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Brave New Neighbórhoods

THE PRIVATIZATION OF PUBLIC SPACE

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ROUTLEDGE
NEW YORK AND LONDON

68. Norimitsu Onishi, "Public Beach, Unspoiled by the Public," *New York Times*, August 24, 1996, 25 (about parking restrictions in Queens, New York). See, generally, Marc R. Poirier, "Environmental Justice and the Beach Access Movement of the 1970s in Connecticut and New Jersey: Stories of Property and Civil Rights," *Connecticut Law Review* 28 (1996), 719–811.
69. According to Benjamin Barber, many developers have agreements with municipal transportation systems not to permit stops near their malls. Trumbling Shopping Park in Connecticut fought to prevent Bridgeport Transit District buses from transporting passengers to the mall on Friday and Saturday nights. See "Civic Space," *Sprawl and Public Space: Redressing the Mall* (Cambridge, MA: MIT Press, 2002), 104. See also Jane Fritch, "Hanging Out with the Mall," *New York Times*, November 25, 1997.
70. Regina Austin, "Not Just For the Fun of It!: Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space," *Southern California Law Review* (May 1998), 667–714.
71. See the chapter on "Fortress L.A." in Mike Davis, *City of Quartz*.
72. For example, the Morningside section of Miami voted to block off streets and put up two guard booths in order to prevent crime. This also restricted access to the attractive waterfront Morningside Park. John Lantigua, "Morningside Votes to Put Up Guard Booths," *Miami Herald*, July 3, 1997, B1. See also Peter Whoriskey, "Urban Barricades. What Do You Think? Gated Communities are Changing City Landscape," *Miami Herald*, August 17, 1997, L1.
73. During one afternoon visit (performed at 3 p.m. on a weekday in July 2002), the racial composition of Historic Battery Park was 42% black, 40% white, and 18% other (mostly Asian). Battery Park City was 83% white, 2% black (two women au pairs accompanying white children in the play area), 15% other. These figures do not include maintenance staff. The racial composition of Battery Park City may overestimate the black population because the Harlem summer camp (about 16 people) is included in the count.

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HOMELESS-FREE ZONES: THREE CRITIQUES

LIVING IN PUBLIC

Homelessness is one of the most dramatic reminders of the interdependence of public and private. The homeless are those who have no private space, no dwelling where they can exercise sovereignty or perform the basic bodily functions that we think of as private: sleeping, washing, sexual activity, urinating, and defecating.¹

Much of the aversion that people feel towards the homeless has to do with the transgression of these taboos about appropriate public behavior; many people feel disgust when they see someone sleeping, washing, or relieving themselves in a park or alley. Sometimes the aversion comes from the smell and appearance that is a logical consequence of the difficulty of maintaining hygiene when facilities for these activities are not accessible.²

When discussing the issue of homelessness, commentators often overlook the basic fact that "everything that is done has to be done somewhere."³ If an individual has no private place to perform intimate bodily functions, these will have to be performed in public or they will not be performed at all. The latter, however, is not an option, because they are functions intrinsic to life itself. No amount of criminalization or harassment can prevent people from performing activities intrinsic to life itself, although policing strategies certainly can confine the homeless to certain limited zones of the city that are out of sight of the more affluent citizens.

This chapter explores the relationship between the experience of homelessness and the rules governing public and private space. In order to understand this topic, I contrast the positions taken by two

prominent political theorists, Jeremy Waldron and Robert Ellickson. Waldron argues that homelessness poses a serious problem for liberalism because it reveals the contradiction between two cherished liberal values: private property ownership and freedom. Insofar as the system of private ownership does not include everyone, then at least some individuals are denied the most basic freedom of having a place "where (they are) allowed to be."⁴ Robert Ellickson also takes seriously the fact that the homeless must inhabit public spaces but concludes that cities should return to the old skid row model of social control. He argues that certain behaviors associated with transients, hobos, drunks, and homeless people should be confined to specific zones of the city so that other areas can enforce more rigorous quality of life ordinances against behaviors such as nonaggressive panhandling and bench sitting.

In this chapter I seek to expose the flaws in Ellickson's zoning strategy. His article is important because his proposal is a formalization and justification of the strategies currently being pursued (*de facto* if not *de jure*) in the United States today. In order to assess the problems with his proposal, I consider three lines of critique: the liberal, the romantic, and the democratic perspectives. Although all three can contribute to rethinking homelessness, the democratic critique is the most effective.

HOMELESS FREE ZONES

In "Controlling Chronic Misconduct in City Spaces," Robert Ellickson forcefully articulates a widely shared view.⁵ He insists that "if city dwellers cannot enjoy a basic minimum of decorum in downtown public spaces, they will increasingly flee from these locations into cyberspace, suburban malls, and private walled communities."⁶ He argues that the vitality of public space depends on the ability to exclude behavior that violates community norms of civility and appropriateness. Ellickson compares rules against non-aggressive panhandling to the rules of parliamentary procedure which function to ensure a small minority cannot disrupt the deliberation of a large group. Similarly, restrictions on certain behaviors enhance public spaces by eliminating the disturbances that cause others to flee into their homes or commercial spaces such as malls.

Ellickson advocates a system of zoning similar to the one that city governments use to restrict commercial development, but in this case panhandlers⁷ rather than strip malls are the blight to be contained.⁸ His schema is modeled on traffic lights with red signaling caution to the ordinary pedestrian, yellow, some caution, and green, a promise of safety.⁹ Red zones would be composed of five percent of a city's down-

town area; like the old skid rows, these areas would allow noise, public drunkenness, and prostitution. They would be "designed as safe harbors for people prone to engage in disorderly conduct." In yellow zones, ninety percent of downtown, chronic panhandling, bench squatting, and other "public nuisances" would be prohibited but some "flamboyant and eccentric conduct" would be allowed. In the remaining five percent of downtown, strict social controls would guarantee a sanitized environment for the most sensitive: the elderly, parents with toddlers, and unaccompanied children. In these areas, even mildly disruptive activities such as street performances, leafletting, and dog walking would be prohibited.

Although Ellickson's highly structured schema is put forth as a proposal, it is actually a codification of existing practices. As Mike Davis documents in *City of Quartz*, Los Angeles has long maintained the practice of excluding street people from the downtown core of Bunker Hill and containing them in a Skid Row along Fifth Street, east of Broadway.¹⁰ The contrast between Battery Park City and Historic Battery Park provides another dramatic example. Most cities and small towns have *de facto* red light districts where prostitutes ply their trade without police interference. Times Square in New York City, until its recent and controversial rebirth as a tourist mecca, was the best known icon of zoned transgression.¹¹ No one who has ever taken the 4, 5, or 6 train from the Upper East Side of Manhattan to the Bronx could doubt that social zoning (segregation) is already well developed in the United States. In different zones, vastly different levels of government service, poverty, and policing prevail.

