

## ORDERLY COMMUNITIES & DISORDERLY GANGS:

*A reassessment of harm principle intuitions in light of negotiable exchanges, the political instrumentality of violence and the optimality of differentiation*

At the conclusion of his seminal work on adolescent gangs,<sup>1</sup> Frederic Thrasher speculates about the impact of gangs on the community.<sup>2</sup> The collection of costs he identifies is a now familiar parade of evils: demoralization,<sup>3</sup> forgone and lost profits,<sup>4</sup> crime and violence,<sup>5</sup> corruption.<sup>6</sup> That a complex social institution has negative externalities that spill over onto the social institutions in which it is embedded is, of course, not surprising.<sup>7</sup> More troubling than the presence of costs qua costs is the perceived nonnegotiability of their presence in Thrasher's account for the community. In the most striking passage of this section, Thrasher characterizes the relationship between gangs and their surrounding communities as highly coercive:

The community finds itself thrown back upon medieval conditions where the robber chieftains and their respective bands of armed retainers work their wills and cow the timorous populace.<sup>8</sup>

Thrasher deploys the language of victimization, likening the interaction between gangs and communities to the unidirectional power structure of feudal lords and serfs. Thrasher is hardly alone in this severe characterization of the gang/community power dynamic.<sup>9</sup> In fact, the coercive view has become the dominant paradigm.

While the plight of gang-ridden communities is indeed great and this paper in no way intends to justify callousness towards the suffering of these communities, I do assert that the status quo view of pure coercion is too thin. Over the course of the next few pages, I will argue that the relationship between violent street gangs and the surrounding community in low-income neighborhoods of the United States is, in fact, at least sometimes,

social contractarian in nature, if not overly so. I will argue that the community negotiates with the gang as to the level of disorder in the neighborhood. Having rejected the common mantra of community disempowerment, however, I am left with the burden of recharacterizing the costs associated with gang activity for the community. The intuition is if a community could really negotiate with gangs, with anything approaching parity in the parties' bargaining power, the community would negotiate for fewer negative externalities, manifested in the form of, at least, a reduction in gang violence. I suggest that this intuition misses the mark because what outside observers perceive as costs of gang activity for the community can in fact be benefits for the community under conditions of economic deprivation and political neglect. I will suggest that the agreed upon level of disorder is instrumental for the community because while the community's legitimacy in the eyes of the government rests on refraining from engaging in violent and disorderly behavior, the disorderly behavior of the street gang allows the community to extract social benefits from an otherwise unwilling government for distribution within an otherwise politically unimportant and impoverished neighborhood. Moreover, I will argue that such a relationship between community residents and gang members is optimal<sup>10</sup> for the former because social differentiation between the two sets of sociopolitical actors allows community residents to maximize the net benefits they receive from the government.

Before diving into a revisionist exposition of gang/community relations, I would like to examine a seemingly unrelated topic: Mexican political economy. In the following section, I will review a brilliant paper by Alan Knight whose critical analysis of the Mexican central government's relationship with hinterland governors provides a framework for organizing my own exploration. Armed with Knight's theoretical insights, I will return to the project at hand. In Part Two of this paper, I will use recent ethnographic data to lay out and prove my first hypothesis that gang/community relations are sometimes contractarian. As used here contractarian relationships have two important characteristics, both of which I will demonstrate are occasionally present in gang/community relations: 1) a benefit from the relationship runs to both parties and 2) both parties have the ability to negotiate as to the level of costs incurred because of the relationship. Having raised the possibility of contractarianism, in Part Three, I attempt to bear the burden of explaining why communities, if they could negotiate with gangs about the level of gang-related costs, do not negotiate for much lower levels of gang violence. My second hypothesis is that the presence of gang violence is in fact instrumental for these communities. In Part Four, I explain why assuming that violence is instrumental,

community members delegate violence creation to gang members rather than engage in disorderly conduct themselves. My third hypothesis suggests that social differentiation allows community members to maximize the benefits they receive from both orderly and disorderly conduct.

