

Fearing the Mirror: Responding to Beggars in a "Kinder and Gentler" America

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I. Introduction

This business of walk past the poor and write a check when you get home is a yuppie transaction of the cleanest kind. It lets us anesthetize our conscience.

Jonathan Kozol, author of *Rachel and Her Children*.¹

No other activity better exemplifies the tension in American society between the values of independence and the values of community—the American schizophrenia of the individual work ethic and the self-made man competing with our oft-buried compassion for a fellow traveller—than our responses to beggars in the streets. To give or not to give: few of us have a simple answer. Rather, the internal dialogue is confused and complicated. Will a hand-out really help? Will he spend it on booze? Is it my responsibility? Is it the "right" thing to do? There are so many of them—how can I possibly make a dent? For many of us, compassion fatigue is setting in, and empathy is turning into frustration.²

Trained as lawyers, we tend to frame our personal responses to beggars in terms of legal rights and responsibilities (an intellectual process that may distance us further from meaningful solutions). If our system of justice recognizes neither a right to beg nor a duty to help, our guilty conscience may be eased as we scurry by the outstretched hands. For not only do our laws reflect our nation's social values, but the judiciary's imprimatur on those laws serves as a guidepost for those of us wallowing in conflict and indecision. A judge's ruling that officialdom may sweep the streets clean of beggars gives us permission to ignore their individual pleas and, instead, to write a check to our favorite charity. When a judge rules that an individual has no right to ask the public for financial help, certain assumptions necessarily underlie such a ruling: that everyone is an island, that help can be found through other channels, that the beggar

1. Nancy R. Gibbs, *Begging: To Give or Not To Give*, TIME, Sept. 5, 1988, at 68, 70.

2. See Isabel Wilkerson, *Shift in Feelings on the Homeless Empathy Turns into Frustration*, N.Y. TIMES, Sept. 2, 1991, at A1.

is not deserving, or perhaps that the public has an overriding right to be free from a collective guilty conscience.

This Article focuses on our responses to beggars and what our responses say about us as a society. First, however, it may be necessary to explain the widespread presence of beggars, especially for those of us whose daily routine does not involve receiving face-to-face pleas for money, food, or help of some kind. Part II is entitled "Who Are These Beggars and Why Are There So Many of Them?"

Society's response to beggars can be measured as much by our personal reactions on the streets as by the laws we enact. Part III offers anecdotal testimony to the wide-range of personal responses to beggars, followed by common law, legislative, and judicial responses to "the problem."

Discussing such human suffering within the limitations of rights analysis and with an over-reliance on legalistic distinctions seems wholly inadequate. "Thinking like a lawyer," at its worst, obscures the deeper, more painful, but necessary process of personal and societal self-examination. Yet certain legal questions, when stripped of their polished veneer, speak to truth. Three questions invite particular attention in Part IV:

1. Can begging possibly constitute protected speech (or, Do the voices of beggars serve any worthwhile purpose)?
2. Isn't begging for oneself distinguishable from solicitation by organized charities (or, Isn't checkbook charity the more civilized approach)?
3. Aren't there compelling governmental interests to justify bans on begging (or, Aren't we entitled to sweep the streets clean of any reminders of our failures)?

Seventeen years ago, writing in this journal, I noted the "severe social costs resulting from economic segregation."³ At that time, I did not fully appreciate the poverty of conventional legal discourse in the context of a class society, nor the extent of our culture's psychological resistance to creating a jurisprudence of inclusion. Part V offers some thoughts about our increasingly polarized society, our inclination toward fear and disassociation, and the ultimate futility of avoiding the mirrors of our discontent.

3. Michael M. Burns, *Class Struggle in the Suburbs: Exclusionary Zoning Against the Poor*, 2 HASTINGS CONST. L.Q. 179, 180 (1975).

II. Who Are These Beggars and Why Are There So Many of Them?

A. Who Are These Beggars?

We are witnessing a phenomenon unlike anything our people have experienced since the Great Depression of the 1930s. Estimates of the mounting numbers of homeless Americans run from 650,000 to as high as 3 million.⁴ Equally alarming, the homeless whom we find on doorsteps, in subways, and under bridges, comprise no single type of person, no single subculture. "There is only homelessness, an archetypal state of transiency, poverty and isolation latent, to varying degrees, in every human being."⁵ Men and women and entire families, "pushed over the edge by a combination of bad luck and government indifference, . . ."⁶ find themselves abandoned on the street.

