FROM ENGLISH COMMON law dealing with vagrants, American jurisdictions have formulated their own laws to tackle the problems related to what we call beggars, "idle or dissolute person[s], physically able to work who beg] or subsist[ ] on charity." English laws criminalizing begging were enacted when throngs of jobless and homeless people began living in the streets and a notorious "brotherhood of beggars" roamed from place to place and became a definite and serious menace to the community. Derived from their English counterparts, American laws also criminalize vagrancy, loitering and begging.

* Lawyering Instructor, New York University School of Law. Beginning Fall 1994, Associate Professor, West Virginia University College of Law. Former Assistant General Counsel, Washington Metropolitan Area Transit Authority.

I am grateful to Professor J. Clay Smith, Jr., Howard University School of Law, and Associate Professor Blake Morant, University of Toledo College of Law, for their suggestions and continuous support.


4. id.

5. Id. at 161-62. The roads of England were crowded with unemployed people who adopted vagrant lifestyles. Some of them roamed together as beggars and were a public menace. Id. at 161 n.4 (citing Ledwith v. Roberts, 1 K.B. 232,271 (1937)). See also Loper v. New York City Police Dep't, 882 P. Supp. 1028, 1031-32 (RD.N.Y. 1992), affd, 999 F.2d 699 (2d Cir. 1993) (loitering for the purpose of begging was a crime under New York law which was based on English law). See, e.g., infra note 19.
In America today, the situation is much like that of old England. Tens of thousands of homeless people in New York City alone are living in makeshift homes set up on busy sidewalks, in public parks and transportation stations, under bridges and anywhere else they can find shelter. Many subsist on begging alone. In metropolitan areas throughout the United States, scores of men, women and children beg for quarters, nickels and dimes to purchase food, shelter, clothing, transportation, drugs, alcohol and

6. City of Seattle v. Webster, 802 P.2d 1333,1340 (Wash. 1990), cert, denied, III S. Ct. 1690 (1991) ("Homelessness is a real national concern, particularly in metropolitan areas such as Seattle."). See also Court as Scapegoat, NAT'L L.J., Feb. 12,1990, at 14 ("Last anyone think it's a peculiarly New York problem, similar conditions exist, to a varying extent, in Philadelphia, Washington, D.C., Boston, and Atlanta."); Malcolm Gladwell, Rooms with a View to Housing the Poor, WASH. POST, Mar. 28, 1993, at A4 (lamenting that me renovation of 100,000 rooms in single occupancy hotels in New York has pushed thousands of poor people into the street). Beggars are not exclusively a domestic problem. New Delhi has a number of road hazards including cows, elephants and beggars. John W. Anderson, On the Routes of the Killer Buses, WASH. POST, July 26, 1993, at All.

7. See, e.g., Gladwell, supra note 6 (people living under bridges); Douglas Martin, Giving Alternatives to the Visible Poor, N.Y. TIMES, Jan. 7,1994, at B3 (homeless living in shelters made of milk crates, office furniture, boards and plastic); Metro Closing 2 More Stations, WASH. POST, Apr. 29, 1993, at C3 (subway station entrances enclosed to prevent homeless people from living there); Brian Moreau, Eking Out a Buck Between the Red and Green, WASH. POST, May 9,1993, at BS ("family of panhandlers" living in railroad tunnel); Deborah Pines, State's Anti-Begging Law Struck, N.Y. LJ., Oct. 2,1992, at 1 (homeless living in city park); Robert Teile, Legislation for Livable City Spaces, NAT'L L.J., Jan. 11, 1993, at 17 (people sleeping on sidewalks).

8. Although the rationale is unclear, at least one author distinguishes between homeless people and beggars. Anthony J. Rose, The Beggar's Free Speech Claim, 65 IND. L.J. 191,198-99 n.47 (1989) ("While some overlap may exist between beggars and homeless people, the two should be kept distinct."). Other sources recognize that at times, beggars are destitute as well as homeless. See, e.g., Young v. New York City Transit Auth., 903 F.2d 146, 166 (2d Cir.), cert, denied, 498 U.S. 984 (1990); Loper, 802 F. Supp. at 1035; Blair v. Shannah, 775 F. Supp. 1315, 1318 (N.D. Cal. 1991). See also Clark v. Community for Creative Non-violence, 468 U.S. 288, 304 n.4 (1984) (Marshall, J., dissenting) ("Detrimental effects of homelessness are manifold"); Edwards v. California, 314 U.S. 160, 177 (1941) ("Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence. Poverty and immorality are not synonymous."); Charles F. Knapp, Statutory Restriction of Panhandling in Light of Young v. Light of Young v. New York City Transit: Are States Begging Out of First Amendment Proscriptions?, 76 IOWA L. REV. 405,406 (1991). Accord: Becker v. Fillis, 306 F. Supp. 613,617 (D. Utah 1969) (opining that the statute "attenuates" to make idleness or indigency coupled with being able-bodied a crime"). However, a consultant in Young called beggars a "subset of the homeless." 903 F.2d at 150 (quoting Professor George Kelling who studied begging in the subway system); Webster, 802 P.2d at 1340-41 (amicus arguing that pedestrian interference or begging ordinances "necessarily disparately affects the homeless as a class").
medical care.9 "The size of this class [of beggars] is, and will remain
unknown.10