In the end, this project is one of complexification rather than clarification, but the hope is that the complexity it creates is theoretically useful for future discussions about gangs and the criminal law. Specifically, having a richer notion of the harms to the community attributable to gang activity takes on greater importance as the criminal law turns increasingly to the harm principle for justification of the imposition of criminal sanctions.<sup>11</sup>

## I. A THEORETICAL FRAMEWORK OF NEGOTIABILITY, INSTRUMENTALITY, AND SOCIAL DIFFERENTIATION

One of the most curious aspects of modern Mexico is the schizophrenic nature of politics at the national and local levels. This puzzling duality is captured in the coexistence of what Alan Knight<sup>12</sup> calls “national softball politics” and “local hardball politics.” Knight explains that softball politics is high-minded, progressive and reformist in tone.<sup>13</sup> The values of the Mexican Revolution are invoked, as is the rhetoric of populism and democratization. Furthermore, the national government on occasion puts its money where its mouth is, engaging in equitable redistributive policy. This kind of politics stands in stark contrast with local hardball politics. Here technocrats with US doctorates give way to pistol-wielding caciques, clientelism, graft, nepotism and violence.<sup>14</sup> Hardball politics involves repression; disappearances and rigged elections are common. While the conduct of national politicians is hardly angelic, the contrast between Revolutionary rhetoric and government behavior is particularly bald at the local level. The coexistence of such conflicting practices between two actors sharing the same political geography suggests that national politicians have little control over their local counterparts—a coercive relationship with the balance of power running to local politicians. And yet in the Mexican case, especially during the heyday of the PRI, nothing could be farther from the truth.

Knight unravels this mystery without compromising on the historical assumption of a strong central authority. Rather than suggesting that local politicians behave as they do in spite of the preferences of the national government, Knight shows that the national government tacitly condones the actions of local politicians by failing to crackdown on their counterrevolutionary behavior.<sup>15</sup> Hardball politics has distinct advantages in terms of managing domestic dissent and shoring up party support.<sup>16</sup> National politicians reap the political advantages of their local counterparts’ actions while

hiding behind the plausible deniability of federalism when it comes time to pay the political costs. Simply put, hardball politics at the local level is a political resource for the national government. The national government's behavioral options are constrained; it must tailor its behavior not just for a domestic audience, but also for an international audience. Foreign opinion has become increasingly more important as North American integration continues and the stipulations, especially those pertaining to democratization and decentralization, accompanying conditional loans and grants from the International Monetary Fund and World Bank have multiplied. The national government must play softball if it wants access to these sorts of international benefits.<sup>17</sup>

The national government is not always made better off by trading some of its authority for international esteem (and more importantly the cash that usually accompanies such standing).<sup>18</sup> There are times when assuredly the Mexican national government would prefer to pursue a course of action more akin to that seen in Argentina; expedience would be best served by calling in the military to repress politically troublesome factions. Nevertheless, the national government takes great risks when it departs from softball politics.<sup>19</sup> Knight notes "the advantage of the dualistic hardball/softball syndrome is that responsibility can, to an extent, be evaded. The smoking gun is to be found in calloused cacique hands, not those of Ivy League graduates."<sup>20</sup> When a faction threatens its political project, the national government cannot risk losing face on the international stage by engaging in hardball politics, but it can tacitly encourage just as instrumental repression by state and local government actors, achieving its political end without ever directly taking part in the necessary politically questionable means. The national government benefits by getting what it wants without jeopardizing its international status and the local government benefits by being allowed to conduct its repressive political project without interference. That is to say, Knight's exploration reveals in the Mexican case that disorder at the local level is not indicative of a breakdown in the control of the national government. Instead there is to some extent a tacit partnership between the national/orderly actor and local/disorderly actor, the presence of disorder in the system benefits the national actor notwithstanding an official rhetoric of order, and political differentiation between national and local actors via the institution of federalism allows the former to avoid the costs of its tacit support of disorder.

Knight's exploration, specifically his use of the elements of negotiable exchange, the instrumentality of violence, and social differentiation to explain the continued existence of disorder without a resort to the rhetoric of coercion, is the model for my exploration of the relationship between

gangs and their surrounding communities. As stated in the introduction a parallel paradox arises in the ghettos, hoods and barrios of the United States. There is an orderly component, the community; and a disorderly component, the gang. The orderly and disorderly components share the same political geography and the initial intuition is to ascribe the continued presence of disorder to a coercive relationship between the two parties that favors the disorderly element. Like Knight, I believe this intuition is at least too quick, if not patently incorrect in light of negotiable exchange, the instrumentality of violence, and the optimality of social differentiation.

## II. COERCION OR CONTRACTARIANISM?

Diego Gambetta<sup>21</sup> has conducted extensive research on the Sicilian mafia. In Sicily, the mafia provides selective contract enforcement and protection from market hazards that the organization itself introduces.<sup>22</sup> The power dynamic is very much unidirectional and coercive—the mafia holds Sicilians hostage in a nonnegotiable, suboptimal equilibrium.

The conventional view is that the relationship between violent street gangs and the surrounding community in the American ghettos has a similar quality. The community would prefer to have gang-affiliated drug pushers off the street corners, business owners would prefer not to pay for gang protection and all residents would prefer to see an end to such violent gang-related activities as street fights and drive-by shootings. The standard argument continues, proposing that the only reason the community does not cooperate with the police, teaming up to eradicate the gang, is because the gang scares community residents into keeping their mouths shut and tolerating the disorder of daily life in the urban ghetto.