Ellickson argues that this informal system should be formalized and strengthened because chronic street nuisances are a serious harm that must be prevented. Whereas other proponents of strict laws against begging usually focus on aggressive panhandling, Ellickson targets nonaggressive panhandling and the menace of "chronic bench squatting." It seems clear that he would also object to camping in parks and public urination, which, although not aggressive or intimidating, are annoying to most people. For Ellickson, panhandling causes harm by disturbing the privacy of passersby. He suggests that people may fear violence, resent the fact that the panhandler thrusts his problems on the public rather than social service agencies, or become annoyed that someone has shirked his moral duty to be self-supporting. Chronic bench squatting, although less offensive than begging, may still disturb others by monopolizing space in prime tourist destinations; more likely, the smell or appearance of street people may discourage others from sharing public space.

A proponent of law and economics, Ellickson relies on a utilitarian calculation to advance his proposal. After quickly dismissing the alleged benefits of begging (such as the pleasures of altruism) and non-utilitarian considerations (religious legitimization of begging and constitutional protections) he concludes that the harms of street nuisances justify the zoning system. A full treatment of the issue, however, requires that we also consider possible harms that arise from the proposed zoning system.

This zoning proposal formalizes existing patterns of marginalization and exacerbates social problems. One consequence of confining street people to five percent of downtown (significantly less than one percent of a metropolitan area) is creating an extremely high concentration of the most troubled, impoverished people. Describing skid row in Los Angeles, Mike Davis noted that "by condensing the mass of desperate and helpless together in such a small space, and denying adequate housing, official policy has transformed skid row into probably the most dangerous ten square blocks in the world."¹² Under these conditions it seems particularly unlikely that those with problems such as alcohol or drug addiction will receive treatment. Those in recovery or fighting addiction will be in constant contact with dealers, dangers, and indulgers, making it almost impossible to stay clean. The environment seems guaranteed to exacerbate rather than solve the conditions that often cause and/or accompany homelessness not to mention the fact that, surrounded by the most poor, they will have little chance to receive the alms they rely on for survival.

Another problem is that these isolated areas are often far from adequate schools and medical facilities. One mother living in subsidized housing in the South Bronx suggested that life in a homeless shelter in Manhattan had been preferable because "at least we were close to better hospitals and we were in the middle of an area of normal life, normal activity and you could walk along Fifth Avenue and take your kids to Central Park."¹³ But Ellickson is unconcerned with the plight of the homeless (he suggests they choose the lifestyle) and therefore sees the discomfort of seeing street people (rather than being one) as the serious harm.

It is dubious whether such discomfort should even be counted as a harm in the first place. My subjective discomfort is not necessarily a legitimate reason for prohibiting otherwise acceptable behavior. I may feel a certain class rage when I see a Prada bag, a Rolex watch, or a Lexus SUV but that does not mean that such objects are objectively harmful and should be banned or even excluded from ninety-five percent of the city center. Or to take a more serious example, major

social transformations such as the civil rights movement would have been impossible if we had taken racist whites' feelings of resentment, hatred, and fear into account when deciding if equal treatment of minorities was legitimate.¹⁴ Even utilitarians such as John Stuart Mill recognized that perverse outcomes would result if an evaluation of moral worth were based on a simple calculation of pleasure over pain. Instead, Mill suggested that we make decisions based on utility "in the largest sense, grounded on the permanent interests of man as a progressive being."¹⁵

Is the discomfort that some feel when confronted with a panhandler a serious harm? In a survey carried out by the New York Transit Authority, two-thirds of respondents had felt intimidated by panhandlers in the subway.¹⁶ But it is possible that these fears are unwarranted or exaggerated.¹⁷ In San Francisco, the police undertook a sting operation in which undercover cops sought to arrest homeless people engaged in aggressive, intimidating behavior. After a few days, the operation had to be called off because there were so few arrests.¹⁸ Undoubtedly there are cases of street people, especially those who are mentally ill, who become aggressive and violent. The question is whether the overwhelming majority who sit passively next to a sign "will work for food," sell homeless advocacy newspapers, or call out "spare a smile" should be banned from ninety-five percent of downtown and all of the surrounding residential areas too. It is hard to imagine a law prohibiting all sales of stocks because some brokers have deceived or defrauded clients. Similarly, we should not prohibit peaceful bench squatting and panhandling because of isolated incidents of violence.

It is also debatable whether the discomfort that passersby feel when they see street people is a harm at all. It is possible to imagine that some people, say tourists from wealthy suburbs or small rural areas, may not have been aware of the extent of poverty and homelessness in cities. Upon seeing the suffering of someone sleeping on the street in brutal weather or going through a garbage can for food, they may feel shock, anger, and discomfort. Although these feelings are aroused by seeing the homeless person, the anger might actually be aimed at a government that cuts social welfare or an economy that cannot provide affordable housing. The "harm" of discomfort might also be a benefit, the benefit of becoming better informed about existing social conditions. This knowledge might make one a more informed citizen, better able to evaluate priorities on government programs. If a voter has never seen a homeless person urinate in the park, it is unlikely that she would recognize the necessity of using tax money to provide public toilets.

Although it is true that witnessing suffering can and should cause dismay, the moral consequences of this depend very much on whether we believe the harm comes from the suffering itself or from the act of witnessing. If the problem lies in the act of viewing, then it makes sense to banish those who suffer out of sight. But if the problem lies in the suffering itself, then the appropriate response is to take action to mitigate the suffering.

Public opinion on this issue is somewhat difficult to gauge. Although 53.5% of people in one survey agreed that the homeless are more violent and dangerous than other people, 85.8% also felt compassion for the homeless and/or felt anger that homelessness existed in a country as rich as the United States.¹⁹ Large majorities favored prohibitions on panhandling and sleeping on the street (69%), but even more favored providing additional public housing (79%), drug treatment (83%), and higher wages (70%). These results reflect the deep ambivalence about homelessness in our society. Perhaps more systematic reflections on the political, moral, and legal implications of homelessness will help us evaluate these different strategies for solving the problem of homelessness. The next section looks at three different rationales for rejecting criminalization or marginalization of the homeless: the liberal, the romantic, and the democratic.