Those who resort to begging on the street come from every social stratum—"suburban housewives to Ph.D.'s, health care professionals to dope-smoking teenagers, war veterans . . . to former heads of companies."⁷ For some, their poverty is only temporary, but most remain part of a permanent underclass. Their average age appears far younger than in days past; the average age and ethnicity of the homeless (who presumably are well-represented in the population of street beggars) has shifted dramatically over the last generation. A 1960 survey of Philadelphia's skid row revealed that only 25% were under the age of 45, and only 13% were minorities; by 1988, however, 86% were under 45, and 87% were minorities.⁸

Today's beggars are victims of government policies, private practices, and social trends that have produced this entrenched underclass, "cut off by walls of discrimination, illiteracy, hopelessness, and, perhaps worst, lack of education for participation in the community."⁹ Often they are products "of broken and abusive homes, or were squeezed between rising prices and stagnant wages, or were forgotten by an impenetrable bureaucracy."¹⁰ For those who have lost their homes, the reasons

4. Marie Matousek, *The Crucible of Homelessness*, COMMON BOUNDARY, Sept/Oct. 1991, at 12,13-14.

5. *Id.* at 13.

6. Alexander Wohl, *Gimme Shelter Lawyering for the Homeless*, A.B.A.- J., Aug. 1990, at 58.

7. Matousek, *supra* note 4, at 14.

8. Sarah Ferguson, *Us vs. Them: America's Growing Frustration with the Homeless*, UTNE READER, Sept/Oct 1990, at 50, 53.

9. Linda R. Hirshman, *The Virtue of Liberality in American Communal Life*, 88 MICH. L. REV. 983, 1012 (1990).

10. Gibbs, *supra* note 1, at 71.

are equally varied:

[I]llness, layoff, accident, theft, natural disaster, substance abuse, imprisonment, divorce, abandonment, sexual abuse, rent increase, trauma, racism, sexism, ageism, homophobia, mental illness—a litany, in other words, of exactly the conditions members of our society contend with every day of their lives ____ In short, . . . 'the sum total of our dreams, policies, intentions, errors, omissions, cruelties, kindnesses, all of it recorded, in flesh, in the life of the street.'¹¹

Yet our tendency is to distinguish ourselves, to distance ourselves as far as possible, from people of the street. One timeworn way to accomplish this end is to perpetuate the statistically disproven myth that beggars are all "crazy."¹² "The label of mental illness places the destitute outside the sphere of ordinary life," writes Jonathan Kozol. "It individualizes an anguish that is essentially 'general' both in its genesis and manifestation."¹³

B. Distribution of Wealth

Few would disagree that, on an immediate level, the single greatest cause of the growing ranks of beggars on our streets and subways and in our doorways is the "desperate shortage of affordable housing."¹⁴ From

11. Matousek, *supra* note 4, at 14 (quoting Peter Marin, *How We Help and Harm the Homeless*, HARPER'S MAG, Jan. 1987, at 36, 40).

12. "[The] fallacy . . . of pervasive mental illness among homeless individuals . . . must be laid to rest . . . [W]ith the exception of alcohol and drug use, the most frequent illnesses among . . . the homeless [appear to be] . . . trauma, upper respiratory disorders and limb disorders, with mental illness trailing fourth (at 16 percent)." Matousek, *supra* note 4, at 14.

13. *Id.*

Once we shatter the illusion of some separate, sad-eyed bugaboo called The Homeless, we can properly examine the unique geography of this inner state . . . [T]he seeds of homelessness [appear to be] . . . laid in childhood and are closely aligned with issues of mistrust, family dysfunction, low self-worth and alienation. Sadly, this developmental factor is compounded by the fact that children are the fastest growing contingent in the homeless population. (Since 1968, the number of minors living in poverty has grown by three million.) Regardless of whether this nurture-and-shelter deprivation is actual or symbolic, it often results in a crippling insecurity, as child psychologist Robert Coles found while working with homeless children. "When cut loose from a particular place, children are not only literally homeless, but also psychologically set adrift," Coles has written. Asked to draw themselves, his juvenile subjects depicted stick figures without features, without sun, without sky or ground beneath their feet. "These were people literally suspended in air," Coles concludes.