Beggars are everywhere—sidewalks, streets, medians, parks and restau-

rants. They have become "part of the urban landscape."11 It is not un-
usual to encounter as many as six beggars in one city block.12 Typically they
stand in the street or park asking passersby for spare change for food. Oc-
casionally they initiate conversation with the people from whom they are
begging,13 often speaking about inefficient government social services or
some personal misfortune which has forced them to plead for donations.14

9. Young, 903 F.2d at 80 (citing research indicating that the homeless in subways are
generally suffering from mental illness and alcohol and/or drug abuse). See also Loper, 802 F.
Supp. at 1033 (class action filed by those unable to pay for food, shelter, clothing, medical care
and transportation). Panhandlers are often drug or alcohol-dependent people who need profes-
sional assistance in combatting their illnesses. See, e.g., Kevin Konar, Homeless Need Help, Not
Nickels, WASH. SQUARE NEWS, NOV. 17, 1993, at 7. One beggar admitted he begged in order to
pay his rent, but he was more concerned about getting money for crack: Ti'll tell you the truth . . . .
Most of the guys who work out here have drug habits." Konar, supra note 7, at BS. One
homeless beggar saved money to buy a beeper so that prospective employers could contact
her. Konar, supra note 7, at BS. See also DISTRICT OF COLUMBIA CITY COUNCIL, REPORT ON
PANHANDLING CONTROL ACT OF 1993 [hereinafter REPORT ON PANHANDLING] (money donated
used by beggars to support addictive habits); Kerin Adelaide, Brother, Can You Spare a Voucher?,
MANHATTAN SPIRIT, Aug. 29, 1993, at 9; Konar, supra, at 7 ("85 percent of street people are
alcoholics, drug addicts, or mentally ill"); Linda Wheeler, 70 Arrested Under D.C. Panhandling
Law, WASH. POST, July 1, 1993, at C8 [hereinafter Wheeler, Arrested].

1993). See also Clark, 468 U.S. at 304 n.4 (Marshall, Brennan, JJ. dissenting) (1984 estimates of
the number of homeless were two to three million); Nancy R. Gibbs, Begging: To Give or Not to
Give, TIME, Sept. 5, 1988, at 71 ("No one ever knows how many beggars there are, though esti-
mates run as high as 5,000 in New York City, 1,500 in Chicago."); Jay Mathews, Just How Safe Is
It?, WASH. POST, Apr. 18, 1993, at EI, E14 (New Yorkers admit there are more panhandlers on
the streets); Linda Wheeler, Panhandlers Tap Deep Pockets of Resentment, WASH. POST, May 9,
1993, at BI (hereinafter Wheeler, Panhandlers) ("No one knows how many [panhandlers] more
are.").

Some authors surmise that since the number of homeless people is high, men proportionately
speaking, the number of people who beg will be high. The number may get even higher because
of the limited public resources available to needy people. J. Buckrop & D. Miller, Brother, Can
You Spare a Dime? An Analysis of Young v. New York City Transit Authority, 30 FREE SPEECH

generally HARLAN W. GILMORB, THE BEGGAR (1940).


Loper, 802 F. Supp. at 1033.