But is the conventional view accurately applied to the case at hand? In light of Knight's analysis of central/local government relations in Mexico, arguing that the conventional view is incorrect has a certain plausibility. Modern ethnographers already assert that the coercive view is oversimplified.<sup>23</sup> Taking just one aspect of the gang/community relationship, the so-called protection racket, contemporary sociological studies cast serious doubt on the purely coercive thesis. Rather than viewing gang members antagonistically, community residents seem to welcome and in fact prefer gang protection to police protection. Martin Jankowski's<sup>24</sup> interview with Jorge, a fifty-nine-year-old carpenter from Los Angeles, is illuminating:

People from outside the community are always down on the gangs, but they don't see the good they can do for us in the community...For one they give us good protection from people outside our community who would rob and hurt our kids. You see there ain't

many people who come into the neighborhood that the gangs don't pick up right away. For most of us in the community, we feel more safe with them than the police because they can watch anybody suspicious because they know who the people are that aren't from the community where the police don't know.<sup>25</sup>

Additionally, Jankowski presents the statement of Dorothy O'Hare, a fifty-two-year-old housewife and mother of three in New York, as typical of what he often heard throughout the decade he spent conducting research in the communities where gangs operate:

I feel much safer when I see our boys around the street corners. I know that I and my daughters will be able to walk around the neighborhood without being attacked by some drug addict or sexual pervert. Most of the time anybody who comes to the neighborhood is confronted by the gangs and chased from here so we don't generally have to worry about being attacked. . . . Though if anybody were to attack me or my family, the gang would be there so quick that we probably wouldn't be hurt too much. I know the police don't care for the gangs very much but the community appreciates what they do for us. Actually, I think the police don't like them because they are jealous that the gangs do a better job of protecting us than they do.<sup>26</sup>

Certainly these statements, if accepted at face value, are not indicative of a relationship that community residents perceive as coercive. No resident included in Jankowski's extensive study indicates that gang protection is in fact extortion. This perception is critical because it differs markedly from typical protection rackets in which a gang offers protection from an endogenous threat created by the gang itself.<sup>27</sup> Rather in the US case, there is a genuine belief among community residents that the threat to the community's safety is truly exogenous. "Contracting" with a gang for protection against this outside threat instead of the police is genuinely preferred by at least some residents.<sup>28</sup> Jankowski observes a relationship between the community and gang that leans towards social contractarianism more so than pure coercion, and goes so far as to use contractarian language to describe the relationship, concluding "the gang and the community strike up a working relationship, which lasts as long as the two *mutually aid and respect* each other. If either breaks the code, the pact is terminated."<sup>29</sup> Of the thirty-seven gangs, Jankowski observed, thirty-one gangs (84 percent)

have established a working relationship with the community in which they are active.<sup>30</sup>

Jankowski speculates that the reason gang protection in low-income neighborhoods of the United States does not take on the traditionally extortive nature of most protection rackets is because the gang needs the community more than the community needs the gang. For instance, the community can always receive protection from the police (although some would clearly see this as a suboptimal choice), but the gang needs the community to protect it from the police and cannot seek such protection for its illegal activities from a third party.<sup>31</sup> The gang attempts to cultivate a good relationship with the community in order to ensure the community does not have an incentive to comply with police requests for information about gang activity in the neighborhood and that residents of the community will share needed information with gang members when it is requested. Additionally, Jankowski notes that parents of children both in a gang and not in a gang encourage their children and other children to join a gang.<sup>32</sup> Gangs look to the community when recruiting new members and so good relations ensure that residents do not discourage young people from joining. Through passive noncooperation with the police and cooperation with the gang in terms of providing requested information and failing to dissuade membership in a gang, the community tacitly supports the gang and its disorderly behavior.

But saying that both parties benefit or need each other is not sufficient to rule out the possibility that one party is being coerced into the partnership.<sup>33</sup> Instead what should be the benchmark and distinction of a voluntary contractual relationship when juxtaposed with a coercive arrangement is the ability of either party to negotiate the terms of the relationship. The partnership between gang members and community residents in the United States is quasi-contractual because the community can negotiate the terms of it, especially the level of disorder the gang introduces into the neighborhood.

