



**Down and Out in Winnipeg
and Toronto: The Ethics of Legislating
Against Panhandling**

by

Arthur Schafer

August 1998

ISBN 1-894159-16-0

Summary

Beginning in the 1980s, and continuing into the 1990s, the centre of many Canadian cities experienced a dramatic increase in the number of down-and-out individuals living on the street: bag-ladies sitting in doorways or pushing their worldly goods in supermarket carts, homeless men and women huddled over heating grates during the winter, scruffy teenagers with their hands outstretched for a donation, ‘squeegee kids’ wiping auto windshields without invitation, in the expectation of payment from embarrassed motorists, beggars outside hotels and shopping malls.

Twenty years ago, an encounter with a beggar was not a common occurrence in Toronto or Winnipeg or Vancouver. Today, however, in the downtown centre of large and medium-sized Canadian cities, panhandlers seem to be ubiquitous. One is likely to encounter them on the sidewalks, on the streets, in city parks.

Cities across Canada are now moving swiftly to ban or severely to restrict panhandling. They are legislating the use of legal coercion not only against aggressive begging (which is already covered by the Criminal Code of Canada) but also against passive (peaceful) begging.

A constitutional test-case is about to come to trial, in which the National Anti-Poverty Association challenges the validity of the City of Winnipeg’s anti-panhandling by-law. If this challenge is successful, cities across Canada will be forced to rethink their enthusiasm for using legal coercion against panhandlers.

This paper asks the questions: Is it good public policy to use legal coercion against peaceful panhandlers? Can it be morally right in a democratic society to prevent one person from publicly saying to another “I’m in trouble and need help?”

There is no denying that panhandling sometimes causes problems for the rest of the

community. But the question which must be answered is: Are the negative consequences of peaceful panhandling so seriously harmful as to justify legal coercion that may contravene other basic social values? This paper argues that the cure (legal coercion) will be worse than the disease (passive panhandling).

To defend the right peacefully to beg is not to deny that panhandling is a serious negative symptom of a deep social problem. But sweeping the existence of beggars under a coercive legal carpet is the wrong way to go about dealing with this problem.

Do we, as a society, really want to rely upon still more contentious laws to deal with the serious social problems of poverty, homelessness and panhandling? Are we convinced that legal coercion, with its use of physical force backed by weapons, lawyers, courts and jails, will be effective in addressing what is essentially a social problem? Are we prepared to violate fundamental rights to freedom of expression and add further burdens to the least advantaged members of our society?

This paper argues that we cannot expect much success if we treat panhandling as an isolated problem to be dealt with by police action. Legal prohibition may sound as if it would be a cheap and easy solution, but the messy truth is that it would, at best, provide a temporary cosmetic cover-up. To ban or severely to restrict a person’s right peacefully to ask others for help would jeopardize some of the most cherished rights of a democratic society.

Passive panhandling is a nuisance, not a menace. The top-down passage of anti-panhandling legislation is neither good ethics nor good social policy. It should be rejected in favour of a more complex, possibly more expensive (in the short run), bottom-up approach involving such measures as income redistribution and appro-

appropriate provision of housing and social services. A social approach to passive panhandling would be more just, more humane and ultimately more effective.

Introduction

Beginning in the 1980s, and continuing into the 1990s, the centre of many Canadian cities experienced a dramatic increase in the number of down-and-out individuals living on the street: bag-ladies sitting in doorways or pushing their worldly goods in supermarket carts, homeless men and women huddled over heating grates during the winter, scruffy teen-agers with their hands outstretched for a donation, 'squeegee kids' wiping auto windshields without invitation, in the expectation of payment from embarrassed motorists, beggars outside hotels and shopping malls.

They are all part of the substantial number of people who today beg on the streets of Canada's cities. Virtually every Canadian beggar suffers from severe poverty. Typically, these people lack the education or skills necessary to obtain, let alone hold, employment. Often they have additional social problems, such as the lack of a supportive network of family and friends. They also may encounter problems of racism, domestic abuse, alcoholism and mental illness [Carter 1998; Addictions Foundation of Manitoba 1996, 1993, 1992]. These social problems overlap in ways which defy easy amelioration.

Most people who suffer from such problems do not become beggars; but almost all of those who are to be found begging on the streets fit within this complex matrix of overlapping problems. It must be admitted that there are a few panhandlers who 'do it for fun' – a minority which receives disproportionate and sensationalized media attention. Nevertheless, the overwhelming majority of panhandlers who beg on the streets of downtown Canadian cities is drawn from the ranks of the poorest of the poor, with fewer resources of any kind than virtually anyone

else in this country [Addictions Foundation of Manitoba 1996, 1993, 1992].

Mr. Don Skup

In Winnipeg, one of these beggars is Don Skup. Mr. Skup has become something of an institution in downtown Winnipeg. For a number of years, he has every day, almost without exception, positioned himself in front of the Metropolitan Store on Portage Avenue. He wears a sign asking for spare change. More exactly, the sign hanging around his neck reads: "Can you help? Any spare change would help me. "No job. No money." At Christmas time are added the words: "Merry Christmas." When the Winnipeg weather turns bitterly cold, Mr. Skup adds layers to stay warm: three coats, three pairs of pants, two pairs of socks, mitts and a tuque.

Mr. Skup's wife is dead and he has virtually no contact with any member of his family. He was once employed, but he has now become one of the long-term unemployed.

He is reported as saying that he has hopes of getting some sort of job offer. But for now and, realistically, likely for the rest of his life, he is on provincial welfare, supplementing his meagre allowance by begging.

A very short distance from where Mr. Skup solicits money from passers-by, there is a community police station. The police do not bother Mr. Skup, nor do they attempt to interfere with his begging. Skup does not intimidate people into giving him money, so the police leave him alone: "Those that aren't aggressive we don't have a problem with," said Staff Sgt. Paul Ingram in an interview with the Winnipeg Free Press. "They're seeking assistance. You can't stop a person from asking for help" [Williams 1996].