14. See Loper, 802 F. Supp. at 1033 (beggars discussing their plight). See also Helen
Hershkoff & Adam S. Cohen, Begging to Differ: The First Amendment and the Right to Beg, 104
HARV. L. REV. 896, 898-901 (1991) (contending that begging is protected speech which enlight-
ens listeners about beggars' plight).
Begging styles range from passively carrying a sign or holding out a cup on a city sidewalk, to threatening, taunting and touching passersby in an attempt to intimidate them into contributing. These "aggressive toll collectors" use numerous "props" to get attention, sometimes obstructing a pedestrian's path as they shove their hand or a cup out in front of them. Meanwhile, "the public is . . . divided and ambivalent about the proper response to dependent persons. Beggars . . . sorely tax both public purse and private conscience."16

There are few cases specifically addressing the question of whether an individual has a First Amendment right to solicit funds, perhaps because the people against whom begging laws are enforced have neither the means nor the wherewithal to pursue a constitutional claim. Many United States Supreme Court and state court decisions have recognized solicitation rights for organizations. However, individual beggars' rights to seek contributions remain unclear.

Part I of this Article focuses on the right to solicit contributions under the First Amendment, and argues that there is no justification for distinguishing between organized solicitors and beggars. Part II discusses the balancing approach taken by some courts, weighing the beggars' right to communicate against the public's interests in privacy and safety to determine the constitutionality of the laws regulating begging. This Part closely analyzes five of the leading cases on beggars' rights to illustrate the inevitable tension between the two groups. Finally, Part III argues that begging should be carefully regulated to protect both the beggars' First Amendment right to communicate and the public's interests in privacy and safety. Specifically, this Part advocates the use of content-neutral time, place and manner restrictions on beggars' speech in the face of a substantial government interest, as long as the restrictions do not unreasonably limit other means of communication.

I. Individual Beggars Are Indistinguishable from Organized Solicitors

The First Amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."17

When this amendment was ratified, at least eight of the fourteen states in the Union prohibited begging. Today, several states still forbid such activity.

Protected expression may be oral, written or symbolic conduct that is intended to be communicative. Begging is a form of communication which often inextricably intertwines expression and conduct. "Even the statement 'I am hungry' communicates a fact of social existence of some relevance to public discourse . . . . The rudimentary nature of a communication cannot deprive it of all First Amendment protection." Consequently, begging is a clear example of communication that deserves full First Amendment protection.

The United States Supreme Court has not issued an opinion on individual beggars' rights to solicit funds. In November 1990, the Court declined an opportunity to end this controversy when it denied certiorari in Young v. New York City Transit Authority. In Young, the court of appeals held that a transit authority regulation prohibiting begging and panhandling in the subway system did not violate the First Amendment.

At the same time, the Supreme Court has repeatedly upheld fifty-year-old rules declaring that solicitations from charitable and religious organiz--

19. See, e.g., ALA. CODE § 13A-11-9(aX1) (1982); ARE. REV. STAT. ANN. § 13-2905(AX3) (1989); COLO. REV. STAT. § 18-9-12(2)(a) (1986); DEL. CODE ANN. tit 11, § 1322(4) (1992); KAN. STAT. ANN. § 21-4108(c) (1988); LA. REV. STAT. ANN. § 14:107(3) (West 1986); MASS. GEN. LAWS ANN. ch. 272, § 63 (West 1990); MICH. COMP. LAWS ANN. § 750.1473(3Xc) (West 1991); MINN. STAT. ANN. § 609.725(4) (West 1987); Miss. CODE ANN. § 97-35-37(g) (1972); VT. STAT. ANN. tit 13, § 3901 (1974); Wisc. STAT. ANN. § 947.02(4) (West 1982).
25. Id. at 147-48.
tions constitute protected speech. The Court has enunciated the same First Amendment guarantee for others who solicit funds, including professional fundraising groups, non-profit groups and political action


groups. The rationale for allowing these groups to solicit funds is that their “solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and . . . without [such] solicitation the flow of such information and advocacy would likely cease.”

The Supreme Court should provide direction on beggars’ rights to resolve the confusion created by the conflicting decisions in the lower courts. In general, the courts have been unable to agree on whether begging is speech or conduct, much less whether it is protected. Some courts have compared begging with charitable solicitation, which the Supreme Court has unequivocally cloaked with First Amendment protection; these courts have concluded that “[n]o distinction of constitutional dimension exists between soliciting funds for oneself and for the charities.” In the view of these courts, beggars inform the public about societal conditions and the First Amendment protects such particularized messages.

Other courts have held that begging is conduct and behavior that is unworthy of First Amendment protection because it does not necessarily

29. Thomas v. Collins, 323 U.S. 516, 531 (1945) (soliciting funds for labor union); City of Phoenix, 798 F.2d at 1268 (advancing interests of low and moderate income people); National Anti-Drug Coalition, Inc. v. Bolger, 737 F.2d 717 (7th Cir. 1984) (supporting a “drug-free” society).


