed program to physically deprive certain individuals of their homes and remove them from the city of Monrovia using a variety of mechanisms that also included traditional condemnation.

However, the empirical data complicates this uncontroversial conclusion. Both the injuntee interviewees and public officials almost wholly ignored the many instances of the deprivation of traditionally recognized property as the important takings effected by the gang injunction. Instead, they clearly identified the property implicated by the gang injunctions as what has been described, here, as identity property (i.e. the status and purchase conferred through the gang)—that is, they focused on the gang injunction’s impact on those valuable resources associated with the injuntees’ identity as a gang member.<sup>87</sup>

Describing how the gang injunction dismantled the relationships he developed, one man explained,

Well me personally, I feel like the gang injunction is a way of separating people or somethin’ like, you know, like people I might have grown up with all my life, I might have grown up with em’ an now they come with this gang injunction where it should be family injunction if anything I

87. In *Blood In, Buyout*, I give article-length treatment to how and why gang identity constitutes identity property. See Yuille, *supra* note 3.

feel like, you know? I mean like people I grew up with, I'm 21 right now and people I been playin' in the sand box since I was 5 with, you know, they tryin' to tell them, you can't be with him. You know? And it be somebody's that like family I grew up with all my life and they separating us, you can't be with him.

More directly, another man explained: "It feels like OG segregation, baby, let me tell you."

Reflecting on the deprivation of status, space, and place, one man explained:

It's like you know, well if somebody can't be somewhere they been all their life, you know it's no place like home. So once they bring you up outta there, you out your safe zone, your comfort zone. So now you gotta go somewhere else . . . they don't care where you go really . . .

Even more explicitly connecting the gang injunction to the destruction of status conferring identity property—here described as a label—another man said this: "It's also scaring the neighbors. It has them scared to even have us come in they house and near their house cause now we got this bad label. We used to have a good one."

All of these echo the experience described by Trezy Loc of being curbed. The status he normally demanded, created, sustained "loc'd up" on the corner was systematically dismantled as he was stripped on the curb from his community to see. Yes, he lamented the loss of his notebook and lyrics. However, the loss of place and status was more significant.

This deprivation is exactly the type of deprivation that local government actors indicated they hoped the gang injunction would effect. For example, one official explained that in the period leading up to the gang injunction a large number of criminal gang members had returned to the city after having been released from prison. These individuals, they argued, were the germinators of the problem. "The gang injunction helped knock them down. And that's what we wanted to do. Knock them down . . . or get them out."

School officials were enlisted to this task, as well. For example, monthly debriefing sessions were held for some time at which the middle and high school principals were asked to identify gang members for monitoring. Police would determine to serve those identified by school officials with an injunction. Further cooperation among school administrations and police more directly served this function. Trezy Loc reported that he was publicly pulled out of class by the police to determine compliance with the gang injunction. While he, again, noted that his material property was con-

fiscated. His answer focused on the deprivation of status effected by his public subjugation to hyper-surveillance: “They let the police come an get me right from my class. How they gonna do me like that? How’my ‘posed to represent after that? Feel me? . . . And they ain’t give me back my notebook.”

The data suggests then, that the gang injunction effects—by design—a comprehensive involuntary property deprivation. The symbology that the injunctees may deploy using their personal property to create identity property that conferred status in and access to the alternate market they were creating was purposefully dismantled via the gang injunction. As discussed above, regardless of any disapprobation of gangs, it is important to recognize (a) the identity property function they play and (b) that identity property is precisely that category of property to which highest deference is owed. Indeed, in the elaboration of the dignity taking framework, Atuahene stresses the epistemological, ontological, and vocational value of property as a core justification of theorizing dignity takings as a special, extraordinary category of involuntary property loss. As the framework is being elaborated, this “admixture”<sup>88</sup> among traditional notions of ownership and more robust conceptions of has dignity and humanity has remained a core attraction and site of expansion and elaboration.

## 2. Inflicting Sub-Personhood: “. . . Whom it Deems to be Sub Persons”

In addition to the question of whether gang identity property is of a nature and value worth or appropriate for a dignity takings analysis, the data collected in the study complicate the second step of the dignity takings analysis: determining whether the taking of that property inflicts sub-personhood on injunctees.

In the dignity takings framework, sub-persons are those who are intentionally or unintentionally dehumanized or infantilized by the agent perpetrating the taking. Core to this concept is the attack of the dispossessed’s equal human worth or autonomy. Atuahene’s South African case—in which colonial to apartheid regimes forcibly removed Black South Africans from their homes and property—is definitionally paradigmatic. Neither the “top down” nor “bottom up” construction of the narrative yields a result clearly analogizeable to that experience. Nevertheless, critical consideration of the concepts suggest that the gang injunction is properly character-

88. Justin B. Richland, *Dignity as (Self-)Determination: Hopi Sovereignty in the Face of US Dispossession*, 41 LAW & SOC. INQUIRY 917, 920 (2016).



ized as infantilizing the injunctees, denying full recognition to their capacity to reason and autonomy.

As Atuahene neatly charted, infantilization is the rejection of a person's capacity for "rational self-governance."<sup>89</sup> The standard example of this concept is treating adults as if they were children. From that perspective, the data collected would indicate that no infantilization occurred. All public officials repeated emphatically, though inaccurately, that no juveniles had been subjected to the Monrovia Gang Injunction. "No. No. No. We didn't do kids. They were all adults." A robust literature exists documenting this phenomenon, i.e. the paradox of Black boys' experiences, which consists of the "vacillat[ion] between making them babies and making them men."<sup>90</sup> Sometime before the age of eight or nine, "their childhood evaporates"<sup>91</sup> and officials begin to think of them as men. Thus, they are not infantilized, they are "adultized."