Ruth Horowitz<sup>34</sup> demonstrates in her study of gang members and community residents that family ties are used to negotiate the form gang disorder takes. Mothers and fathers of gang members incorporate their children into family and community life and do not tolerate the intrusion of disorder into major social events. Through this process community residents and gang members negotiate on the acceptable boundaries of disorderly behavior. For instance the community in Horowitz's study managed to confine gang fights geographically to a single, noncentral park, largely segregating gang disorder from most resident's everyday life.<sup>35</sup>

Beyond this, the community has more than just the power to *bargain*

with street gangs as to the level of violence in the neighborhood. The community has the power to unilaterally terminate its relationship with the street gang. Jankowski provides an anecdote about the Pink Eagles street gang in New York that goes to corroborating this strong assertion.<sup>36</sup> The Pink Eagles and the surrounding community had a standard protection arrangement: the gang patrolled the neighborhood and the community remained silent whenever the New York Police Department came around to ask questions about the gang's drug operation. As the Pink Eagles' drug operation expanded, the amount of time the gang spent providing the community with protection decreased and crime against community residents increased. Perceiving that the Pink Eagles were not living up to their end of the bargain, residents were not coerced into keeping their silence as the conventional view of gang/community relations would predict. Rather, the community cooperated with the police. Using information given by residents, the gang's illegal operation was exposed, gang leaders were imprisoned and rival gangs, taking advantage of the Pink Eagle's weakened position, captured its share of the drug market. In this instance the community voluntarily contracted for gang protection in exchange for passive noncooperation with the police, but once it felt the gang had failed to live up to its end of the deal, the community unilaterally terminated the contract. Jankowski believes this pattern is not peculiar to this instance, but rather indicative of a general practice:

In cases when the community perceived that the social contract was violated by the gang, there was a consistent pattern of reaction. First, the members of the community would stop assisting the gang by withdrawing their protection of members, by not supplying information, and by discouraging membership. At the outset of these actions, many of the residents seemed apathetic or indifferent. Yet, they usually did not feel that way at all. Rather, they were in the beginning stages of a passive-aggressive posture. This stage may last a considerable length of time, depending on police action or inaction; but regardless of how long it lasts, it will mark a difficult period for the gang's operations. In this phase of community rebellion, if the gang members can make changes and convince the majority of the disenfranchised that they are now willing and able to either establish new roles or resume their old ones as helpful resources, then they can ameliorate the hostilities

and reestablish ties. However, if the gang is either unwilling or unable to take steps to do what the community wishes, then relations will continue to deteriorate, leading to two subsequent phases of community reaction. Phase two occurs when members of the community begin to help the police by providing information; and phase three occurs when the community becomes openly vocal in its opposition to the gang. If either of these latter phases comes to pass, typically it marks the beginning of the end for the gang as a viable organization.<sup>37</sup>

Jankowski interprets the Los Angeles anti-gang sweeps in the spring of 1988 as being a product of unilateral community withdrawal from its protection contracts with the Bloods and Crips, following the inability of these street gangs to prevent violence against residents associated with drive-by shootings.<sup>38</sup> The community cooperated with the Los Angeles Police Department not only by finally providing crucial information, but also by not protesting against the civil rights violations that occurred during the course of the initial sweep.

### III. THE INSTRUMENTALITY OF VIOLENCE

Having reviewed at least suggestive evidence that the relationship between violent street gangs and the community is not entirely coercive, the question remains: if the community with its predilection towards order can negotiate with street gangs on the level of disorder in the neighborhood, why does this arrangement usually produce a nonzero quantity of disorder?

This is of course the same question that Knight must answer when he demonstrates that the central government can in fact control the amount of political violence in which local Mexican strongmen engage. Knight demonstrates that political violence is in fact a benefit to the central government as it produces the benefit of political control. I argue that a similar dynamic can be found in community/gang interactions for which gang violence takes on an instrumental quality for the community.

It has been argued that residents of urban communities, especially low-income and economically decaying communities, are not politically important to most US politicians.<sup>39</sup> As a consequence of political marginalization and underrepresentation, social services targeted at urban populations are often the first casualties of fiscal cost cutting. Caraley notes that between 1981 and 1991 the Reagan and Bush administrations cut some 46 percent (\$26 billion in constant 1990 dollars) of the grant programs that

benefit city governments.<sup>40</sup> These cuts combined with a slowing economy to lead city governments to drastically decrease social services. The decline in social services had its most profound effect on residents of low-income neighborhoods who were already struggling to make ends meet with only limited personal resources and insufficient government aid.<sup>41</sup> I once again turn to the fieldwork of ethnographers to support the assertion that gang violence (i.e. negotiating a nonzero level of disorder) is instrumental for community residents insofar as gang disorder extracts social services from an otherwise unwilling government. That is, community residents tacitly encourage gang violence and disorder through passive noncooperation with the police and cooperation with the gang because it ensures that the spigot of social services to the community is not shut off.