32. Loper v. New York City Police Dep’t, 802 F. Supp. 1029, 1040 (S.D.N.Y. 1992), aff’d, 999 F.2d 699 (2d Cir. 1993) (declaring messages were the same and the only difference was the “eventual ends of the funds contributed”); Blair v. Shanahan, 775 F. Supp. 1315, 1322 (N.D. Cal. 1991).

33. Blair, 775 F. Supp. at 1322-23; City of Seattle v. Webster, 802 P.2d 1333, 1342 (Wash. 1990), cert. denied, 111 S. Ct. 1690 (1991). However, some pessimists think that people will do very little with the information they receive from the beggars. “That the pleas of a beggar or professional fundraiser may change the way his listeners think about their world is often only a desirable side effect.” Blair, 775 F. Supp. at 1323.
involve communication of information or opinion. These courts have classified beggars' communication as "incidental speech" and distinguished it from that of charitable solicitations: "While organized charities serve community interests by enhancing communication and disseminating ideas, the conduct of begging and panhandling ... amounts to nothing less than a menace to the common good." In organized solicitation cases, the identification of the speaker is not dispositive of determining whether speech is protected under the First Amendment. As to individual begging, however, it is the messenger, not the message, that keeps beggars from speaking freely.

There is no justification for distinguishing between beggars and organizations. "Take away the status of the professional fundraiser, take away the nice clothing, take away the cleanliness that comes with regular access to showers and washing machines, and what is left is a person appealing for money .... " Beggars' speech should not be enjoined simply because they receive contributions for their own use in connection with their communication with the public.

35. Young, 903 F.2d at 156. "[B]egging in the subway often amounts to nothing less than assault." Id. at 158.
36. Eric Neisser, Homeless Orators—Begging as Free Speech, N.J. L.J., Feb. 22, 1990, at 12 (1990). The writer expresses a similar viewpoint: It is the messenger or the message, not the medium that offends. Just as you will never find a statute banning the kissing of the flag, you will not see a subway regulation prohibiting the Junior League from "begging" for diabetics or Jerry Lewis from "begging" for children with muscular dystrophy.

38. Charities solicit and beggars beg or panhandle. The terms are synonymous. Loper, 802 F. Supp. at 1037; Blair, 775 F. Supp. at 1322 ("No distinction of constitutional dimension exists between soliciting funds for oneself and for charities."). "To beg is 'to ask for as a charity.'" Loper, 802 F. Supp. at 1037 (quoting WEBSTER'S NEW COUXCIA DICTIONARY 100 (1978)). See also Young, 903 F.2d at 104-65 (Meskill, J., dissenting) (beggars and organized charities deserve the same protection); Hershkoff & Cohen, supra note 14, at 904-06; Rose, supra note 8, at 207.
39. Buckrop & Miller, supra note 10, at 92 (noting similarities between charitable solicitation and begging).

Some may argue that begging is commercial speech since the beggar has a financial motivation for speaking. Loper, 802 F. Supp. at 1038. However, this argument is of no moment since the First Amendment also protects commercial speech. Id. See also Hershkoff & Cohen, supra note 14, at 905 (begging is more than commercial speech).
organized solicitation to [beggars] . . . offend[s] logic . . . [and] the Constitution, which [was] designed to protect individual rights . . . .”

41. Rose, supra note 8, at 210 (emphasis added). See also Hershkoff & Cohen, supra note 14, at 906-07; Pines, supra note 7 (“Nothing less than the First Amendment assures their right to meet us eye to eye to ask for help.”).

42. 112 S. Ct. 2701 (1992) (per curiam).

43. Id. at 2706. The regulations permit solicitation on the sidewalks outside the terminal buildings. Id.

44. ISKCON v. Lee, 112 S. Ct. at 2705 (decision expressly limited to solicitation “in this case”). In Lee, the Supreme Court upheld a total ban on solicitations in public airport terminals. Id. at 2709. The ban was reasonable in light of the fact that the terminals were non-public; solicitation disrupted traffic flow in an already overcrowded arena; patrons were potential victims of duress and fraud; and solicitors could request funds on sidewalks located outside the terminal. Id. at 2708-09.

45. Thesolicitors were members of ISKCON, a religious sect which practiced sankirtan. Id. at 2703. This ritual involved public dissemination of religious literature and solicitation of funds to support the Krishna religion. Id.