THE LIBERAL POSITION: HOMELESSNESS AND FREEDOM

In "Homelessness and the Issue of Freedom," Jeremy Waldron articulates a distinctively liberal case against the criminalization of homelessness. He argues that prohibiting certain behaviors associated with homelessness is an attack on the most cherished value of freedom. Waldron seeks to expose the tension between the universality of freedom and the unequal distribution of private property that prevents the enjoyment of freedom.

A liberal society is structured in order to protect the individual's pre-political rights and for many theorists, private property is foremost among these rights. Property, insofar as it means control over access to land, is essential to our very existence. As embodied beings, everything we do has to be done somewhere. No one is free to perform an action unless there is some place where she can perform it.²⁰ The Wobblies claimed that the "right" to free speech was meaningless when they were prohibited from speaking or selling their newspapers on the downtown street corners where their target audience congregated. For the homeless,

restrictions on living in public (e.g., bench squatting, sleeping in parks) are more burdensome, inasmuch as they prohibit basic life functions.

Waldron argues that if all property were private then the homeless would not have the right to be; everywhere they went they would be subject to arrest and expulsion for trespassing.²¹ Most people who live in homes or apartments have access to many other spaces that they legitimately enter and share with others: workplaces, restaurants and bars, gyms, and shopping centers. Most of these places, however, are commercial establishments that are only accessible to paying guests. Although a charitable individual or group could give a homeless person a place to rest, sleep, or clean himself, most people and businesses tend to take the opposite tack.²² As the ubiquitous "restrooms for customers only" signs suggest, even businesses that serve the general public still try to exclude the homeless.

According to Jeremy Waldron, "(the homeless) are allowed to be in our society only to the extent that our society is communist."²³ Waldron, a well-known liberal, is polemically making the point that a regime of private property rights becomes oppressive if there is no public or common property that the dispossessed can inhabit. Finally, it is tyrannical that the majority of North Americans who have the luxury of disposing over private space would also restrict public spaces so that over one million homeless people would have no place to perform primal human functions.²⁴

Waldron's argument, unlike Ellickson's, does not rely on a utilitarian calculation. He does not try to weigh the suffering of a million homeless people against the annoyance and discomfort of the majority who bear witness. His argument is based on rights and is therefore meant to trump the (possibly selfish or tyrannical) desires of the majority.

A critic might object that the claim that "homelessness is unfreedom"²⁵ employs the term freedom in a manner inconsistent with the liberal tradition. For liberals, freedom is the ability to live as one chooses as long as one's actions do not impinge on the freedom of others. The role of government is to enforce the law and administer justice in order to guarantee individual freedom. Insofar as government is not responsible for an individual becoming homeless by destroying or expropriating his dwelling (actions that did occur on a large scale during the so-called urban renewal movement of the late 1960s and 1970s²⁶), then no one's freedom has been violated. According to this critique, Waldron's position diverges from the typical liberal defense of negative freedom to embrace the more expansive and problematic notion of positive freedom, for example, that the government has the

obligation to fight social inequalities in order to foster each individual's potential for autonomous thought and action.²⁷

Despite Waldron's polemical invocation of "communism," his solution does not involve abandoning private property altogether. The one concrete proposal that he makes is that localities should provide public toilets. The guiding principle seems to be that a society based on exclusive private property is morally required to maintain a commons provisioned with adequate facilities and governed by fair rules. As long as the dispossessed can glean a living in the commons, then the system of private property is still legitimate.

Which rules are fair? Waldron distinguishes three categories of prohibitions on conduct in public places. The first category includes conduct that is illegal no matter where it happens, crimes like murder or rape. The second category is made up of restrictions specific to public places that "provide the basis of their commonality" and "can be justified as rules of fairness."²⁸ Interestingly, he chooses park curfews, jaywalking, and obstruction of the street as examples. The final category covers activities such as making love and urinating that are only illegal when they are performed in public. Waldron convincingly argues that such measures are intentionally adopted to drive street people out of public places in order to make such spaces feel safer and more attractive to other users. The problem, however, is how to distinguish between the second and the third categories. Which rules are fair bases for sharing public space and which are punitive restrictions aimed at the homeless? It is puzzling that Waldron uses park curfews as an example of fair rules when curfews are among the strategies most commonly employed to ensure that homeless people cannot sleep in parks. It would be perfectly acceptable to sleep in one's own garden, therefore it seems as though this restriction should be in category three.

There is a lot of disagreement about what rules are necessary to accommodate different users of public space. Should activities such as walking a dog off the leash, playing a radio, or skateboarding be allowed? These activities are permissible in private but restricted in public, yet it seems likely that these would count as reasonable restrictions designed to make sure that some people's use does not preclude the use of others. Why can park authorities prohibit these activities or restrict them to certain areas of the park? Some people, especially small children or the elderly, might be afraid of unleashed dogs; loud radios make it difficult to converse or read; fast-moving skateboards are hard to control and pose a risk to pedestrians. So park administrators often decide to create special zones where these otherwise legitimate activities are prohibited.

Communitarians who favor stricter rules governing conduct in public space argue that restrictions aimed at the homeless are fair measures designed to balance the interests of different users. In other words, they claim that prohibiting sleeping on a park bench is like prohibiting radio playing. One weakness of Waldron's otherwise well-constructed essay is that he does not explain how to distinguish between "fair rules" that make sure that some uses of public space don't foreclose others (category two) and unfair restrictions (category three). Ellickson believes that his own proposed rules zoning out chronic panhandling and bench squatting are similar to traffic lights or other rules of the road.

The only way that Waldron can distinguish between fair and unfair restrictions is to rely upon the argument that certain types of restrictions effectively prohibit bare biological life for homeless people. Waldron claims that society can legitimately regulate conduct in public space only insofar as such regulations do not make the most basic functions of life impossible for homeless people. Despite the rhetoric of freedom, Waldron's argument ultimately protects homeless people's right to bare life. Although this is undoubtedly an advance over the criminalization of basic life functions, it has certain unintended consequences. According to Leonard Feldman, "Paradoxically this reduction—of the homeless to bare, biological life and its compulsions (eating, sleeping, breathing)—reinstates and criminalizes the agency of the homeless."²⁹ If the rights of the homeless only extend to the basic functions of survival, then they have no legitimate grounds for turning down a shelter space or leaving the confines of an area like skid row. Once constructed as "bare life," rejecting any basic provision that ensures survival becomes a volitional and therefore punishable act. A homeless person who has access to a shelter, even one that is filthy, dangerous, or separates families, cannot claim to have no "place to be" and therefore has no right to live on the streets. As Feldman puts it, "Once the homeless have been reduced to bare life in the legal imagination, the shelter becomes a legitimized space of confinement and resistance to it becomes constitutionally punishable."³⁰

The problem with Waldron's liberal position is that it does not actually provide the philosophical or legal basis for refuting Ellickson's zoning scheme. In response to Ellickson, Waldron makes a convincing argument that it is philosophically wrong to count moral distress as a harm for the purposes of utilitarian calculation. But nowhere does he specifically object to the idea of creating a small restrictive zone where "street nuisances" are permissible. As long as the homeless have some zone of the city where they can perform basic life functions, then their right to exist is not infringed. An analogy with property rights explains

why this is so. Imagine that a poor family lives in a cockroach, lead paint infested apartment in a dangerous neighborhood. These unappealing living conditions do not give the family the right to move into the more sanitary, safe accommodations in an affluent neighboring suburb. Similarly, the fact that areas zoned for street sleeping and bench squatting are dangerous, squalid, and remote from basic facilities does not give the homeless the right to enter "yellow" or "green" areas of the city.