"You can't stop a person from asking for help." That's exactly right. But this view, so clear to Staff Sgt. Ingram, is not widely shared by Canadian municipalities.

Canadian municipalities move fast, in the wrong direction

Twenty years ago, an encounter with a beggar was not a common occurrence in Toronto or Winnipeg or Vancouver. Today, however, in the downtown centre of large and medium-sized Canadian cities, panhandlers seem to be ubiquitous. One is likely to encounter them on the sidewalks, on the streets, in city parks.

People who live and work in the suburbs and who do all or most of their shopping in suburban malls may seldom encounter a panhandler. By contrast, those who live, work or shop regularly downtown will meet panhandlers on a daily basis.

Typically, an encounter between a pedestrian and a panhandler is a mundane, unthreatening affair. The beggar will hold out a hand, request spare change or sit silently on the pavement, eyes down to signal passivity. The request for help addressed to Portage Avenue pedestrians by Mr. Skup is a representative example of such 'passive begging.' The great majority of encounters between passers-by and beggars is of this non-aggressive variety. They may be experienced as a nuisance by many of the targeted population, but they are not threatening.

Occasionally, however, a panhandler or, worse, a group of panhandlers, will aggressively confront a passerby, possibly obstructing passage or following the targeted pedestrian down the street, reach out to touch him or her, or utter words of threat.

There is a great deal of difference between these two types of begging behaviour. Passive begging may be annoying or unsightly (or not, depending upon the attitude of the target), but it is not intimidating. Aggressive panhandling, by contrast, may be experienced as menacing and frightening no matter what the target otherwise might think about people who panhandle. Yet such crucial distinctions are not being made by Canadian municipalities which are today, seem-

ingly, in a race to legislate against both types of panhandling.

By-law No. 6555/95 (see Appendix), passed by Winnipeg's City Council in January of 1995 and now about to have its constitutional validity tested in court by the National Anti-Poverty Organization, may be the most far-reaching attempt among Canadian cities to regulate all forms of panhandling. It restricts where, how and when beggars can ask for help, and punishes violations with a sizeable fine of up to \$1,000, a term in prison of up to six months, or both. By making any act of panhandling vulnerable to being found in contravention of the by-law, Winnipeg City Council effectively has criminalized and banned most ordinary begging from its streets.

The City of Vancouver recently passed a similar by-law, modelled on Winnipeg's. Ottawa, Brandon, Oshawa and Sudbury have by-laws that ban all panhandling. Kingston, Oshawa and Charlottetown have enacted by-laws against gathering and loitering. Toronto is trying to make up its mind about which way to move [Carter 1997].

the heavy-hand-of-the-law approach

The list of municipal recruits to the heavy-hand-of-the-law approach to begging is long and becoming longer by the month. Yet such restrictive legislation is simply not necessary to control aggressive panhandling. Most aggressive panhandling is almost certainly illegal under the Criminal Code of Canada. (The qualifying adjective 'almost' is necessary because the strength and efficacy of the Criminal Code of Canada may not yet have been fully tested in the Courts for all forms of aggressive panhandling.)

In other words, the recent Canadian wave of municipal legislation intended either to ban panhandling outright or to restrict it severely would seem at best to involve overkill. Since these drastic legal restrictions are not required for aggressive

begging, they function, in reality, mainly as tools for the suppression of passive begging.

Does society have the right to restrict passive begging in this way? Is it in our best interests?

Arguments against permitting passive panhandling

Those who support the criminalization of panhandling usually support their case with the claim that panhandling is a seriously anti-social activity. Justification for this claim is conveniently provided by at least two different groups of sociological theorists: first, by advocates of what is called the ‘broken windows’ hypothesis and second, by advocates of what might be called ‘city planning hygiene.’ There is some overlap between the position taken by proponents of these two schools of thought, but it will be useful to consider them separately.

the ‘broken windows’ hypothesis

The urbanologist Jane Jacobs, in her enormously influential book *The Death and Life of Great American Cities*, makes the point that the health and viability of a neighbourhood depend crucially on the attractiveness of its sidewalks, streets and public spaces:

The bedrock attribute of a successful city district is that a person must feel personally safe and secure on the street among all these strangers. He must not feel automatically menaced by them. A city district that fails in this respect also does badly in other ways and lays up for itself, and for its city at large, mountain on mountain of trouble [Jacobs 1961: 30].

Jane Jacobs’ work, in turn, inspired the highly influential *Atlantic* article “Broken Windows” [Kelling and Wilson 1982], and its more recent

sequel *Fixing Broken Windows* [Kelling and Coles 1996]. They argue that there is a link between what they call street disorder, on the one hand, and serious crime, on the other. The phrase ‘street disorder’ refers to such phenomena as the importuning of beggars, the rowdiness of teenage gangs, people sleeping on benches and urinating in parks, walls sprayed with graffiti and aggressive public drunkenness.

According to the ‘broken windows’ hypothesis of Kelling and Coles, when low-level disorder (symbolically, the broken window) is ignored by such authorities as the police, neighbourhoods deteriorate, serious crime increases and public safety soon becomes compromised.

Broken windows theorists allege that there exists a strong link between the public *perception* of how safe it is to be in a neighbourhood and the *reality* of how safe the members of the public truly are. That is, ‘perception becomes reality.’ When the norms of orderly behaviour are ignored, even if only by a sizeable minority, other citizens become fearful. When people feel fearful, their loss of confidence is expressed by cowering behaviour or by flight. Many people stay off the streets when they can or, more dramatically, they ‘vote with their feet’ by moving to other, safer, nicer neighbourhoods. In such fertile soil, serious crime increases and public insecurity becomes a self-fulfilling prophecy.