46. See supra note 19. See also Knapp, supra note 8, at 407 & n.15.

47. Compare JACKSONVILLE, FLA., MUNICIPAL ORDINANCE § 404.102-404.103 (permitting registered charitable organizations to solicit contributions) and JACKSONVILLE, FLA., MUNICIPAL ORDINANCE § 330.105 (prohibiting begging in public places). Likewise, begging was not allowed in the New York subway system, but organizations were allowed to solicit for charitable, religious or political causes with few restrictions. N.Y. COMP. CODES R. & REGS., tit 21, §§ 1050.6(b), 1050.6(c) (1989). See also LA. REV. STAT. ANN. § 14:107(3) (West 1986) (distinguishing able-bodied beggars from religious, charitable or eleemosynary organizations, which are allowed to solicit). A Supreme Court Justice made a distinction in a 1980 opinion: "(N)othing in the United States Constitution should prevent residents of a community from making the collective-judgment that certain worthy charities may solicit door to door while at the same time insulating themselves against panhandlers, profiteers, and peddlers." Village of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620, 644, reh’g denied, 445 U.S. 972 (1980) (Rehnquist, J., dissenting).
If the solicitor is a beggar, the solicitation is criminal.\footnote{48} Under these statutes, peddlers, preachers and Salvation Army bands can solicit, but beggars cannot.\footnote{49} Such an arbitrary distinction is not constitutional. Most of the statutes that try to regulate begging in this manner effectuate an overbroad restraint on speech.\footnote{50} There are better ways to regulate beggars' communications.

II. Balancing Beggars' Rights with Public Interests

This section discusses begging cases which reveal the courts' view of the relationship between beggars' rights and public interests. The issues raised expose not only the inevitable tension between individual rights and the interests of society but the very rationality of our society in its commitment to the rights protected by the First Amendment.\footnote{51} The following cases help illustrate this tension between beggars' rights to communicate and the public's right to privacy and safety.

\textbf{Vlmer v. Municipal Court for Oakland-Piedmont Judicial District}\footnote{52}

In \textit{Vlmer}, a beggar soliciting funds in public was accused of violating section 647(c) of the California Penal Code which made "[e]very person . . . who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms" guilty of disorderly conduct.\footnote{53} The legislative history of section 647(c) reveals the legislature's intent to allow charitable solicitation and to protect its citizens from aggressive beggars:

\begin{quote}
[Section 647(c)] is aimed at the conduct of the individual who goes about the streets accosting others for handouts. It is framed in this manner in order to exclude from one ambit of the law the blind or crippled person who merely sits or stands by the wayside, the Salvation Army worker who solicits funds for charity on the streets at Christmas time and others whose charitable appeals may well be left to local control.\footnote{54}
\end{quote}

The California Court of Appeals rejected the superior court's holding that the statute was unconstitutionally overbroad, explaining that the language in section 647(c) clearly distinguished peaceable begging, which was permitted, from intrusive begging, which was not permitted. "Walking up to and

\begin{footnotes}
49. \textit{Id.}, at 1039 (only beggars subject to blanket restriction).
50. \textit{Knapp}, supra note 8, at 422-23.
53. \textit{Id.} at 446-47. See also CAL. PENAL CODE § 647(c) (West 1961).
54. 127 Cal. Rptr. at 447 (citing APPENDIX TO THE JOURNAL OF THE ASSEMBLY, REG. SBSS. 1961, 2 REPORT OF ASSEMBLY INTERIM COMMITTEE ON CRIM. PROC. 12-13 (1959-61)).
\end{footnotes}
approaching another for the purpose of soliciting, as opposed to merely receiving donations, is prohibited . . . .”

The court therefore upheld the statute.

_C.C.B. v. State_ 56

In _C.C.B.,_ a child 37 challenged section 330.105 of the Jacksonville Municipal Ordinance, prohibiting begging in streets and public places. 58 A separate city ordinance allowed registered charitable organizations to exact contributions. 59

The state argued that the City of Jacksonville was properly fulfilling its responsibility of protecting its citizens from undue public annoyance and preventing obstruction of pedestrian and vehicular traffic. 60 Although the court recognized the city’s authority to protect its citizens, it was not persuaded that the city had a sufficiently compelling reason to justify a total abridgment of beggars’ freedom of speech:

That lofty goal must be measured and balanced against the right of those who seek welfare and sustenance for themselves, by their own hand and voice rather than by means of the muscle and mouths of others. We have learned through the ages that charity begins at home, and if so, the less fortunate of our societal admixture should be permitted, under our system, to apply self help. 61

The court then reminded city representatives that they had the power to regulate the manner of begging with strict, definitive principles to further Jacksonville’s interests without absolutely restricting begging. 62

_Young v. New York City Transit Authority_ 63

In _Young_, another major case involving beggars’ rights, the United States Court of Appeals for the Second Circuit announced a standard for...
reviewing laws, such as section 1050.6 of Title 21 of the New York Compiled Codes of Rules and Regulations, prohibiting unauthorized begging in the New York subway system.\textsuperscript{64} The New York City Transit Authority and other local transit authorities ("TA") were named as defendants.