Waldron is convincing when he argues that as long as homelessness exists we must construct rules for public space that take the needs of street people into account. But a defense of bare life is not robust enough to combat the trend towards criminalization and punitive treatment. This became apparent in *Love v. City of Chicago* (1996), a case that challenged the city's policy of confiscating the belongings of homeless people. A group of homeless petitioners claimed that Chicago's policy of removing and destroying the property of homeless people during street cleaning violated the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. The federal district court judge who decided the case emphasized the voluntary nature of homelessness and concluded that the loss of private property was the unavoidable consequence of a lifestyle choice. In a later iteration of the same case, the court spelled out that the homeless petitioners lost their entitlement to protection because they accumulated possessions ("chairs, boxes, sofas, computers, keyboards, potted plants, box springs, and extra mattresses") beyond what was essential for physical survival.³¹ According to the court, their rights only extended to a sleeping bag and several blankets, items indispensable for survival on the street. The minimalist defense of the right to bare life does not foster freedom.

Even cases that strike down punitive sanctions against the homeless sometimes unwittingly reinforce the same dehumanizing logic. In *Pottinger v. Miami* and *Johnson City v. the City of Dallas*, the courts concluded that statutes prohibiting sleeping in public constituted cruel and unusual punishment. Noting that Miami had some 6000 homeless people and only 700 shelter beds, the judge pointed out that the homeless "truly have nowhere to go." Under such circumstances, the judge concluded that the statute in question was unconstitutional because it effectively criminalized "involuntary status." But what if a homeless person chose to live on the streets because she did not want to be separated from her partner or pet, or feared theft or disease? According to this decision, if shelter existed, no matter how inadequate, living on the streets would be a lifestyle choice that was not constitutionally protected. This opens up the possibility of implementing schemes such as

those proposed in New York City and Los Angeles to confine the homeless in fenced encampments on the periphery of town. In order to combat such proposals we need an approach to homelessness that treats the homeless as more than passive victims with a right to primal survival.

THE ROMANTIC AND THE DEMOCRATIC VIEWS

The romantic view of street life is much less common in theoretical and legal treatises but it does play a role, albeit a marginal one, in the popular imagination. The texts that provide a window into this perspective are often films, literature, and essays. By calling this approach romantic I do not mean to imply that it necessarily looks at the plight of the homeless through rose-colored glasses. Instead, I use the term romantic in a manner indebted to Northrop Frye.³² According to Frye, a romance is a literary genre in which the hero goes through a series of adventures (often including much suffering) before ultimately triumphing over evil. Throughout the story, the viewer or reader is encouraged to identify with the values of the hero. The romantic view treats homeless people as heroic individuals, urban nomads or victims-turned-rebels, who symbolize a principled rejection of the materialistic values and competitive ethos that dominate capitalist society. This picture first emerged in the early twentieth century in IWW folk songs such as "Mysteries of a Hobo's Life" in which leaving a job and riding the rails was depicted as an act of rebellion against abusive labor practices.³³ Although the figure of the hobo is often assimilated to the "bum" or "derelict," it can also signify an alternative set of values that provides the basis of critique or insight into the corruption of capitalist society.

In the Great Depression, films and stories sometimes had itinerant workers, homeless families, or hobos as protagonists. Perhaps the most famous and critically acclaimed example was John Ford's film of John Steinbeck's *The Grapes of Wrath* (1940). The film and novel tell the story of the Joads, a family of sharecroppers that is turned off its farm and seeks work in California only to have their dreams of plenty destroyed by the crushing poverty of the migrant camps. Throughout the narrative, the hero Tom Joad, an ex-convict and itinerant worker, challenges the policies and practices that seem designed to dehumanize and defeat the common man's struggle for survival and dignity. The film, unlike the book, tries to provide a happy ending. Driving out of camp in their old jalopy, Ma Joad insists that the poor will ultimately

be triumphant. But nothing in the film suggests that her optimism is likely to be rewarded.

The Grapes of Wrath is not really an example of the genre of romance because the ending is ambivalent at best. The audience identifies with the values of the hero as he fights the dragon of soulless agribusiness, but the more cynical viewers might note that the dragon is not slain in the end. Although the film clearly ennoble the struggle of the Joads to maintain integrity and morality in the face of suffering and exploitation, it does not valorize "homelessness" or "nomadism" in the same way that poststructuralist theorists such as Deleuze and Guattari do. The film mourns the loss of a kind of American pastoralism, where families were rooted to each other and to the land. The film captures the transition from agrarian America to a rootless society with new values and new heroes. At the beginning of the film, John Casey, the preacher, is traveling around the abandoned countryside alone, sleeping in the open. An outsider and hobo, he is welcomed by the Joads on their trip out West. He immediately recognizes that the family values of the old world have become anachronistic and is the first to fight for a more class-based solidarity. For Tom and others, Casey becomes a Christ figure and a source of enlightenment and inspiration.

This "romantic" image of the marginal and dispossessed as the carriers of authentic American values emerged in the Great Depression. It was rediscovered and transformed in the 1960s when books such as Jack Kerouac's *On the Road* valorized a certain kind of urban nomadism as the realization of human freedom. This equation of homelessness or nomadism with freedom finds echoes today in the work of political theorist Thomas Dumm, who wrote, "If the material conditions that enable...any one of us to be homeless disappear, the spiritual possibility of homelessness as the open road, as a possible path of freedom, disappears as well."³⁴ Another recent example is French filmmaker Agnès Varda's *The Gleaners and I* (2001). Varda takes Jean-François Millet's famous painting *Les Glaneuses* (1867) as inspiration to explore the survival strategies of modern-day urban and rural gleaners who gather food and objects left behind after the harvest or in the garbage. Her subjects include the rural poor and urban homeless as well as artists and resourceful bohemians who find freedom at the margins. Living on the street is figured as a refuge from the constraints of bourgeois society and a source of alternative values and meanings.