Jankowski's interview of Jim, a fifty-two-year-old father of two living in New York, drives home the point that most residents of the community do not believe the government would pay much attention to their needs if the gangs were not present and disorderly:

Let me tell you that if it weren't for the gangs, this community wouldn't see any social program and especially any job-type programs. You see, we got a high unemployment rate among people in this area and especially young people. But none of the government leaders cares about that. If nothing happened, they'd continue to let 'em be unemployed. They only care when the gangs get active in illegal stuff, then they start a job program. So you see, we need the gangs to help us out. It's their behavior that the policymakers are concerned about, not some regular kid who's unemployed.<sup>42</sup>

Jim expresses a need for the gangs that is both contractarian and instrumental. Gang disorder is not strictly imposed, but rather to an extent solicited; gang activity does not reduce the resources available in the neighborhood, but rather increases the availability of resources.<sup>43</sup> Gang members are responsive to the opportunity to increase resources for the community through disorderly conduct. Jankowski cites an interview with Pato, an eighteen-year-old Chicano gang leader in Los Angeles:

Check it, man, we know you don't deal with the politicians in this city and expect to get anything. Hey, we know this ain't Mexico, but we also know that you don't need to do that to help yourself out...We know that if we keep the pressure on them, we can get them to do something for the community.

Even if it [the social program] is trying to get rid of us, it may help some other people in the community. And if that happens, the community will know we helped and they will give us credit and that shit helps us within the community.<sup>44</sup>

Jankowski further demonstrates that gang members use disorder, crime and violence to get what they want (and the community needs) from the government in an interview with Tippy, a sixteen-year-old leader of a Chicano gang in Los Angeles, who sought to increase recreational facilities in the neighborhood:

Look, we asked for some ping-pong tables to be set up in the park and for some new basketball courts and nothing has happened for five months. So let's send a message. We hit a couple stores tonight. This'll get their attention. They will know that they can either pay for us now with recreation or later with insurance.<sup>45</sup>

Gangs use disorder instrumentally not just to control *when* resources flow from the government into the neighborhood, but also *how* those resources come into the neighborhood. Instead of letting the government administer the distribution of social services in the neighborhood, gangs use violence and noncooperation to channel government money through community organizations such as local churches and nonprofits. Jankowski's interview with Sale, a nineteen-year-old gang member in New York, is illustrative of this tactic:

We try to help out the brothers at the [name of the community based organization] and try to get them more money to run these programs...Well, what we try to do is to talk to everybody and anybody who has money to give and tell them that we like to deal with that agency. You know, we try to pass on the message that we trust them and can work with them better. And if the message don't get through that way, we mess with the other programs so it looks like they ain't as effective.<sup>46</sup>

Politicians play directly into the gang's hands by first providing social services in an effort to reduce gang activity and second by notifying community residents that these social services are being provided to discourage gang membership. The implicit connection is that social services will continue only so long as gang activity does. If disorder leads to resources and community residents believe that in the absence of disorder resources

would not be forthcoming, then it is in fact very rational for residents to negotiate a nonzero level of disorder.

#### IV. THE OPTIMALITY OF DIFFERENTIATION

A final question remains: If the community can both negotiate the level of gang violence and violence is itself instrumental in funneling resources into low-income communities, why does the community need the gang? Put another way, the community could eliminate the middlemen, living under orderly police protection in times of plenty and becoming violent and disorderly when resources are scarce. Of course, in noting that gangs, once they exist, are instrumental, I do not mean to suggest that gangs arise *because* they are instrumental, but rather ask why having acknowledged the instrumentality of disorder, members of the community do not themselves embrace it as a tactic, instead negotiating its presence with a distinct social actor, the street gang.

Knight's exploration of the duality of Mexican politics suggests the answer. A counterfactual thought experiment is instructive. If there were only one type of government actor throughout Mexico, this national government actor would be free to choose a policy of "order" (i.e. softball politics: fair elections, restrained government, equitable/need based redistribution) or "disorder" (i.e. hardball politics: rigged elections, violent repression, patronage-based redistribution). Both policies have some benefits and some costs. If the national government actor chooses a policy of order, it receives an international benefit (i.e. better trade partnerships, international investments and grants), but must forego a domestic benefit (i.e. access to government spoils, uncontested political control) that comes from choosing a policy of disorder. On the other hand, choosing a policy of disorder leads to domestic benefits while forfeiting international benefits. Essentially, the unitary national government actor faces a high opportunity cost and must make an economic choice in the true sense of the word, trading off the benefits arising from one policy for those that would arise from another.