What sets broken windows theorists apart from others is this idea: Unless a community employs legal coercion against those people who behave offensively, even when their offensive behaviour violates no criminal law, their disorderly behaviour will encourage, directly and indirectly, future criminal behaviour. So, for example, the authors of *Fixing Broken Windows* identify beggars as a prime source of that ‘urban chaos’ in which crime flourishes. They favour using the police to restore good order by coercively ridding neighbourhoods of panhandlers and other ‘undesirables.’

Unfortunately, the broken windows hypothesis is almost impossible either to confirm or to disconfirm. Crime measurement is a notoriously imprecise enterprise. It is not very difficult for police officials dramatically to inflate or deflate the crime figures, depending upon whether they, in their capacity as official crime score keepers, wish to highlight rising crime rates to make the case for increased spending on policing or, contrariwise, to highlight falling rates, which are claimed as proof of the efficacy of police efforts [Burnham 1996].

Moreover, there is an omnipresent danger of committing the fallacy of mistaking coincidence for causality. Correlations between policing policy and crime rates, even if we could rely upon the relevant statistics, are notoriously tenuous. Thus, when crime rates fall in New York *after* a vigorous policy of enhanced street policing, many people will be tempted to infer that the crime rates fell *because* of the enhanced policing. But if it is then discovered that in other cities in which policing was not enhanced there was a comparable decrease in crime rates, one is then forced to consider other possible causes – say, increased employment rates, improved race relations or demographic shifts. Empirical confirmation of one's favoured theory is difficult to achieve; decisive proof is probably a phantom objective [Moran 1977].

Thus, it is difficult to place a very high degree of confidence in claims that this or that panacea has miraculously produced falling crime rates. Police enforcement, or the lack thereof, may or may not be the key variable which explains why crime rates rise or fall. It may, or then again it may not, be crucially important to have more 'cops on the beat,' 'rapid police response units,' preventive patrols and better high technology, including fast computers and large crime data bases.

The literature of criminology is littered with once-popular theories, now discredited and discarded. In this it bears an uncanny resemblance to the literature on education and schooling, with its alternating faddish preferences for big schools/

little schools, closed classrooms/open classrooms, strong authority figures/participatory democracy. When the phenomena one seeks to explain are exceedingly complex and none of the many relevant variables can be held constant, one is inevitably blessed, or perhaps one should say 'cursed,' with a plethora of hypotheses. None of the competing hypotheses can be either confidently endorsed or confidently discounted since none can be decisively proven or refuted [Lardner 1997].

Thus, if one's goal is to produce lower crime rates, and in the absence of strong evidence that legal coercion against so-called street disorder has resulted in lower crime rates, it would seem little more than a questionable experiment to use legal coercion against the mere presence of panhandlers.

the 'city planning hygiene' argument: panhandlers as a public nuisance

Even if the broken windows theory is of dubious validity because of the absence of any reliable link between panhandling and crime, advocates of the criminalization of begging can invoke an alternative theory to justify the use of legal coercion against peaceful panhandlers.

The argument from 'city planning hygiene' contends that communities need to regulate public spaces in order to prevent, or at least minimize, 'street disorder.' If panhandlers are allowed to proliferate in our city centres, sooner or later a point will be reached – and probably sooner rather than later – at which most middle-class people will be driven out of our downtown areas into the suburbs. Suburban malls will thrive, but city centres will enter a dangerous downward spiral and cities will lose increasingly their tax base. This loss, in turn, will lead to a fiscal crisis the consequences of which include, for example, further deterioration of city services and infrastructure, poorer schools and bad roads. Vital urban services deteriorate causing still more citizens to flee the city or its centre, which will cause ... and so on, in a seemingly endless downward spiral.

Panhandlers and vagrants, from this point of view, constitute a ‘chronic street nuisance’ [Ellikson 1996: 1175]. Although panhandlers and their like may cause only minor annoyance to passers-by, their vexatious conduct clearly violates community norms governing proper conduct in particular public spaces. Even “a few street people disproportionately create an ambience of urban disorder” [Ellikson 1996: 1176]. Those who also believe in the broken windows syndrome will want to add that, if such seeming street disorder goes unchecked, it will signal a lack of social control which, in turn, will encourage others to misbehave.

Moreover, proponents of police coercion against beggars may argue that even if panhandling does not lead in any obvious way to increased serious crime, it may annoy or upset many pedestrians and, thus, be bad for business. Certainly, many inner-city business people believe that the presence of panhandlers costs them customers. Not surprisingly, these merchants are among the strongest supporters of invoking the law to get panhandlers off the street or, at least, off their street.

Although the voice of the business community usually can be heard most prominently amongst those agitating for a crack-down on panhandlers, what is less often noted is the fact that panhandling can also pose a problem for poor residents of neighbourhoods. When panhandling becomes a common occurrence, low-income residents as well as the middle and upper classes may feel that their neighbourhood is deteriorating. Unlike their wealthier fellow citizens, however, their lack of economic resources and powerlessness effectively prevent them from fleeing to the sanctuary of suburban life.

assessing the arguments against permitting passive panhandling

There is no denying that panhandling sometimes causes problems for the rest of the

community: problems for the elite stratum of society, problems for the middle class and problems for poor residents of inner-city neighbourhoods. But there is controversy about the gravity and extent of the problems posed. The broken windows argument may have some merit, although it remains at best unproven. City planning hygiene is quite properly a major concern for all those who value civility in public places.

Although there are positive benefits arising from panhandling, some of which are discussed later in this paper, it would be difficult to deny that on the overall scales – weighing both positive and negative considerations – panhandling would reasonably be classified by many people as a socially negative phenomenon.