Id. As for homeless adults, their moorings are hardly any more secure. *Id.*

14. According to Patrick Murphy, Director of the Police Policy Board of the U.S. Conference of Mayors and former New York City Police Commissioner, "It's an entire social structure. "Without proper housing, there is little hope for a solution." Laurence Zuckerman, *Can You Spare a Dime—For Bail?*, TIME, Jan. 11, 1988, at 33. "[T]here is widespread agreement that private generosity would not solve the problem. The main flaw in public policy, advocates for the homeless say, is that emergency shelters and soup kitchens do nothing about the root

1980 to 1988, the federal housing budget was slashed from \$33 billion to \$13 billion. "Forced to choose between housing and food, many of these families were soon driven to the streets," explains Kozol. "[F]or many of them, homelessness is just one paycheck away."¹⁵ As one senior housing planner has observed, "Once you fall out of the housing market, you're sliding down a greased pole."¹⁶ Professor Curtis Berger condemns the utter failure, in our courts and in our legislatures, to confront this problem.

In the United States, we have neither embraced a domestic constitutional right to housing, as have such western democracies as Sweden and the Netherlands, nor do we now profess that our citizens have 'the fundamental right, regardless of economic circumstances, to enjoy adequate shelter at reasonable costs,' as does our neighbor Canada. Moreover, we have not authorized our government to take 'extraordinary steps' to alleviate any housing shortage, as has Germany. "In none of these countries, nor in any other western democracy, with the exception of Great Britain (whose current government shares this government's political vision), does the extent of homelessness even begin to approach the dimensions of our own."¹⁷

To fully comprehend these shocking conditions of homelessness and street begging, we must recognize it as part of a larger societal portrait depicting enormous wealth disparity, deepening class divisions, and for children especially, the lack of any meaningful "equal opportunity." The reign of Ronald and Nancy Reagan (as yet perpetuated by George Bush, though symbolically tempered by Barbara Bush) has been "an ostentatious celebration of wealth, the political ascendancy of the richest third of the population and a glorification of capitalism [and the] free market[]"¹⁸ The eighties were an orgy of conspicuous consumption and

causes of homelessness—poverty, lack of affordable housing and a changing economy that has eliminated entire classes of well-paying, low-skilled jobs." Wilkerson, *supra* note 2, at A10, col. 4.

15. Gibbs, *supra* note 1, at 71. A recent Economic Policy Institute study reported that 27 million households were "unable to meet their nonshelter needs at even a minimum level of adequacy" due to high housing costs. Forty-seven percent of our nation's poor renters pay more than 70% of their income for shelter. Forty-two percent of renters and 22% of homeowners were reported to be "shelter poor." Michael E. Stone, *One-Third of a Nation: A New Look at Housing Affordability in America*, EcoN. POL'Y INST. (1990).

16. Gibbs, *supra* note 1, at 71 (quoting Joe Carreras, S. CaL Ass'n of Gov'ts).

17. Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315, 334-5 (1990-91) (footnote omitted).

18. KEVIN PHILLIPS, *THE POLITICS OF RICH AND POOR: WEALTH AND THE AMERICAN ELECTORATE IN THE REAGAN AFTERMATH* xvii (1990). Reagan's post-Presidency behavior has been equally ostentatious, cashing in on public service to a degree unlike any other President in history. See HAYNES JOHNSON, *SLEEPWALKING THROUGH HISTORY: AMERICA IN THE REAGAN YEARS* (1991).

credit card purchasing, by our government as well as by individuals, of dramatic tax reductions for the rich, and of deregulation of corporate America, "all indulged in with the greatest recklessness while beggars filled the streets and the average family's real disposable income declined toward a dimming future."¹⁹ As the income gap has widened, the United States has developed "one of the sharpest cleavages between rich and poor^{1*} among Western nations."²⁰ By disproportionately taxing the working class, filling regulatory agency posts with those critical of regulation, and massively increasing defense spending at the expense of human services, we have fostered a nation of haves and have-nots and spawned an underclass unheard of in modern civilized society. "[N]o other democratic country," charges Senator Daniel Patrick Moynihan, 'takes as large a portion of its revenue from working people at the lower ends of the spectrum and as little from persons who have property or high incomes."²¹