Knight, however, demonstrates that the multiplicity of distinct government actors in Mexico allows the national government to play a mixed strategy of choosing a national policy of order, while tacitly supporting a policy of disorder pursued by local government actors. One can imagine three additional simple mixed strategies: the national government actor chooses a national policy of order and prevents local government actors from choosing a policy of disorder, the national government actor chooses a national policy of disorder but does not prevent local government actors from choosing a policy of order, and the national government actor

chooses a policy of disorder and encourages local government actors to do the same. Furthermore, one can imagine the outcomes, in terms of international and domestic benefits, that might arise from each mixed strategy.

When both the national government actor and local government actors choose the same policy, order or disorder, the payoff schedule is the same for the national government actor as in the unitary national government actor case. When both choose order, international benefits are forthcoming, but domestic benefits are forgone and vice versa when both choose disorder. That is to say, if both types of government actors choose the same type of policy, the national government actor is no better off than it would be if it were the only type of government actor; as in the unitary national government actor case, the national government actor still faces a tradeoff between international and domestic benefits. However, in the presence of multiple types of government actors, the national government actor can make itself better off than it could possibly be if it were the only type of government actor, so long as it chooses a national policy of order while tacitly supporting local government actors in choosing policies of disorder. In this mixed strategy, the one found in Mexico according to Knight, the national government actor still receives the international benefits from a national policy of order, but through a local policy of disorder pursued by discrete (but not entirely independent) local government actors does not entirely forgo domestic benefits. The national government does not receive *either* international benefits *or* domestic benefits but receives international benefits *and* domestic benefits.<sup>47</sup> The remaining strategy at best captures domestic benefits while forgoing international benefits, but is arguably the worst mixed strategy. Therefore, given that a policy of order will capture international benefits, a policy of disorder will capture domestic benefits and no government actor can simultaneously pursue two different policy strategies contemporaneously, a national government actor in a situation with multiple discrete, quasi-independent government actors maximizes its payoff by pursuing a national policy of order while tacitly encouraging local government actors to pursue a policy of disorder.

Returning to the case at hand, a similar framework can be superimposed on the relationship between the community and street gang in a low-income neighborhood. The parallel of the unitary national government actor case is a situation in which there is no social differentiation between community residents and gang members; there is only a unitary community social actor. This actor may choose orderly behavior (i.e. refrain from participating in illegal markets and violence) or disorderly behavior (i.e. participate in illegal markets and violence). If the first route is chosen, the community actor will receive protection from the govern-

ment (i.e. police protection), but will not receive social services from the government (by the evidence and perceptions presented in the previous section). On the other hand, if the community actor chooses to be disorderly, it will extract social services from the government, but no longer receive its protection (indeed the government will attempt to actively punish the deviant community actor). Like the national government actor in the unitary national government actor case above, the community actor in the unitary community social actor case just discussed faces an economic tradeoff between the benefits of government protection and the benefits of government social services. The community actor would be made better off if it could reduce its opportunity cost in taking either course of action.

This cost reduction can occur in the presence of multiple types of social actors. The social differentiation between community residents and gang members parallels the multiple government actor case from above. Just as in the multiple government actor case where the national government actor holds some influence over local government actors but the latter remain independent and differentiated enough from the former that the national government actor is not held fully accountable for the actions of the local government actors, I have tried to demonstrate that although the community and gang are significantly different social actors, the former can influence the behavior of the latter. Thus the community actor has four simple mixed strategies in the multiple social actor case: the community behaves in an orderly manner and encourages the gang to do the same, the community behaves in a disorderly manner and encourages the gang to do the same, the community behaves in an orderly manner and encourages the gang to behave in a disorderly manner, and the community behaves in a disorderly manner and encourages the gang to behave in an orderly manner. The outcomes of the first two strategies neither improve upon nor reduce the possible benefits to the community actor under the unitary social actor condition. The opportunity cost of behaving in an orderly or disorderly manner remains the same. The third strategy, however, leads to a reduction in opportunity cost. When the community actor chooses to be orderly, it receives government protection, which, in addition to protecting the community actor against exogenous threats, is essential because it allows the community actor to establish a more effective protection contract with the gang actor. The community has a threat option when interacting with the gang so as to prevent the latter from making usurious demands. However, because the community actor can facilitate the gang actor's disorderly behavior, the former's choice of orderly conduct does not require it to sacrifice the social services that the government provides in response to disorderly behavior in the neighborhood. Opportunity cost

is reduced by this mixed strategy and the community actor instead of receiving *either* protection *or* social services receives protection *and* social services.<sup>48</sup>

The conclusion drawn from this exercise is that in situations in which multiple differentiated but not wholly independent social actors are present, it is rational for the community actor to behave in an orderly manner (i.e. abstain from instrumental disorderly behavior) while encouraging other social actors to behave in a disorderly manner. The community actor maximizes its benefit in this manner.