What must be stressed, however, is that even if one were to conclude that panhandling is, on balance, a socially negative phenomenon, it does not follow that it would be either prudent or morally right to use legal coercion to prevent peaceful panhandling.

In other words, defending the right to peaceful panhandling is not the same as arguing that panhandling is desirable. Rather, the question is: Are the negative aspects of panhandling so seriously harmful as to justify legal interventions that may contravene other fundamental social values? Critics of anti-panhandling legislation argue as the core of their case that there is a very real danger that the cure (i.e., legal coercion) will be worse than the disease (passive panhandling).

Critics of anti-panhandling by-laws do not deny that a problem exists. On the contrary, most who defend the right peacefully to beg likely would agree that panhandling is a serious negative symptom of a deeper malaise in society. But sweeping the existence of beggars under a coercive legal carpet is the wrong way to go about dealing with this social problem and may end up hurting both the beggars and the ‘beggees,’ as is argued in the next sections of this paper.

Social solidarity and a sense of community

Whatever may be intended explicitly by the beggar's outstretched hand, part of what is achieved is the establishment of some sort of human relationship between beggar and beggee. As the political philosopher Michael Walzer puts it: "The act of giving is good in itself; it builds a sense of solidarity and communal competence" [Walzer 1983: 94].

Even when no donation is forthcoming, the person who has been solicited has been drawn, however briefly, into a personal relationship with the beggar. A bond of sorts has been established. It could be a positive bond of involvement and recognition, or a negative bond of discomfort and hostility. In either case, by addressing other members of society with a plea for help, the beggar is challenging society for recognition and is, in the process, challenging the stigma which attaches to poverty and exclusion [Goffman 1963: 105]. However discomfiting the experience, both sides gain from this engagement, albeit in different ways. And society becomes more inclusive, which should itself count as a gain.

Mainstream members of society may not welcome their encounters with poor people who are begging for help. When beggars migrate from their 'natural' habitat in the poorest area of town onto busy downtown sidewalks, this might be seen as challenging their stigmatization by refusing to stay 'in their place' [Rosenheim 1969]. From the perspective of mainstream society, it cannot be denied that encountering people who seem quite different from 'us' can be a stressful, anxiety-inducing experience [Gilman 1985].

This encounter may not be entirely easy from the beggar's perspective, either. It may be a necessary means, however, whereby the beggar obtains subsistence, and it may provide an opportunity publicly to express one's painful condition. But only as a last resort would anyone

choose this way of obtaining money or communicating their problems.

communitarian approaches

The political philosophy which currently goes by the label 'communitarianism' may offer some helpful insights here. This philosophy generally assigns a higher priority to the rights and needs of the community and a lower priority to individual rights and needs. Communitarians tend to criticize rights-oriented liberalism as too atomistic to sustain a flourishing community life [MacIntyre 1981].

Thus, one might expect that communitarian philosophers would look with favour upon attempts by the wider community to restrict or even to ban outright 'disorderly' street activity such as panhandling. And, indeed, some communitarians, citing the values of city planning hygiene and expressing concerns about the broken windows hypothesis, do take such a position.

Interestingly, however, some other communitarians apply their philosophy in a manner which actually defends the right of beggars to ask their fellows for help. Hershkoff, for example, argues that: "The beggar implicitly proposes a communitarian vision in which citizens have a responsibility for each other's survival, a perspective that an informed decision-maker should consider" [1991: 902].

Paradoxically, then, a communitarian perspective can be developed in ways which both support and undermine the panhandler's right to beg peacefully on the streets. What seems undeniable, however, is that the beggar's message communicates a special vision of the responsibilities of living in community. The encounter between beggars and those from whom they seek help compels people to rethink their understanding of social life and its accompanying obligations.

The case in favour of permitting panhandling

freedom of expression

Picture this scenario. A desperate-looking person stands on the pavement outside Portage Place Mall in Winnipeg, or on Yonge Street near Eaton's in Toronto, with a hand outstretched in a begging posture. The beggar holds, in the other hand, a sign on which is crudely lettered the message: "I am hungry and have no money. Please help me."

If this panhandler approaches passers-by with menace or threats, the police are authorized by the Criminal Code to make an arrest. Obtaining money by menaces is indisputably a criminal offence. The police already have, under existing federal legislation, the power to enforce community norms with respect to any attempt to obtain money by threats, force or fraud. There is no need, here, for any further legal powers.

Similarly, if our Portage Avenue or Yonge Street panhandler is intoxicated and stumbling into pedestrians, blocking traffic in the street, urinating on the sidewalk or marking graffiti on walls, there is no need for any special new municipal ordinance to empower the police to act. Police already have discretionary power (under provincial legislation such as The Intoxicated Persons Detention Act) to enforce the law against drunken/drugged disorderly behaviour in public.

But if anti-panhandling by-laws, such as those enacted by the cities of Winnipeg and Vancouver, were to be upheld as constitutionally valid, then it could become a legal offence for one citizen simply to communicate to another, in a public place, that she or he is in trouble and needs help. The most peaceful, polite and non-threatening beggar, a person such as Mr. Skup, would become guilty of illegal conduct and could be subject to legal sanctions, including prison, if he is standing in the wrong spot.

On the face of it, to deny to any person the right to ask another person for help, in a public

place, would seem to violate our society's fundamental commitment to freedom of expression. And we ought to be especially concerned about any law the effect of which would be to curtail debate about social policies affecting the poor, the homeless, the unemployed.

A beggar need not speak to passers-by to communicate his or her request for assistance. Thus, for example, an outstretched hand, hat or pail will signal the same objective as a polite request. But whether a beggar makes a plea for help orally or in writing (*via* a sign, say) or contextually, what is being communicated in every act of begging is a request for a personal charitable gift. More than this, some would argue that the beggar's plea challenges other members of the community to think directly about the issue of social responsibility [Hershkoff 1991]. We are graphically invited to consider the question: In an affluent society such as our own, what obligations do we owe to each other?