The romantic view of the homeless is a useful corrective to the more common depiction of the homeless as victims or threats. It humanizes the homeless person by emphasizing his agency when confronting

structural constraints beyond his control. From the romantic point of view, the hobo or migrant is not someone who failed in terms of bourgeois standards of success but someone who has embraced a different set of values even at great material cost to himself. The romantic perspective makes it possible to see nomadism and gleaning as heterotopic practices,³⁵ which create spaces on the margins of society that preserve a way of thinking and living differently.

The problem with the romantic perspective is that it aestheticizes homelessness. This has two disadvantages. First of all, most homeless people are not urban nomads who choose life on the street because of the freedom that it provides.³⁶ To the degree that this understanding of the problem came to predominate it could probably lead to counterproductive government policies. Second, the romantic view of homelessness does not provide convincing reasons to elicit the support of those who do not share the antisystem values. If homelessness is framed as the consequence of the existing social and economic structures, then it is possible to argue that it is a requirement of justice that those who disproportionately benefit from those structures help those who disproportionately suffer. If homelessness is perceived as a lifestyle choice, however, it is unclear why taxpayers should subsidize this choice by providing safe shelters, facilities, or outreach programs. Many voters believe that they should not be obliged to support someone who chooses not to work if he or she is capable of doing so. Although the romantic view does not adequately explain why others have an obligation to aid the homeless or resist criminalization, it does make an important contribution by counteracting the tendency to dehumanize the homeless and view them as abject.

Both Waldron's liberal perspective and romantic perspective offer arguments against the criminalization of homelessness, but neither one provides a complete critique of the zoning strategy that is employed today in areas like Battery Park City. A proponent of zoning could always argue that the homeless could subsist or even create their hobo heterotopia in nearby Historic Battery Park where few unwilling New Yorkers would be forced to see them. The difficulty with this solution is that it has consequences for democratic decision making. How can citizens make informed decisions about social programs if they don't grasp the full extent of social problems? If bench squatting and nonaggressive panhandling are confined to five percent of downtown (and excluded from residential areas) then most people will probably never see a homeless person. The suffering caused by homelessness and extreme poverty will not go away but most citizens will simply become

less aware of it. Or their awareness will not come through the personal experience of occasionally chatting with the woman selling the *Street Sheet* but rather through news reports of sporadic acts of extreme violence that take place in forbidden, terrifying, unfamiliar parts of the city. The racial and socioeconomic segregation of American cities is already far advanced and exacerbating it through new antivagrancy laws will only intensify the tendency of different groups to live in wholly separate and unequal worlds.

Of course, citizens can learn about the phenomenon of homelessness through newspaper articles that document the growing numbers of families seeking shelter or perhaps an occasional piece featuring some individual's hard luck story. But the reality is that even a well-researched fact piece or sympathetic feature does very little to overcome the enormous gap between each person's individual experience and the abstract remote reality that happens elsewhere. This is particularly true of international news, where suffering and atrocities happen in places so far away that it is impossible, for most people, to identify with the victims. The deaths of thousands of remote foreigners seldom elicit even passing interest. Restricting street people to danger zones on the wrong side of town turns fellow citizens into the equivalent of Ethiopian famine victims or Liberian child soldiers. They become slightly exotic, unfamiliar, and easy to dismiss from individual consciousness and policy-making priorities.

Zoning is motivated by the desire to create a veil of ignorance that is the reverse of the one developed by moral philosopher John Rawls. Rather than imagining that we do not know our individual characteristics and life situation in order to develop principles of justice, this veil of ignorance ensures that we make political decisions without ever having to think about how they might affect differently situated persons. Reverend Overall, a pastor serving a poor congregation in the Bronx, made a similar point when commenting on the ban on panhandling in the New York subway. She rejected the MTA's (Metropolitan Transit Authority) suggestion of giving to organized charities instead of individuals, explaining, "I don't think that the point is charity but self-protection. I mean emotional self-protection. Looking into the eyes of a poor person is upsetting because normal people have a conscience. Touching the beggar's hand, meeting his gaze, makes a connection. It locks you in. It makes it hard to sleep, or hard to pray. If that happened, you might be profoundly changed, the way that Paul was changed. Writing a check to the Red Cross or some other charity can't do that. What this card is really telling us is 'Do not open up your heart. Don't

take a chance! Send a check and we will do the touching for you.' That is why I think it is sacrilegious."³⁷

Of course, there is no guarantee that encountering a panhandler on the street will elicit sympathy. As Ellickson points out, many encounters evoke judgment and scorn rather than compassion. Democracy does not guarantee that society will advance specific values such as the recognition and celebration of difference or heterogeneity. Some people, perhaps the majority, may feel nothing more than aversion when confronted with a panhandler or bench squatter. They may choose neither to give alms nor to support programs to provide subsidized housing or shelters. Nevertheless, as a society we cannot make decisions about how to solve the problem of homelessness if most citizens are unaware of the nature and scope of the problem. This means that the solutions we adopt should not permanently block the flow of relevant information.

Some might say that citizens have decided how they want to deal with the problem of homelessness and the solution that they have chosen is criminalization. The rationale behind this policy is that individuals choose homelessness over less appealing options such as working low-wage jobs, therefore laws against panhandling and sleeping in parks "solve" the problem of homelessness by providing a disincentive for choosing this lifestyle. It is beyond the scope of this essay to try to resolve the debate about whether homelessness is a choice, but it seems fairly uncontroversial to assume that for some significant proportion, for example, the 12,800 homeless children in New York City, it is not voluntary.³⁸ Furthermore, a recent report put out by the National Coalition for the Homeless studied 80 rural and urban communities in 37 states and found that 100% lacked an adequate number of shelter beds to meet demand.³⁹ Regardless of the precise causes of homelessness, a zoning system like the one proposed by Ellickson is inconsistent with liberal-democratic principles. Today many political theorists argue that democracy is more than a set of procedures; it is also a culture of equality and solidarity. Although I am sympathetic to this view, the "democratic" argument against the criminalization of homelessness does not depend on this more expansive definition. The case can also be made by relying on the mainstream definition of representative democracy articulated by pluralist Robert Dahl.