Income disparity figures tell a sad, some would say obscene, story. During the 1980s, the income share of the top 20% grew to more than 50% of that earned by all Americans.²² The wealthiest 10% of America's families have amassed nearly 68% of U.S. family net worth.²³ On an individual basis, the wealthiest 1% earned 8.1% of that earned by all Americans in 1981; by 1986, the percentage earned had risen to 14.7%.²⁴ The IRS reports that the wealthiest 1.6% of Americans own more than 28% of our nation's personal wealth, and these holdings exceed our entire gross national product.²⁵

The average CEO was paid forty times more than the average blue-collar worker in 1985, but by 1988 he (and a very occasional she) took home ninety-three times more.²⁶ From 1981 to 1988, the net worth of the Forbes 400 richest Americans nearly tripled.²⁷ While the after-tax incomes of America's richest families—the top 1%—increased nearly 75% from 1977 to 1987, the poorest residents' after-tax incomes fell more than 10%.²⁸ The 2.5 million people at the top of the income scale

19. PHILLIPS, *supra* note 18, at 4.

20. *Id.* at 8.

21. *Id.* at 80.

22. *See id.* at 12. "Capital gains were so concentrated at the top that their inclusion boosted the top quintile's share from 46.1 percent under the standard computation to a huge 52.5 percent Federal and state taxes brought it down to 50 percent" *Id.*

23. *Id.* at II.

24. *Id.* at 12.

25. *Rich Own 28% of Pie, IRS Says*, MIAMI HERALD, Aug. 23, 1990, at 1C

26. PHILLIPS, *supra* note 18, at 180.

27. *Id.* at 166.

28. *Id.* at 14.

have almost as much money as the 100 million people who live in families that earn less than \$27,000 a year. This disparity "is in sharp contrast to 1977, when families in the under \$27,000 class had twice the share of the national wealth as those at the very top."²⁹

By every measure, the very rich were the primary beneficiaries of the Reagan era. Reducing or eliminating income taxes has always been a priority for libertarians and capitalists, but for Ronald Reagan it became "a personal preoccupation."³⁰ Though simply an "amiable dunce"³¹ in the eyes of some, President Reagan and his advisors managed to lower the top personal tax bracket from 70% to 28% in only seven years.³² For those with inherited wealth, estate taxes were cut, as was taxation of unearned income, so the idle rich benefitted as well.³³

The mythological "trickle-down" effect of Reaganomics, reflecting the views that industrialist Andrew Mellon expressed more than a century ago,³⁴ proved to be an empty promise. The Reagan economic agenda "produced one of the quickest and most regressive redistributions of wealth in U.S. history."³⁵ The hundreds of thousands of homeless are graphic evidence of our polarized economy, as are the street beggars holding their hands out to fellow Americans. And, not surprisingly, racial minorities have fared worst of all.³⁶

For the financially secure, government has come to be seen primarily as a protector of property rights—beyond that, an illegitimate, bloated and oftentimes annoying bureaucracy. The well-off simply don't

29. Ramon G. McLeod, *Gulf Widening Between Rich and Poor in U.S.*, S.F. CHRON., July 29, 1991, at A4.

30. PHILLIPS, *supra* note 18, at 76.

31. JOHNSON, *supra* note 18, at 447 (quoting Clark Clifford).

32. PHILLIPS, *supra* note 18, at 76.

33. *Id.* at 67.

34. FRANCES MOORE LAPPE, REDISCOVERING AMERICA'S VALUES 77 (1989). "The prosperity of the middle and lower classes depends on the good fortune and light taxes of the rich." *Id.*

35. PHILLIPS, *supra* note 18, at 74 (quoting former Texas Agriculture Commissioner Jim Hightower).

36. Nineteen eighty-seven figures indicate that the income of the average black family (\$18,098) was only 56.1% of the average white family's income, the greatest disparity in more than twenty years. PHILLIPS, *supra* note 18, at 207. Comparative average incomes of black and white neighborhoods within the same city can be even more disturbing. In Miami, for example, the per capita income of upscale South Grove is almost ten times that of Little Haiti. MIAMI HERALD, Oct. 30, 1991, at 1B, 2B (summarizing the City of Miami's Comprehensive Housing Affordability Strategy report). Even more disturbing in the long run is the recent Census Bureau report that the average white household has ten times as much wealth as the average black household. Wealth reflects generations of differences in earnings, investments, and inheritance; thus, the enormous economic gulf between blacks and whites is likely to endure far into the future, even if the income disparity is reduced in the decades ahead. Robert Pear, *Rich Got Richer in 80's; Others Held Even*, N.Y. TIMES, Jan. 11, 1991, at A1.

need most government services; they can buy their own. At a time when "the top fifth of working Americans took home more money than the other four-fifths put together,"³⁷ we are experiencing what Robert B. Reich calls the "secession of the successful,"³⁸ those who are securely ensconced above the shifting tides of the economy.