Critics of the view that beggars have a freedom of expression, the right to beg in public places, tend to argue that "ordinarily, a panhandler's intended message is wholly transactional, namely, 'I would like you to give me money' " [Ellikson 1996]. That is, they contend that begging is transactional rather than informational, communicative or expressive.

By contrast, the civil libertarian defenders of the right to panhandle tend to assimilate the activity of begging with that of public solicitation by charitable organizations – e.g., those annoying telephone calls that come just as one is sitting down to dinner. If personal begging is viewed as essentially similar to charitable solicitation, then the words of US Supreme Court Justice Brennan, writing about the latter, will apply to both. The act of solicitation, Brennan writes, "is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues" [444 US (632), as cited by Horwitz 1993].

Most famous, perhaps, of all defences of free speech, is the argument associated with John Stuart Mill [1947] that society benefits in many important ways by promoting and defending a ‘free market place of ideas.’ Even views which are generally found to be offensive may contain some part of the truth, and the pursuit of truth is vital to the progress of civilization. Moreover, Mill argues, even when a particular view or opinion is entirely false it ought not to be censored since, in a free society, it often will serve to promote in others the key intellectual virtues of open-mindedness and critical rationality. The strength of any community is more likely to be enhanced than to be weakened by the promotion of free and vigorous debate on social issues.

Mill has been criticized for focussing too exclusively on liberty as non-interference with rights. He is sometimes said to neglect the equally important problem of lack of opportunity, such as might result from poverty or powerlessness, to exercise one’s rights effectively

When Kalven refers to expressive conduct, such as begging in public places, as “the poor man’s printing press” [Kalven 1965: 30], he draws attention to the general lack of opportunity enjoyed by the poor and disadvantaged in our society to communicate their views to the wider community. If laws are passed which make it illegal to communicate one’s need for help through begging, then some of the most disadvantaged members of our community will lose their sole realistic opportunity to communicate their plight to others.

Street people in general, and panhandlers in particular, tend to possess few basic literacy skills. For example, the 1996 Addictions Foundation of Manitoba Report found that more than 85 percent had failed to graduate from high school. Equally important, they almost always lack wealth, power and status. Access to the media of mass communication is generally confined to an elite circle of those with wealth, power and status. Thus, if people outside the political mainstream are denied access to public spaces for purposes of communicating their views and

needs, their abstract right to free speech will, in practice, amount to very little. In short, if freedom of expression is to mean anything at all to the average citizen, let alone to the poor and excluded, it cannot mean only that those who own newspapers or other media can say whatever they like.

What this line of reasoning suggests is that the wider community is morally required to tolerate the nuisance of begging in order to ensure that people who have been marginalized by society are not entirely excluded from communicating their plight to their more fortunate fellow citizens.

democratic governance

The preceding argument provides strong justification for the proposition that the poor are entitled to have some reasonable opportunity to express and communicate information about their lot in life. Equally important, the rest of the community is entitled to have access to such information so that, as citizens, they can choose how best to respond.

Alexander Meiklejohn [1965: 24] calls this “the democratic governance value” of freedom of expression. Unless those who decide issues in a community have access to a full range of facts and viewpoints relevant to governance, the welfare of the community will suffer. Unless a community offers robust protection to the expression rights of all of its citizens – including the most weak and vulnerable – it cannot be sure that either its voters or its decision-makers will be able to make properly informed choices.

utility and self-realization

Mill’s defence of freedom of expression is largely consequentialist. That is, it appeals primarily to the balance of good over bad consequences likely to result from tolerating even those opinions and ideas which the majority may find obnoxious. But Mill also presents another

argument which is highly relevant to the issue of panhandling.

Mill believes that the highest task facing each of us as individual human beings is the development of our talents to the highest degree possible. For society to promote this end effectively, it is necessary for society to tolerate a great many diverse ‘experiments in living.’ Society must permit and, more than this, ought to encourage individuals to seek personal fulfilment through self-expression and self-realization.

To prevent panhandlers from expressing themselves by communicating publicly their need for financial help would be to undermine their ability to pursue their own individual path to self-realization, as unappealing as that path may be to the majority.

Lest this argument seem too fantastic, we should recall that there are some distinguished cultures in which begging, at least in certain circumstances, is regarded as an exalted rather than as a degraded activity. In some Buddhist and Hindu cultures, for example, to forsake all worldly possessions and to live (or die) solely on the basis of charity offered by others (i.e., a form of begging) is considered to be a path towards enlightenment.

Mill argues that the pursuit of individual self-fulfilment may legitimately be limited by society, but only when the individual causes significant ‘harm to others.’ Mill is wary of counting ‘offensive behaviour’ as harmful because he recognizes that the majority may be offended by any behaviour which fails to conform to majority tastes.

The danger is that an intolerant majority might stifle and suppress just those experiments-in-living or unorthodox activities which, in their totality, make it possible for a civilized society to grow and develop. The recent decriminalization of homosexual activity between consenting adults reflects society’s widespread acceptance of Mill’s philosophy of tolerance for individually varied life choices. By contrast, the recent trend towards

criminalization of passive begging represents a retrogressive return toward social intolerance.

Autonomous individuals must be allowed the widest range of liberty to challenge each other, learn from each other’s wisdom and each other’s folly, and encourage and chastise each other. In words which echo the philosophical argument of Mill, Justice Greaney of the Massachusetts State High Court eloquently declared that a state law which makes it a crime to beg “intrudes not only on the right of free communication, but it also implicates and suppresses an even broader right – the right to engage fellow human beings with the hope of receiving aid and compassion.” [Craig 1997: 13]

These words are capable of bearing several interpretations, but at least part of what they suggest is this: When society silences a panhandler or banishes the panhandler from places which have traditionally been public places, such banishment comes close to being a denial of recognition. Each of us has a fundamental need to be recognized by our fellow citizens as a person with needs and views. The criminalization of panhandling is not only an attack upon the income of beggars, it is an assault on their dignity and self-respect, on their right to seek self-realization through public interaction with their fellow citizens.