Democracy is not simply government based on majority rule. In *Democracy and Its Critics*, Robert Dahl argues that there are several procedural elements that must be in place before a decision-making process is democratic. The first condition is what he calls "effective par-

icipation.” Citizens must have an adequate opportunity to express their preferences about the final outcome, place items on the agenda, and convince others of their views. They must also have the same impact on the outcome as other citizens at the decisive stage. Another crucial precondition is the “*opportunity for informed choice*.”⁴⁰ Each citizen must be able to gather information on how a given decision affects her interests and the public good. From this principle, Dahl derives well-established rights such as freedom of speech and the press. But the principle of informed choice is also a reason to be skeptical of other government policies that would leave citizens ignorant about the basic structures of society and the consequences of their own decisions. The democratic case against zoning is that it effectively shields citizens from crucial knowledge about the way their society and economy work. The democratic perspective provides an important supplement to the liberal, rights-based view that the government cannot criminalize the basic life functions of a certain class of people.

A critic might respond that the democratic argument instrumentalizes the homeless as carriers of a certain social critique rather than treating them as human beings with a right to housing. Or, to put the objection more starkly, there is a danger of turning the homeless into a spectacle of pathos. Insofar as the privileged viewer actually experiences a certain pleasure in viewing the suffering of others, the encounter simply reinforces the distance between subject and object, privileged viewer and abject. Furthermore, if the homeless person’s right to inhabit public space is justified exclusively in terms of the pedagogical benefit it gives to the middle classes, then it is precarious indeed.

The homeless are not simply a text for citizen-readers to learn from and interpret. They are political agents who initiate and take part in a societal conversation about poverty, marginalization, work, and responsibility, both individual and collective. The ubiquitous homeless advocacy newspapers capture this position well; they provide street people with a source of income while also describing the experience of homelessness through poetry and prose and translating this experience into a political program.

It is worth emphasizing that the preferred solution to homelessness is not legalizing begging but providing more housing. The right to housing and the right to inhabit public space, however, are not mutually exclusive and the latter may help strengthen the former.⁴¹ I support redistributive programs, including public housing, but I also recognize that the amount of funding devoted to social programs depends on the priorities of citizens and their representatives. A theory of justice may

provide a compelling reason in favor of redistributive programs, but it does not explain why citizens should take the standpoint of justice rather than self-interest. To examine a question from the standpoint of the other person requires more than mere reflection or mere feeling. It requires an act of imagination.⁴² To imagine the standpoint of someone else is difficult when they are made invisible by laws that are meant to exclude them from the city.

The democratic argument strengthens the legal construction of the homeless as political agents, participants in a certain kind of civic conversation, rather than treating them as criminals or recipients of government largesse. When federal courts have struck down anti-homeless statutes or policing tactics, they have done so based on two different rationales. Some courts have found that statutes that criminalize the status of homelessness violate the cruel and unusual punishment clause of the Eighth Amendment.⁴³ As Leonard Feldman pointed out, this outcome may be laudable but it also unwittingly reinforces the legal construction of the homeless as bare life, for example, deserving of pity but bereft of agency and humanity. Looking at a different set of court cases, however, reveals another legal construction of homelessness, one more akin to the democratic perspective. The jurisprudence protecting panhandling as political speech treats the homeless as citizens and bearers of a legitimate social critique.⁴⁴ In cases such as *Blair v. Shanahan* (1991) and *Loper v. New York City Police Department* (1992), the federal courts have held that “begging gives the speaker an opportunity to spread his views and ideas on, among other things, the way our society treats its poor and disenfranchised.”⁴⁵ The homeless plaintiffs in these cases were not portrayed merely as victims but also as citizens with an important message to communicate.

Those who reject panhandlers’ First Amendment claims argue that begging is conduct not speech.⁴⁶ The courts have faced this issue in the past when they have had to decide whether flag burning or wearing symbolic clothing constituted protected expressive conduct or prohibitable behavior. In *Spence v. Washington* (1974), the court established a two-part test to decide whether conduct contains enough communicative content to invite constitutional protection. First, there must be the intent to convey a particularized message. Second, there must be sufficient likelihood that it will be understood.⁴⁷

Panhandlers rely on a variety of communicative strategies. Some “sell” a homeless advocacy newspaper filled with well-researched articles and editorials; others display a simple sign such as the one I saw the other day stating, “Lost my lease to co-op conversion. Please help”; some simply chant, “Spare some change.” Are these forms of speech?

Are they saying something that we need to hear? Do these three examples meet the criteria outlined in the Spence test? The person distributing the *Street Sheet* most obviously conveys a very clearly articulated and easily comprehensible critique.⁴⁸ The cardboard sign also makes a definite political statement and most New Yorkers would understand that it is trying to show the consequences of using condo and co-op conversion to make more profit from rent-controlled apartments. Robert Teir has argued that it is possible to prohibit begging (the solicitation of money) while still allowing discussions about poverty or criticisms of existing welfare provisions. But to allow a sign saying "Lost my lease to co-op conversion" while prohibiting "Help me" is to eviscerate the core of the message. The homeless person is not primarily making an abstract point about real estate speculation but rather drawing attention to the painful personal costs. The communicative goal of the sign-holder (and the person repeating, "Spare some change?") is a plea for individual help. If the goal is to prevent violence and intimidation, it would make more sense, as the court in *Loper* suggested, to enforce existing laws against aggressive behavior (e.g., it is already illegal to intimidate someone into giving money, to follow them, or to block their passage on the street) without targeting peaceful speech.

In a culture of individualism and achievement, many people, perhaps the majority, may be unsympathetic to the homeless person's message, regardless of the manner in which it is communicated. But if there is one basic rule of democratic governance, it is that the minority has a fair chance to become the majority. If the homeless do not have the opportunity to be visible in public space, if they cannot communicate their needs, then there is no chance that they will convince others to make the social changes necessary to meet these needs.