The secession is taking several forms. In many cities and towns, the wealthy have in effect withdrawn their dollars from the support of public spaces and institutions shared by all and dedicated the savings to their own private services. As public parks and playgrounds deteriorate, there is a proliferation of private health clubs, golf clubs, tennis clubs, skating clubs and every other type of recreational association in which costs are shared among members. Condominiums and the omnipresent residential communities dun their members to undertake work that financially strapped local governments can no longer afford to do well—maintaining roads, mending sidewalks, pruning trees, repairing street lights, cleaning swimming pools, paying for lifeguards, and notably, hiring security guards to protect life and property.³⁹

Members of different classes rarely even live in proximity to one another. Entire communities can be identified merely by name as belonging to one class or another. And in our major cities, self-contained, ultra modern building complexes provide residents with all their business, shopping and entertainment needs under one roof "without risking direct contact with the outside world."⁴⁰ As for private security guards, they now outnumber police officers in the United States.⁴¹

During the past decade, federal aid to the cities has been reduced dramatically. While well-to-do cities, towns, and suburbs have been able to carry the added financial burdens without much difficulty, lower income communities, "faced with the twin problems of lower incomes and greater demand for social services,"⁴² are struggling to survive. This growing inequality in community services has become an all-too-familiar pattern. In Philadelphia, for example, where

the city tax rate . . . is about triple that of communities around it, the suburbs enjoy far better schools, hospitals, recreation and police protection. Eighty-five percent of the richest families in the

37. Robert B. Reich, *Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, § 6 (Magazine), at 16, 42.

38. *Id.* at 16-17.

39. *Id.* at 42.

40. *Id.* at 44.

41. Ayn Rand, who once observed that the "only proper function of a government is to . . . protect . . . the individual from physical violence," AYN RAND, CAPITALISM, THE UNKNOWN IDEAL 40 (1946), would be pleased to know that, with respect to the truly deserving, government need no longer even provide these police services.

42. Reich, *supra* note 37, at 44.

greater Philadelphia area live outside the city limits, and eighty percent of the region's poorest live inside. The quality of a city's infrastructure—roads, bridges, sewage, water treatment—is likewise related to the average income of its inhabitants.⁴³

Perhaps the most disheartening and damaging aspect of our increasingly divided society is the maintenance of a dual school system—a private one for the children of the upper and upper middle classes, and a public one for the offspring of the working class and the unemployed. Our federal government has effectively washed its hands of the problem by reducing its contribution to the costs of primary and secondary education to little more than 6%; and state and local governments have been hard pressed to pick up the slack. Not surprisingly, states with a higher concentration of wealthy residents can buy better quality. For example, in 1989, the average public school teacher in Arkansas earned \$21,700; in Connecticut, \$37,300.⁴⁴ This disparity is equally dramatic within most states, correlating closely with the average income of school district's residents. For example, the average pupil expenditure in New York City in 1987 was \$5,500, while in the affluent suburbs of Great Neck and Manhasset the figure was more than \$11,000 and, in the wealthiest districts in the state, \$15,000.⁴⁵ In Texas, school district expenditures range from a high of \$19,300 per year, per pupil, to a low of \$2,100 per year.⁴⁶ In a wealthy suburb of Dallas, Highland Park High School students "enjoy a campus with a planetarium, indoor swimming pool, closed-circuit television studio and state-of-the-art science laboratory. Highland Park

43. *Id.*

44. *Id.*

45. JONATHAN KOZOL, *SAVAGE INEQUALITIES* 83-84 (1991).

46. Reich, *supra* note 37, at 44-45. One would be mistaken to conclude that the disparities fall simply along racial lines. Consider, for example, three white Boston suburbs located within minutes of one another. While most residents within each town earn about the same as their neighbors, the disparity of income between towns is substantial.