Talk of ‘dignity’ and ‘self-realization’ may seem to be pretty high-flown language when applied to so-called lowly panhandlers but, as Mill would remind us, when we violate the liberty rights of even the most downtrodden member of society, we threaten the liberty rights of all.

additional positive consequences of panhandling

Some negative consequences of panhandling have been discussed above, and these have been set against some of the seriously negative consequences associated with banning or severely restricting peaceful panhandling. But an impartial assessment of the issue also should pay at least

some attention to several additional positive consequences of peaceful panhandling.

These additional positive consequences include:

- alms for the poor; i.e., economic gain to the panhandler, who is likely to be a person very much in need of such gain
- opportunity for donors to exercise their benevolent impulses by giving direct aid to those who ask for help
- promotion of the entrepreneurial spirit: Panhandlers often exhibit some degree of entrepreneurship, which in our culture is so highly valued, by selling special newspapers, providing squeegee services or simply choosing a marketing strategy (where and how to beg).

Not everyone will agree upon the weight which ought properly to be assigned to such factors, but the first two are important and all three merit at least some consideration.

Social versus legal approaches to reducing panhandling

As noted, in many Canadian and American cities, including the City of Winnipeg, municipal officials have been persuaded that the coercive force of the law should be invoked against panhandling and panhandlers. Jane Jacobs, whose book *The Death and Life of Great American Cities* has inspired advocates of police crackdown, has herself pointed to a major weakness of this legalistic approach. Jacobs recognizes what many of her followers do not – that public peace is not primarily a function of policing:

The first thing to understand is that the public peace is kept primarily by an intricate, almost unconscious network of voluntary controls and standards among the people themselves, and enforced by the

people themselves... [In other words] no amount of police can enforce civilization where the normal, casual enforcement of it has broken down” [Jacobs 1961: 31].

To put this point in another way: The reason most people do not beg in the street or sleep under park benches has very little, if anything, to do with police enforcement of city ordinances.

According to the prevailing norms of our culture, begging is seen as shameful and degrading. The rules of behaviour for proper conduct in public places may be nowhere written down, but they are no less powerful for that. Every beggar was once a child in school, extensively conditioned to the values of society. Parents and peers obviously exert a strong influence, and the values which they inculcate in children and young people are, of course, largely a product of cultural influences. Religious and political institutions, radio and television, commercial advertisers, film and video all shape the identity, attitudes and values of each succeeding generation.

So why is it that a minority within our society does not feel inhibited from panhandling? If those who beg on the streets do feel the sting of guilt or shame, thus acknowledging to themselves that what they are doing is improper or unfitting or undignified, then why do they persist with such behaviour in the face of such feelings? Alternatively, if begging does not induce in them feelings of shame, how have they managed to avoid internalizing those moral emotions to which the rest of society were socialized?

It is highly unusual for people to engage in panhandling unless they are destitute [Rossi 1989]. But what social and moral significance attaches to this empirical fact? A number of scholars argue that the oppressive social and economic conditions in which street people live constitute a kind of duress, which both explains their street behaviour and excuses them, at least in part, from moral responsibility or blameworthiness [Baker 1990-91; Smith 1994]. Extensive social science research in the United States, has shown that:

American street people disproportionately have spent their childhoods with severe disadvantages, including a lack of socialization to mainstream norms. These disadvantages might include an absent father, an abusive or neglectful mother, stints in foster homes, and residency in a neighbourhood in the grip of an underclass subculture [Ellickson 1996: 1194].

There is little doubt that so-called ‘street people’ are drawn disproportionately, as one would expect, from the ranks of the very poor, the severely disadvantaged and the acutely oppressed. They lack money, but they also suffer from ‘social poverty’ – i.e., they lack a supportive network of family and friends [Jencks 1992]. This acute economic and social deprivation is often compounded by such problems as alcohol and drug abuse, mental illness and the stigma of having been in prison.

Within such a context, perhaps it is not altogether surprising that many people come to operate with different social norms from those which prevail in the rest of society. Or, where they share the prevailing norms, it is not surprising that some of them experience their life situation as an unbearable duress, forcing them into behaviour which they themselves see as shameful.

top-downers and bottom-uppers

‘Top-downers’ favour using legal coercion to tackle the problem of panhandling directly. Where informal social pressure has failed, direct police action may succeed. The ‘bottom-up’ approach, on the other hand, recognizes the complexity of the issues involved and offers, in response, a variety of social measures to reduce the extent of panhandling.

Bottom-uppers stress the important role played by deprivation in the problem of so-called street disorder, and they argue that the focus of our concern and efforts should be to counteract

the deprivation which lies at the root of such social problems as panhandling. By means of income redistribution, appropriate provision of housing and social services, and other like measures, the problem of panhandling will be reduced to the status of a minor and very occasional nuisance.

When welfare rates, for example, are set well below poverty levels, many welfare recipients are bound to seek other sources of income. When unemployment is high, those confronted with bleak employment opportunities may feel compelled to turn to begging or theft as an alternative means of support. Remove one set of beggars from the streets of one area of downtown, employing top-down coercion, and another set of beggars soon will appear to fill the vacuum. Meanwhile, those who have been ‘moved along’ simply will transfer their activity to some other neighbourhood or will put their energy into other, equally distasteful, methods of obtaining the money they need.

This cycle of failure is not a promising approach to the problem of creating civility in our cities.