CONCLUSION: THE EYES OF THE POOR

In *Paris Spleen* (1869) Baudelaire included a short vignette called "The Eyes of the Poor." The narrator of the prose poem recounts the events of the previous day in order to explain to his beloved why he "hates" her. After spending the afternoon together, feeling "two souls would be as one," the couple rested in a café situated on a boulevard that was "already displaying uncompleted splendor." The café was "dazzling," a celebration of "gluttony," "lighted with all its might the blinding whiteness of the walls, the expanse of mirrors, the gold cornices and moldings...." Outside this splendid palace stood three figures, a man and his two small children "dressed in rags." The narrator was moved by the "six eyes" staring admiringly at the splendor. He explains to his

beloved, "Not only was I touched by this family of eyes, but I was even a little ashamed of our glasses and decanters too big for our thirst. I turned my eyes to look into yours, dear love, to read my thoughts in them; and as I plunged my eyes into your eyes, home of Caprice and governed by the Moon, you said: 'Those people are insufferable with their great saucer eyes. Can't you tell the proprietor to send them away?'"⁴⁹

Marshall Berman has described this encounter as one of the primal scenes of modernity. "The Eyes of the Poor" captures the tension between opposites, rich and poor, sympathy and contempt, played out against the background of the changing metropolis. In this period, Paris was undergoing major renovations to transform its crowded medieval quarters and confusing streets into a modern capital city with wide, luxurious promenades. Under the guidance of Baron Haussmann, the project was meant to improve the flow of traffic and make workers' neighborhoods more accessible to the military. The restructuring that opened up space for brilliant new street cafés also destroyed neighborhoods, displacing thousands of poor people from the center of Paris. These new promenades brought people together and made the contradictions of urban life more apparent. For Berman, these encounters, between the petit-bourgeois clerk and the soldier-aristocrat or the lovers and the poor family, were manifestations of a latent class struggle that would come to shape the urban environment and polity.⁵⁰

Today's metropolis is designed to limit the possibility of such encounters. Those dressed in rags stay in areas like Historic Battery Park while their affluent counterparts promenade along the riverfront in Battery Park City. Lovers seldom need to confront the unpleasant discovery that one partner feels sympathy while the other feels only disgust when faced with the eyes of the poor. We have built ourselves a Garden of Eden and sacrificed the knowledge of good and evil.

ENDNOTES

1. The definition of homelessness most commonly employed is the definition adopted by the 1987 McKinney Homeless Assistance Act: "(a) a homeless person is) an individual who lacks a fixed, regular, adequate nighttime residence or an individual who has a primary nighttime residence that is a) a supervised publicly or privately operated shelter designed to provide temporary living accommodation; b) a public or private place that provides temporary residence for individuals intended to be institutionalized; c) a public or private place not designed for or ordinarily used as regular sleeping accommodations for human beings."

2. New York City, for example, has no public toilets. Most of the toilets in the subway were closed in 1982 and only 138 out of 266 "comfort stations" in parks were open. Reported in the *New York Times*, May 30, 1992, 22. As of summer 2002, no public toilets had been opened in New York City. In some cases, planners intentionally do not provide public toilets because they feel that such facilities will attract homeless people and other users of public space can use "semi-public" toilets in restaurants and shops. See Mike Davis, *City of Quartz* (New York: Vintage 1992), 232–233.
3. Jeremy Waldron, "Homelessness and the Issue of Freedom," *UCLA Law Review* (December 1991), 296.
4. Waldron, "Homelessness and the Issue of Freedom," 299.
5. Other examples of the position include Robert Teir, "Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging," *Louisiana Law Review* 54 (1993), 285–338 and Williams L. Mitchell, "Secondary Effects' Analysis: A Balanced Approach to the Problem of Prohibitions on Aggressive Panhandling," *University of Baltimore Law Review* 24 (1995).
6. Robert Ellickson, "Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning," *Yale Law Journal* 105 (March 1996), 1172.
7. Ellickson resists using the term homeless to describe the population targeted by his proposed ordinance. He suggests that many panhandlers are not homeless and few of the most disadvantaged actually beg. The empirical evidence on this is mixed. In the footnotes he cites a study done in Manhattan that found that 81% of panhandlers surveyed had been homeless the night before. A study of homeless people in Chicago found that 20.6% had received handouts during the prior month. See Peter Rossi, *Down and Out in America: The Origins of Homelessness* (Chicago: University of Chicago Press, 1989). This article deals both with the homeless (people who must sleep on the street or in shelters), street people (people who spend most of their time on the street because of inadequate private space or who work in the informal economy on the streets, e.g., collecting cans), and panhandlers (people who support themselves by requesting alms). When it seems appropriate I use the terms interchangeably.
8. Ellickson, "Controlling Chronic Misconduct in City Spaces," 1172.
9. Ellickson, "Controlling Chronic Misconduct in City Spaces," 1120.
10. Mike Davis, *City of Quartz*, 232.
11. Samuel R. Delany, *Times Square Red, Times Square Blue* (New York: New York University Press, 1999).
12. Davis, *City of Quartz*, 232–233. In a footnote he adds that at one point skid row had a murder rate of one per week.
13. Jonathan Kozol, *Amazing Grace: The Lives of Children and the Conscience of a Nation* (New York: Harper Perennial, 1995), 52. See also Jonathan Kozol, *Rachel and Her Children: Homeless Families in America* (New York: Crown, 1988).
14. See also Jeremy Waldron, "Homelessness and Community," *University of Toronto Law Journal* 50 (2000).
15. Cited in Waldron, "Homelessness and Community," 381. See also Jeremy Waldron, "Mill and the Value of Moral Distress," *Political Studies* 35, (1987), 410–423.
16. Evidence presented by Peter Harris in *Young v. New York Transit Authority*, United States Circuit Court of Appeals, 903 F.2d 146; 1990 U.S. at 10.
17. See David Snow and Leon Anderson, *Down on Their Luck: A Study of Homeless Street-people* (Berkeley: University of California Press, 1993).
18. National Law Center on Homelessness and Poverty, report entitled "The Right to Remain Nowhere" (1993). On the issue of homelessness and criminality more generally, studies have found that the homeless do commit more crimes than the general population but most of these crimes are nonviolent offenses that are part of survival strategies, for example, trespassing in abandoned buildings or violating "quality of life" ordinances. See David M. Smith, "A Theoretical and Legal Challenge to Homeless Criminalization as Public Policy," *Yale Law and Policy Review* 12 (1994), 487–517.
19. Cited in Wes Daniels, "'Derelicts,' Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates," *Buffalo Law Review* 45 (1997), 720.
20. Waldron, "Homelessness and the Issue of Freedom," 296.
21. Waldron, "Homelessness and the Issue of Freedom."
22. New York City filed suit against the Fifth Avenue Presbyterian Church, trying to prevent the church from allowing homeless people to sleep on the steps ("Ruling Favors Churches Camp," *New York Times*, June 14, 2002).
23. Waldron, "Homelessness and the Issue of Freedom," 301.
24. Estimates of the number of homeless vary widely, from 250,000 to over 2,000,000. Part of the discrepancy depends on whether you count the number of homeless on any given night or the total number of people who were homeless at any point in a given year. Eighty percent of those registered in New York City shelters were categorized as "transitional" (needed shelter for a few weeks and did not return). The dramatic increase in housing prices in the 1990s, however, exacerbated the problem. In New York City alone there are 130,000 families on the waiting list for subsidized housing. (Source: "Housing a Growing City," report issued by the Coalition for the Homeless (2000); based on data from the Housing and Vacancy Survey of the United States Census Bureau.) In 2002 the number of homeless families increased by 22%; on a single day in June (usually low season for shelters) there were 33,840 people in the New York City shelter system, the highest figure since the city started tracking homelessness figures in the 1980s. (Source: "Bloomberg Plans More Housing for the Homeless: First Increase Since '95," *New York Times*, June 18, 2002, 1.) The lack of shelter beds and lack of affordable housing are among the reasons why so many people are forced to eke out an existence on streets and in parks. I am not making an argument about the controversial issue of what causes homelessness, whether it is individual pathology, addiction, deindustrialization, deinstitutionalization, changing family structure, or lack of government programs. My point is simply that many people do not have permanent shelter and given that temporary shelter is often unavailable, homelessness is the inevitable result. To explain why so many people in industrialized countries do not have permanent shelter would involve another study.
25. Waldron, "Homelessness and the Issue of Freedom," 306.
26. Federally funded urban renewal programs based on a strategy of "downtown revitalization" led to the destruction of 400,000 low-income dwellings, displacing over one million people, half of them black. See Gerald Frug, *Citymaking: Building Communities Without Building Walls* (Princeton, NJ: Princeton University Press, 1999), 146. Bernard Frieden and Lynne Sagalyn, *Downtown Inc.: How America Rebuilds Cities* (Cambridge, MA: MIT Press, 1989).
27. The original distinction between positive and negative freedom comes from Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969). This use of the terminology, however, is slightly different than Berlin's. Positive freedom does not mean that there is a specific set of actions that are free or unfree; instead, it captures the position widely held by egalitarian liberals that the state can and should actively intervene in order to rectify social inequalities.
28. Waldron, "Homelessness and the Issue of Freedom," 312.
29. Leonard Feldman, *Citizens without Shelter: Homelessness, Democracy, and Political Exclusion* (Ithaca, NY: Cornell University Press, 2004).
30. Ibid.
31. *Love v. Chicago* No. 96-C-0396 (1998) at 36. Cited in Feldman, *Homeless Politics*.
32. Northrop Frye, *Anatomy of Criticism: Four Essays* (Princeton, NJ: Princeton University Press, 1957).
33. Credited to T-Bone Slim, *Little Red Songbook*, 1920.
34. Thomas Dumm, *United States* (Ithaca, NY: Cornell University Press, 1994), 169.