## CONCLUSION

While the rise of the harm principle has thrown the criminalization of some behaviors into doubt, *e.g.* homosexual sodomy, many traditionally criminalized behaviors have not received renewed scrutiny. I would assert that gang violence is one such area. While it is certainly true that harms flow from gangs and gang activity, the extent of that harm, especially in a world that lacks the political will to address the sociopolitical structures that perpetuate the cultures of poverty and violence, may not be as great as it would appear at first blush.

Members of low-income communities and members of gangs are two sociopolitical actors occupying the same political geography but behaving in nearly diametrically opposed manners. I hope to have at least made an argument that suggests this situation is not entirely indicative of coercion, but rather includes elements of contractarianism—namely mutual benefit and negotiability. The disorderly behavior of gangs can be instrumental for community members who are not themselves disorderly. In fact, theoretically, such a relationship between an orderly sociopolitical actor and a disorderly sociopolitical actor, is not only beneficial, but also optimal in that it reduces the opportunity costs of orderly behavior significantly.

NOTES

- 1 FEDERIC THRASHER, *The Gang: A Study of 1,313 Gangs in Chicago* (University of Chicago Press, 2d. ed. 1936) (1927).
- 2 *Id.* at 255 – 336.
- 3 *Id.* at 390 – 94 (Thrasher was particularly concerned about the socially dysfunctional norms propagated by gang membership.). But see KEVIN McDONALD, “Marginal Youth, Personal Identity, and the Contemporary Gang: Reconstructing the Social World,” in *Gangs and Society: Alternative Perspectives* 62-74 (Louis Kontos, *et al.* eds., 2003) (suggesting that the youth response to social disorganization through gang involvement is at least partially adaptive).
- 4 *Id.* at 425 – 28 (attempting to sum the total amount of cash looted in several Midwestern cities by gangs).
- 5 *Id.* at 428 – 30. See, also G. DAVID CURRY, “Estimating the National Scope of Gang Crime from Law Enforcement Data,” in *Gangs in America* 34-36 (C. Ronald Huff ed., Sage 2d ed. 1996) (metastudy suggesting an upward swing in the amount of crime attributable to gang activity). But see RIC CURTIS, “The Negligible Role of Gangs in Drug Distribution in New York City in the 1990s,” in *Gangs and Society: Alternative Perspectives, supra*, at 41 – 61 (arguing that gangs play a relatively small role in drug distribution in comparison to total market activity).
- 6 THRASHER, *supra*, at 452 – 86 (examining the connection between gangs and the Chicago political machine).
- 7 For instance, an analogous sociological study of businesses-complex social, in addition to economic, institutions-might identify similar costs to the surrounding community-in addition to the more salient positive spillover affects commonly associated with businesses.
- 8 THRASHER, *supra*, at 430 (quoting Editorial, “Crime Triumphant,” *Chicago Daily News*, Nov. 15, 1924).
- 9 See, *e.g.*, PHILLIPPE BOURGOIS, *In Search of Respect: Selling Crack in El Barrio* 10 (1996) (“Most...residents have nothing to do with drugs. The problem, however, is that this law-abiding majority has lost control of public space.”); LEWIS YABLONSKY, *The Violent Gang* 29 – 43 (1962) (recounting the victimization of a community member by gang members, identifying the “otherness” of gang members vis-à-vis the community, their “enemy within” status).
- 10 Optimality as used here is relative to circumstances that are politically feasible. While it might be absolutely, rather than merely circumstantially, optimal for the members of low-income communities to receive attention from the broader political society in the form of spontaneous wealth transfers, the political will for such sweeping unilateral policy interventions is probably lacking. See, BOURGOIS, *supra*, at 318 (“[T]he United States simply lacks the political will to address poverty in any concerted manner.”).
- 11 BERNARD E. HARCOURT, *The Collapse of the Harm Principle*, 90 *J. Crim. L. & Criminology* 109, 120-38 (1999) (recounting the rise of the harm principle). See, also *Lawrence v. Texas*, 539 U.S. 558, 583 (2003) (O’Connor concurring) (“Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause[.]”).
- 12 ALAN KNIGHT, *Mexico Bronco, Mexico Manso: Una Reflecion sobre la Cultura Civica Mexicana*, 3 *Politica y Gobierno* (1996). The original article is in Spanish. An unpaginated English translation is on file with the author.
- 13 *Id.*