In short, if we value civility in our public spaces, society must be prepared to invest in people and their needs. At present, we have excluded a number of groups from the mainstream of society: the homeless, unemployed, mentally ill and inner-city teenagers (in particular, Aboriginal youth and immigrant children). Not surprisingly, the excluded have opted out of mainstream morality. This is a large part of the answer to the question posed earlier: Why are beggars not inhibited from begging in the streets?

Bottom-uppers are sometimes caricatured as impractical utopians. This may be true of some, but it is certainly not true for those who have worked to implement a variety of potentially effective social measures.

In the City of Winnipeg, downtown merchants have taken it upon themselves to collect money for drug outreach workers, food banks,

core-area youth recreational facilities, and homeless shelters. Some governments have begun to undertake the difficult and demanding process of job training for the long-term unemployed. Some downtown business associations appeal to pedestrians not to give money directly to panhandlers but, instead, to donate money to charitable organizations which will use it to provide food and shelter and literacy education to street people in an effort to get them off the streets.

Thus, speech (begging) is answered not by legal coercion but by more speech (institutional appeals for money to tackle systemic social problems with systemic social solutions).

Do we really want to rely upon still more contentious laws to deal with these serious social problems? Are we convinced that legal coercion, with its use of physical force backed by weapons, lawyers, courts and jails, will be effective in addressing what is essentially a social problem? Are we prepared to violate fundamental rights to freedom of expression and add further burdens on the least advantaged members of our society?

Conclusion

We cannot expect much success if we treat panhandling as an isolated problem to be dealt with by police action. Legal prohibition may sound as if it would be a cheap and easy solution, but the messy truth is that it would, at best, provide a temporary cosmetic cover-up. The social causes at the root of panhandling would remain untouched. Indeed, they might become even less well-addressed than at present, because the problems might become less visible. If we legislate peaceful panhandlers off the streets, the underlying social problems would, over time, almost certainly manifest themselves in other ways.

The two key arguments in favour of permitting peaceful panhandling are that it should be protected as part of the right to free speech, and

that the majority ought not to tell the minority how to live their lives, even if the minority's choices seem dubious or downright wrong to the majority. In short, to ban or severely restrict a person's right peacefully to ask others for help would jeopardize some of the most cherished rights of a democratic society.

There is simply no argument strong enough, supported by solid evidence, to justify the proposed infringement upon basic human rights and freedoms. Passive panhandling is a nuisance, not a menace.

The passage of anti-panhandling legislation is neither good ethics nor good social policy. It should be rejected in favour of a more complex, possibly more expensive (in the short run), bottom-up approach which, at the same time, would be more just, more humane and ultimately more effective.

Afterword

The research for this paper originally was done in response to an invitation from the National Anti-Poverty Organization to provide research support for their court challenge to Winnipeg's anti-panhandling by-law. If successful in their argument that the City's by-law is unconstitutional and should be invalidated by the courts, they would establish a precedent with important implications for similar legislation, both already-existing and contemplated, in other cities across Canada.

At the moment of writing, however, in the late summer of 1998, negotiations are underway for an out-of-court settlement. Should such a settlement be reached that, too, would have important national implications.

As explained earlier, almost every case of aggressive or threatening panhandling is already prohibited by the Criminal Code of Canada. The Code, as it stands, provides coercive sanctions

against panhandling carried out with personal threats, intimidation or outright aggression. Fraudulent claims – e.g., a dishonest claim to be disabled when one is not – are also covered.

But it is arguable that the Criminal Code might not cover certain ‘grey-area’ cases of panhandling, those which lie intermediate between the realms of aggression and passivity. These cases might include, for example, when a panhandler does not accept ‘no’ for an answer and persists in his request, or when he follows a pedestrian down the street in an importunate manner or when several panhandlers make a collective approach to a potential donor in a way which shades into intimidation.

Such quasi-aggressive panhandling might be punished under current provisions of the Criminal Code but, then again, it might not. Thus, one could make a reasonable case that municipalities might be justified in legislating against such borderline aggressive methods of panhandling.

The broad outline for a proposed compromise settlement would involve recognition on the part of The City of Winnipeg that individuals have a right to beg on the streets without restriction or interference *so long as they do so in a peaceful, unthreatening manner*. On the part of the National Anti-Poverty Organization, the compromise settlement would involve recognition that some additional legal sanction may be justifiably aimed at those panhandlers whose methods of begging are borderline aggressive.

This compromise approach, which is being considered actively by negotiators on behalf of The City of Winnipeg and the National Anti-Poverty Organization, would permit panhandlers to “ask once nicely,” anywhere and at any time. The teeth of any city by-law would not bite into a panhandler *unless* there was in the conduct of the beggar an element of intimidation, such as in the above illustrative examples.

If a compromise solution along these lines were to be reached, it would seem to respect the right of citizens to ask others for help, at the same

time as protecting the right of all to carry out their daily business without being subjected to threats or aggression. That compromise seems reasonable and fair to all.

References

- Addictions Foundation of Manitoba. (1996). *Change for the Better Program. Statistical Report*. Winnipeg.
- Addictions Foundation of Manitoba. (1993). *Change for the Better Program. Statistical Report*. Winnipeg.
- Addictions Foundation of Manitoba. (1992). *Change for the Better Program. Statistical Report*. Winnipeg.
- Baker, Donald F. (1990-91). “‘Anti-homeless’ Legislation: Unconstitutional Efforts to Punish the Homeless.” *University of Miami Law Review*. Vol. 45: 417-465.
- Burnham, David. (1996). *Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Department of Justice*. New York: Scribener.
- Carter, Tom. (1998). *Panhandling: Do municipal by-laws effectively address the problem?* Report prepared for the National Anti-Poverty Organization legal challenge to the City of Winnipeg Anti-Panhandling By-Law.
- Craig Benefit v. The City of Cambridge and others. (1997). *Massachusetts Supreme Court*. May 14.
- Ellikson, Robert. (1996). “Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning.” *The Yale Law Journal*. Vol. 105: 1165-1247.
- Gilman, Sander L. (1985). *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness*. Ithaca: Cornell University Press.
- Goffman, Erving. (1963). *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, New Jersey: Prentice-Hall.
- Hershkoff, Helen and Adam S. Cohen. (1991). “Begging to Differ: The First Amendment And The Right To Beg.” *Harvard Law Review*. Vol. 104: 896-916.
- Horwitz, Robert. (1993). “Begging The Question.” *Studies in Law, Politics and Society*. (13) 213-247.