Belmont, northwest of Boston, is inhabited mainly by symbolic analysts and their families. In 1988, the average teacher in its public schools earned \$36,100. Only three percent of Belmont's 18-year-olds dropped out of high school, and more than eighty percent of graduating seniors chose to go on to 4-year college.

Just east of Belmont is Somerville, most of whose residents are low-wage service workers. In 1988, the average Somerville teacher earned \$29,400. A third of the town's 18-year-olds did not finish high school, and fewer than a third planned to attend college.

Chelsea, across the Mystic River from Somerville, is the poorest of the three towns [and is now facing bankruptcy]. Most of its inhabitants are unskilled, and many are unemployed or only employed part-time. The average teacher in Chelsea, facing tougher educational challenges than his or her counterparts in Belmont, earned \$26,200 in 1988, almost a third less than the average teacher in the more affluent town just a few miles away. More than half of Chelsea's 18-year-olds did not graduate from high school, and only ten percent planned to attend college.

Id.

spends about \$6,000 per year to educate each student. . . almost twice that spent per pupil by towns of Wilmer and Hutchins in Southern Dallas County."⁴⁷

Court challenges have been brought nationwide to address these inequities, but with mixed results.⁴⁸ Concerned judges and legislators know that they must strike a careful balance: Even if state contributions are equalized among school districts, vast differences in property values—and thus local tax revenues—will continue to produce enormous inequities. On the other hand, if courts order an extreme "Robin Hood" system, whereby wealthy school districts effectively subsidize poorer ones, or if they impose a cap on teacher salaries, affluent parents may simply abandon the public school system.⁴⁹ Increasingly, we are hearing the view that "[p]oor children of all colors are . . . surplus baggage, mistakes that should never have happened [and that] . . . attempts to educate the lower orders are doomed to fail."⁵⁰ Ultimately, we must ask whether we care about children other than our own.⁵¹

As Americans, we do not like to regard our nation as a class society. This denial consumes enormous energy, and stories of hard working individuals who "pull themselves up by their bootstraps" have become a staple of contemporary mythology. The nomination of Justice Clarence Thomas to the United States Supreme Court unfolded as a ripe occasion for such drama. Or consider Hollywood movies that reflect our cultural attitudes. These movies "perpetuate the myth that there are no classes in America," observes Benjamin DeMott.⁵² We have "an ignoble tradition of evading social facts—pretending that individual episodes of upward mobility obviate grappling with the hardening socioeconomic [sic] differences in our midst. . . . [A]t their worst, these films are driven by near-total dedication to a scam—the maddening, dangerous deceit that there

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48. See Michael M. Bums, *Lessons from the Third World: Spirituality as the Source of Commitment to Affirmative Action*, 14 VT. L. REV. 401, 401 n.2 (1990).

49. Even those with humble beginnings may oppose equalization. "There's no point to coming to a place like this, where schools are good, and then your taxes go back to the place where you began." KOZOL, *supra* note 45, at 127-28.

50. Andrew Hacker, *Why the Rich Get Smarter*, N.Y. TIMES, Oct 6, 1991, § 7 (Book Review), at 7.

51. "You cannot issue an appeal to conscience in New York today,' a black school principal... [said]. 'So you speak of violence and hope that it will scare the city into action.' But even that tactic has not stirred suburban taxpayers, most of whom live well away from the war zones and, if anything, prefer to pay for bigger prisons than for better schools.

Id.

52. Benjamin DeMott, *In Bollywood, Class Doesn't Put Up Much of a Struggle*, N.Y. TIMES, Jan. 20, 1991, § 2, at 1.

suaded, or ignores or reacts hostilely to the speaker, the speaker may still experience the inner satisfaction of speaking out on an issue that is important to the speaker. Even if our letter to the President or letters to the editor are largely ignored, we enjoy a certain therapeutic and cathartic satisfaction. Justice Brennan described free speech as "intrinsic to individual dignity,"²²⁸ and Justice Marshall added that free speech serves "not only the needs of the polity but also those of the human spirit—a spirit that demands self-expression."²²⁹ If we refuse to allow beggars to make their pleas, we forbid them to experience the self-respect that necessarily flows from free expression.²³⁰