Of course, to adultize a young Black male is to treat him like an adult Black male. What that means, however, is that they are objects of fear and targets of control. "We feel compelled to control Black male bodies at all times."<sup>92</sup> That fear is rooted in paradigmatic constructs of dehumanization. Control, meanwhile, is rooted in straightforward infantilization.

This construct is borne out by the data collected. One injunctee described his uncertainty: "I couldn't even be outside helping my mom with the groceries at night . . . I did nothing wrong but unjustly live in constant fear of doing something that might be perceived as a violation."

Like most of the injunctees interviewed, a respondent we called CDC described being partially stripped and searched in public view on the street. Describing how the police treated him, he eventually shared: "They treated me like I was grown, but they didn't treat me like I'm a man. They never treat me like a man."

That idea proved sticky for many interviewees. They clearly described being viewed as culpable in adult terms: "Everything changed at about 12 years old. Wait, I don't know, eight grade. Well, it changed for *us*. That didn't happen to the white kids. . . I'm not trying to make this a race thing. I'm just sayin' . . . They never let us off for just kids no more." But they also refused to entertain having been treated like an autonomous actor.

89. BERNADETTE ATUAHENE, WE WANT WHAT'S OURS: LEARNING FROM SOUTH AFRICA'S LAND RESTITUTION PROGRAM 32 (2014).

90. Gloria Ladson Billings, *Boyz to Men? Teaching to Restore Black Boys' Childhood*, in THE EDUCATION OF BLACK MALES IN A 'POST-RACIAL' WORLD 10 (Anthony L. Brown & Jamel K. Donner eds., 2012).

91. *Id.*

92. *Id.*

When asked whether the shift in treatment meant he was treated “like a man,” CDC replied, “I ain’t no man. . . to my boys, yes . . . but to them po’po’s, nope.”

The tenor of injunctee comments was consistent with reports from local officials. School officials reported that the elementary schools were only tangentially involved with the anti-gang efforts, while the middle schools were asked to become vigilant sources of gang intelligence for the police. Children in injunctee families were identified only to middle and high schools for additional surveillance, and middle and high school officials were instructed not to address disciplinary issues involving those students and other “at risk” children internally without gang unit involvement.

From law enforcement and local government officials the complication was clear. One official explaining the benefits of the gang injunction said:

These boys . . . I mean they’re not boys. These aren’t kids. They’re men. Well . . . these guys. Yeah. These guys just don’t know what to do with themselves on the outside. They let them out and they just prey on the community. So . . . well . . . the injunction gives us a way to help them find something else to do with their lives. They take our resources; they grow up . . . that, or they can get out.<sup>93</sup>

## V. CONCLUSION

This article began with the recognition that gangs are, essentially, networked institutions aimed at the creation of identity property, defined as those kinds of property that implicate epistemological, ontological, and vocational humanity—that is, that property which implicates how people are and understand themselves as human and go about the business of that office. That view casts a critical spotlight on gang injunctions (a primary tool in the anti-gang strategy), which prohibit members of specified gangs from engaging in a wide range of otherwise lawful activities through which gangs generate and sustain that identity property.

Using the gang injunction study, the results of which are summarized and excerpted above, the article shines that spotlight on the gang injunction in effect in Monrovia, California, one suburban frontier of Los Angeles’ notorious gangland. The results suggest that gang injunctions conceal a significant wrong being perpetrated by hundreds of cities across America. Rather than effective law enforcement mechanisms, gang injunctions effect dignity takings: they are involuntary deprivations of property that inflict sub-personhood on their targets. Laid bare, this should not be surprising.

93. In the preceding transcript excerpt, ellipsis indicate pauses or hesitation, not omissions.



As I have claimed elsewhere, gangs occupy a uniquely vilified position in American popular consciousness. Indeed, gangs are cast as animalistic institutions. That approaches to manage and destroy them would deny gang members of their equal human worth and autonomy seems natural. This insight is important to the study of gangs and gang injunctions.

The enrichment of the dignity takings framework borne from this study is also important. First, it provides empirical support for the extension of the theory's ambit from traditionally recognized forms of property to other valued resources with the normative force of property. When talking about how they experienced the gang injunction, study participants uniformly engaged property deprivation discourses with more severity and importance with respect to identity property values (regardless of the nature of that property) than to mere material property.

The study also reorganizes the concept of infantilization for the purposes of dignity takings and blurs the distinction between that concept and the idea of dehumanization. As originally formulated, infantilization was epitomized by the treatment of adults as if they were minors, denying their full capacity to reason. The Monrovia Gang Injunction, as experienced by injunctees, appears to have inverted the concept. Youth and minors were treated as adults, whose deviance merited restriction of autonomy. This is no less a deprivation of dignity. At the same time, the actualization of this adultization means that the Black youth injunctees would be treated like Black men. Black men are, in turn, systematically infantilized and dehumanized by the law and legal actors.

What is left to ask is this: If gang injunctions constitute dignity takings, how might the dignity of gangs be restored? The dignity taking analysis demands a remedy that reasserts the dignity of the dispossessed gang injunctees and confirms that they are full citizens.<sup>94</sup> In other contexts, I have explored the idea of "paid gang injunctions" as performing just such a re-integratory function. Therefore, I close with a conundrum.

Dignity restoration in South Africa was embedded in a new, post-apartheid (not idealized) South Africa. As societies learn from that program, must they not interrogate what "full citizenship" might mean? In the #BlackLivesMatter age, what is full citizenship to the Monrovia injunctees? As Trezy Loc noted in an aside unrelated to his experience with the gang injunction: "Monrovia has a lot of nice things, but . . . you know . . . they not for us. Not for people like us." That "us" was not gang injunctees. That "us" was him and me. Two Black Monroviaans.

94. ATUAHENE, *supra* note 89, at 164.