- Jacobs, Jane. (1961). *The Death and Life of Great American Cities*. New York: Random House.
- Jencks, Christopher. (1992). *Rethinking Social Policy: Race, Poverty, and the Underclass*. Cambridge, Mass: Harvard University Press.
- Kalven, Harry Jr. (1965). "The Concept of the Public Forum: Cox v. Louisiana." In P.B. Kurland (ed). *The Supreme Court Review*. Chicago: University of Chicago Press: 1-32.
- Kelling, George, L. and Catherine M. Coles. (1996). *Fixing Broken Windows: restoring order and reducing crime in our communities*. New York: Martin Kessler Books.
- Kelling, George L and James Q. Wilson. (1982). "Broken Windows." *The Atlantic*. Vol. 249, No. 3. March: 29-38.
- Lardner, James. (1997). "Can you believe the New York miracle?" *New York Review of Books*, August 14: 54-58.
- MacIntyre, Alasdair C. (1981). *After Virtue: A Study in Moral Theory*. Notre Dame: University of Notre Dame Press.
- Meiklejohn, Alexander. (1965). *Political Freedom: The Constitutional Powers of the People*. New York: Harper.
- Mill, John Stuart. (1947). *On Liberty*. Illinois: Crofts Classics.
- Moran, Richard. (1977). "New York Story: More Luck Than Policing." *The Washington Post*, cited by James Lardner, "Can you believe the New York miracle?" *New York Review of Books*, August.
- Rosenheim. (1969). "Shapiro v. Thompson: The Beggars Are Coming To Town." *Supreme Court Review*. 303-346.
- Rossi, Peter H. (1989). *Down and Out in America: The Origins of Homelessness*. Chicago: University of Chicago Press.
- Smith, David M. (1994). "A Theoretical and Legal Challenge to Homeless Criminalization as Public Policy." *Yale Law Policy Review*. Vol. 12: 487-517.
- Walzer, Michael. (1983). *Spheres of Justice: a defense of pluralism and equality*. New York: Basic Books.
- Williams, Robert. (1996). "He'll take cash, but he'd prefer to get a job." *Winnipeg Free Press*, December 20.

Appendix

REFERENCE: FILE No. GF-2 (Vol.42)

THE CITY OF WINNIPEG

BY-LAW NO. 6555/95

A By-law of THE CITY OF WINNIPEG to regulate and control panhandling.

THE CITY OF WINNIPEG, in Council assembled, and notwithstanding the Canadian Charter of Rights and Freedoms, enacts as follows:

1. This By-law may be cited as “The Panhandling By-law”.

2. In this By-law,

“bus stop” means a section of roadway which is reserved for the loading and unloading of buses and where parking and stopping of all other vehicles is prohibited;

“hospital” means a hospital as defined and licensed under *The Hospitals Act*;

“panhandle” means to beg or ask, whether by spoken, written or printed word, for donations of money or other things of value for one’s self or for any other person, except where the solicitation has been authorized pursuant to *The Charities Endorsement Act*;

“pedestrian walkway” means an elevated or underground space which is heated, enclosed and designed for the passage of pedestrians from one building to another;

“street” means any roadway, sidewalk, boulevard, place or way, which the public is ordinarily entitled or permitted to use for the passage of vehicles or pedestrians and includes a structure located in any of those areas;

“sunset” means that time shown on the Sunrise/Sunset Tables issued by Environment Canada;

“traffic control signal” means a traffic control signal as defined in *The Highway Traffic Act*;

“trust company” means an office or branch of a trust company to which *The Trust and Loans Companies Act (Canada)* applies and in which deposit accounts are held.

3. No person shall panhandle within 10 metres of:

1. the main entrance to a bank, credit union or trust company;
2. an automatic teller machine;
3. a public entrance to a hospital;
4. a bus stop; or
5. a bus shelter.

4. No person shall panhandle in a bus operated by The City of Winnipeg Transit Department.
5. No person shall panhandle in an elevator or in a pedestrian walkway.
6. No person shall panhandle from an occupant of a motor vehicle which is:
 7. parked;
 8. stopped at a traffic control signal;
 9. or standing temporarily for the purpose of loading or unloading.
10. No person shall panhandle after sunset.
11. No person shall continue to panhandle from a person, or follow a person, after that person has made a negative response.
12. Penalties for the failure to comply with the provisions of this By-law shall be in accordance with Section 149 of *The City of Winnipeg Act* which provides:

“149(1) *Any person who contravenes or fails to comply with ...*
13. a provision of ... a by-law ... for which no other penalty is provided in this Act, is guilty of an offence and liable to a fine not exceeding \$1,000 in the case of an individual or ... to imprisonment for a term not exceeding 6 months or to both.

149(3) The justice imposing a penalty on a person under subsection (1) may, in addition to imposing the penalty, order the person to observe the provision that was breached”

DONE AND PASSED, in Council assembled this 26th day of January 1995.

(Sgd.) Susan A. Thompson
Mayor

(SEAL)

Dorothy Browton
City Clerk

Certified as to form:

or H.R.R. Klapecki
Acting City Solicitor