35. The term heterotopia comes from the work of Michel Foucault and designates an actually existing utopia, a space that actually exists yet allows people to live differently. See "of other spaces," *Diacritics*.
36. The majority of people in shelters have lost their private dwelling due to some sort of financial crisis and many of the long-term homeless (the ones usually associated with the label "street people") have problems with addiction or mental illness.
37. Kozol, *Amazing Grace*, 223.
38. This number only includes children in the New York City Shelter system, as of June 2002. This number represents a 55% increase since 1998. These figures come from the Coalition for the Homeless website, page entitled "Basic Facts." <http://www.coalition-forthehomeless.org>.
39. Press release from the National Law Center on Homelessness and Poverty. www.nlchp.org.
40. Robert Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989).
41. Furthermore, providing public housing would diminish but not resolve the problem of regulating conduct in public places. It is always possible that recipients of social programs, even fairly generous ones, may turn to begging during a crisis or sell the *Street Sheet* in order to push for more suitable programs. Shelter residents may also want to engage in "chronic bench-squatting" in order to sustain social ties with other homeless people.
42. This phrase comes from Hannah Arendt, "Understanding and Politics," *Partisan Review* 20 (1953), 392.
43. *Robinson v. California* 370 U.S. 660 (1972) deemed criminalization of a status (drug addiction) cruel and unusual punishment. Some courts have applied this precedent to the criminalization of homelessness.
44. See Helen Hershkoff and Adam S. Cohen, "Begging to Differ: The First Amendment and the Right to Beg," *Harvard Law Review* 104 (1991), 896–942.
45. *Blair v. Shanahan* 775 F. Supp 1315 (N.D. Cal 1991) at 322–323.
46. Robert Teir, "Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging," *Louisiana Law Review* 54 (1993), 285–338; Williams L. Mitchell, "'Secondary Effects' Analysis: A Balanced Approach to the Problem of Prohibitions on Aggressive Panhandling," *University of Baltimore Law Review* 24 (1995).
47. Peter A. Barta, "Giuliani, Broken Windows, and the Right to Beg," *Georgetown Journal on Law and Policy* 6 (Summer 1999), 165–190.
48. The *Street Sheet* is the name of the paper distributed in San Francisco. Many cities have something similar. The newspaper usually contains articles and editorials on social policy as well as some personal accounts or poetry written by homeless people. Vendors receive a supply to sell, keeping the proceeds for their own needs.
49. Charles Baudelaire, "The Eyes of the Poor," *Paris Spleen* (<http://www.scils.rutgers.edu/~favretto/eyesofthepoor.html>)
50. Marshall Berman, *All That Is Solid Melts Into Air* (New York: Penguin, 1988).

9

CONCLUSION: THREE RATIONALES FOR THE PROVISION OF PUBLIC GOODS

One of the motifs that runs throughout this book is the suggestion that vibrant public space fosters other public goods. Most notably, it facilitates the diffusion of political information, especially marginal or dissenting views that are underrepresented in the corporate-dominated media. Otherwise invisible points of view—that universities exploit the Third World by allowing their lucrative athletic wear to be manufactured in sweatshops or the reasons for abolishing the federal income tax—can be disseminated in the less competitive arena of public space. Leafletting, bell-ringing, demonstrating, and petitioning are still among the core tactics of grassroots campaigns. Some of these groups' ideas, such as the benefits of school prayer and the dark side of globalization, circulate at the margins until grass-roots mobilization, marketing savvy, or political opportunity propels them into the mainstream media.

Public space plays an important role in fostering democracy by preserving opportunities for political speech and dissent. The Wobblies first made this claim forcefully during the Free Speech Fights in the early twentieth century. Standing on soap boxes perched on street corners, they articulated controversial ideas that challenged the truisms repeated from the church pulpit or university lectern. Although many people initially rejected the idea that marginal groups had an equal right to trumpet their views on public streets and plazas, a more expansive embrace of political speech gradually came to dominate the courts and public opinion.

Rights consciousness is far more diffuse now than it was in the era of the IWW soap box orators. Today few North Americans would say