- 14 *Id.*
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.* (translation).
- 21 DIEGO GAMBETTA, *The Sicilian Mafia* (1993).
- 22 *Id.* at 24 – 33 (suggesting that introduction of endogenous distrust into the market might facilitate the sale of the mafia’s protection services).
- 23 See, e.g., SUDHIR VENKATESH, “The Gang in the Community,” in *Gangs in America*, *supra*, at 243 (“[T]he ‘enemy within’ conception of youth gangs, in which youth gangs are understood as a predator on the larger community or a destructive element in a community’s social fabric, is inappropriate.”).
- 24 MARTIN JANKOWSKI, *Islands in the Street: Gangs and American Urban Society* (1991).
- 25 *Id.* at 183 – 84.
- 26 *Id.* at 185.
- 27 See, VADIM VOLKOV, *The Political Economy of Protection Rackets in the Past and the Present*, 67 *Soc. Res.* 709, 733-39 (2000).
- 28 This phenomenon is not limited to Jankowski’s sample. Venkatesh observes similar interactions in Chicago’s Robert Taylor Homes where the gangs had stepped in to protect women from sexual assault by “legitimate” economic and police actors. An elderly Robert Taylor Home resident recalls:
- Little girls was getting raped by that storeowner and the police did nothin’! In that one store, they’d sell themselves for diapers. Can you believe that! In the buildings, it wasn’t any better, ‘cause the [Chicago Housing Authority] security guards was assaulting women comin’ in the building or harass them all the time. There was nothing I could do. I knew Toto [the gang leader in her building] was pissed off at this, ‘cause his lil sister got raped. His boys help us by escorting young women at night. You know, back and forth from the store, or around to other buildings. I ain’t proud of this! But, our young women ain’t been hurt in a long time, so I work with it now.
- VENKATESH, *supra*, at 252.
- 29 JANKOWSKI, *supra*, at 179 (emphasis added).
- 30 *Id.*
- 31 *Id.* at 180 – 82.
- 32 *Id.* at 185.
- 33 See, generally GAMBETTA, *supra*; VOLKOV, *supra* (cataloguing instances in which both parties benefit, if unequally, under very coercive arrangements).
- 34 RUTH HOROWITZ, *Community Tolerance of Gang Violence*, 34 *Soc. Probs.* 437 (1987).
- 35 *Id.* at 440 – 42.
- 36 JANKOWSKI, *supra*, at 191 – 200.
- 37 *Id.* at 201 – 02.
- 38 *Id.* at 202.

- 39 See, DEMETRIOS CARALEY, *Washington Abandons the Cities*, 107 *Pol. Sci. Q.* 1, 1 (1996). See, generally G. ROSS STEPHENS, *Urban Underrepresentation in the US Senate*, 31 *Urban Aff. Rev.* 404 (1996) (attributing at least part of this neglect to the systematic underrepresentation of large urban populations in the US Senate).
- 40 Caraley, *supra*, at 4.
- 41 See, generally KATHRYN EDIN, *Surviving the Welfare System: How to Make AFDC Recipients Make Ends Meet in Chicago*, 38 *SOC. PROBS.* 462 (1991).
- 42 JANKOWSKI, *supra*, at 239.
- 43 Indeed Venkatesh speculates that gangs may provide the only resources in low-income communities. He observes that following the rapid deindustrialization and attendant job loss in low-income communities in Chicago, gangs expanded opportunities for community residents in the illicit economy. See, VENKATESH, *supra*, at 246–47. In doing so, gangs transitioned from “delinquent” actors to important “economic” actors. While including community residents in the drug trade or prostitution is difficult to see positively, even under conditions of extreme deprivation, not all interactions were of this nature. Gang members facilitated community participation in less strictly illegal economic activities, for instance by patronizing and advertising for the services of several unemployed men who worked as car mechanics in a parking lot of one tenement. *Id.* at 246. As important players in this new shadow economy, gang violence began to be seen as a form of useful economic regulation. *Id.* at 247 (“Gang members were now household providers as well as kin; they were friends but also employers; their use of violence and intimidation was feared, but at the same time such force was useful in helping to settle disputes that arose in economic transactions.”). Furthermore, gang violence could be used in bargaining with the city and federal government for increased social services in the public housing complex. See *id.* at 250.
- 44 JANKOWSKI, *supra*, at 225.
- 45 *Id.* at 236–37.
- 46 *Id.* at 247–48.
- 47 For simplicity I ignore the very real possibility that a package of international and domestic benefits is attenuated by the use of a mixed strategy (i.e. neither type of benefit is received fully under a mixed strategy as either may be individually under a pure strategy of order or disorder), but at least assume that the sum utility of a payoff including both types of benefits is greater than the utility of a payoff including only one type of benefit. This assumption is made more plausible if utility curves are bowed.
- 48 I ignore the last simple mixed strategy in the multiple social actor case: the community actor is disorderly while encouraging the gang actor to be orderly, but it is clearly not the optimal strategy. At best the community actor extracts social services from the government for itself but sacrifices protection by the government.