A fourth function of free speech has been described as that of a "safety valve."²³¹ Government and society must afford avenues for letting off steam, or else we play into the hands of revolution. Men and women who feel disenfranchised, who feel victimized by society, are less inclined to resort to violence to achieve their goals if they are free to express themselves about their goals.²³² The freedom of expression, which may allow for divisiveness in the short run, will contribute to social stability in the long run. By permitting the entire spectrum of speech and ideas, the system co-opts or incorporates so as to diffuse dissent.²³³

The fifth, and final, function to be served by free expression is what Hershkoff and Cohen describe as the "engagement value."²³⁴ In a society where the poor have been stigmatized and isolated, where the vast majority of those more fortunate seek every avenue to avoid reminders of the suffering in our midst, face-to-face contact with beggars forces connection and relationship on one level. Solicitations on behalf of the poor, whether by mail or by sanitized, middle-class agents on the street, may yield revenue but do not promote any sort of direct engagement

228. *Herbert v. Lando*, 441 U.S. 153, 183 n.1 (1979) (Brennan, J., dissenting).

229. *Procurier v. Martinet* 416 U.S. 396,427 (1974) (Marshall, J., concurring), *overruled* by *Thornburgh v. Abbott*, 480 U.S. 401 (1980).

230. Hershkoff & Cohen, *supra* note 214, at 903.

231. NIMMER, *supra* note 215, § 1-53 to 1-54.

232. *Id.* "Those who are resentful because their interests are not accorded fair weight and who may be doubly resentful because they have not even had a chance to present those interests," Kent Greenawalt, *Speech and Crime*, 1980 AM. B. FOUND. RES. J. 647, 672, are likely to explode in frustration and anger and, perhaps, violence.

233. Orderly, incremental, evolutionary social change—that is, a balance between stability and change—is the product of this safety-valve function. Sixty-five years ago. Justice Brandeis reminded Americans that "it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss supposed grievances and proposed remedies . . ." *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

234. Hershkoff & Cohen, *supra* note 214, at 912-16.

non-individual elements."³²⁵ He speaks of the interconnectedness of all things, the principle of nonduality. In contrast to the idea that "I am my brother's keeper," for example, one might say that "I *am* my brother."³²⁶ Yet most of us do not really know how to experience being part of the whole, that peak experience of connection. These moments are rare and fleeting, at best. Usually we experience our selves, our thoughts, and our feelings as separate from others—what Einstein called "the optical delusion of consciousness."³²⁷ This serves as an individual prison cell, says Thich Nhat Hanh; our task must be to free ourselves by widening our circle of experience, of understanding, of compassion to embrace all creatures and all of nature.³²⁸

To experience this connection, one must be willing to become engaged. Living with passion empowers people to noble action. In his call for a true participatory democracy, Robert Bellah urges us to overcome despair, cynicism, and apathy by "paying attention to" the institutions that support us—echoing John Dewey's notion of psychic fulfillment through civic involvement.³²⁹ As lawyers, as teachers, as citizens, as leaders, as parents we act from a place of ultimate responsibility of caring and of love. Engagement is concentration, is identification, is connection, is passion. And, as social creatures, that passion is directed toward the community as compassion.

Truly compassionate action first requires, in my view, a healthy level of self-acceptance. Self-acceptance is to be without anxiety about nonperfection—to accept ourselves "as is," acknowledging our "dark side"—our selfishness, our pettiness, our ugliness, our violence, our meanness. Unfortunately, most Americans experience their theological beliefs as largely guilt-based, and guilt tends to produce denial and repression, hardly the ingredients for heart-felt compassionate action. Repressing our dark side produces a judgmentalness that ensures disassociation and breeds a self-righteousness that serves no one.

A second prerequisite to compassionate action is sincere respect for those to whom we lend a hand. Not pity, not paternalism, not condescension, but true respect and compassion for a fellow traveler who is suffering. The familiar phrase "as cold as charity" reminds us of the numerous possibilities for self-deception when we give to others—the "temptation to impose our own ideas and standards from a position of

325. Jack Kornfield, Taped Lecture (available from author).

326. NANCY WILSON ROSS, BUDDHISM, A WAY OF LIFE AND THOUGHT 52 (1980) (emphasis added).

327. Kornfield, *supra* note 325.

328. *Id.*

329. See generally ROBERT BELLAH ET AL., THE GOOD SOCIETY 254-86 (1991).