The TA rationalized its restriction on beggars by arguing that begging was not expression, the subway was not a public forum, and the regulation was a reasonable time, place and manner restriction on passenger conduct.\textsuperscript{65} Therefore, the TA contended, a restriction on begging was necessary to provide effective, safe, and reliable public transportation.\textsuperscript{66}

At the time section 1050.6 was drafted, begging was a pervasive problem throughout the New York subway system. Beggars moved about on subway cars, steps, walkways, escalators and crowded platforms, aggressively soliciting contributions from subway patrons. Passengers were often intimidated and harassed into making donations when beggars touched them, detained them or impeded their passage.\textsuperscript{67}

The three-judge appellate court panel held that because section 1050.6 involved some degree of communication, the principles announced in United States v. O'Brien should apply.\textsuperscript{68} Under the O'Brien test, government interests were balanced against an individual's right to speak and a limitation on speech was justified if:

- it [was] within the constitutional power of the Government; if it furthered an important or substantial governmental interest; if the governmental interest [was] unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms [was] no greater than [was] essential to the furtherance of that interest.\textsuperscript{69}

The Young court applied the O'Brien test and held that section 1050.6 was constitutional.\textsuperscript{70} Undeniably, the TA has a compelling interest to protect its passengers from potential serious injury related to the "alarmingly

\textsuperscript{64} "No person, unduly authorized . . . shall upon any facility or conveyance . . . solicit alms." N.Y. COMP. CODES R. & REGS. tit. 21. § 1050.6(b) (1989).
\textsuperscript{65} Young, 903 F.2d at 147.
\textsuperscript{66} Id. at 148.
\textsuperscript{67} Id. at 149, 158. See also Paul Reidinger, The Expressionists, When Is Conduct Speech?, 76 A.B.A. J. 90, 92 (Aug. 1990). Since non-obscene nude dancers were protected under the First Amendment and subway beggars were not, the author asked a rhetorical question, "Will subway beggars soon be doing stripteases?" implying that panhandling may not be allowed but beggars may legally strip for money. Id. at 90.
\textsuperscript{68} Young, 903 F.2d at 157 (citing United States v. O'Brien, 391 U.S. 367 (1968)).
\textsuperscript{69} 391 U.S. at 377. See also Young, 903 F.2d at 157-61 (analysis of facts under O'Brien standard).
\textsuperscript{70} 903 F2d at 161 (regulation "more than satisfies the O'Brien standard").
harmful conduct" of aggressive beggars.\textsuperscript{71} The court also found that section 1050.6 was content-neutral, as required by \textit{O'Brien}, because the proscribed conduct was unrelated to its communicative impact.\textsuperscript{72} Moreover, there were no less restrictive means available to maintain public safety in the mass transit system while trying to accommodate beggars' rights.\textsuperscript{73} Therefore, "the exigencies created by begging and panhandling in the subway warrant[ed] the conduct's complete prohibition."\textsuperscript{74} The court further ruled that beggars had ample alternative channels of communication because section 1050.6 prohibited begging only in the subway system, not throughout New York City.\textsuperscript{75}

\textit{Blair v. Shanahan}\textsuperscript{76}

In \textit{Blair}, Celestus Blair, Jr., a panhandler,\textsuperscript{77} was destitute and homeless. After being arrested at least five times for violating section 647(c) of the California Penal Code, Blair challenged the statute on grounds of unconstitutionality.\textsuperscript{78}

The court's impression of section 647(c), reviewed fifteen years earlier in \textit{Ulmer}, was unfavorable. In fact, District Court Judge Orrick stated: "A more encompassing prohibition of speech in a public forum would be difficult to create."\textsuperscript{79} He was equally unimpressed with the argument that the statute was necessary to both avoid public annoyance and protect the public from coercive and intrusive begging.\textsuperscript{80} The court ruled that neither of those purported interests was sufficiently compelling, nor was the statute narrowly tailored to sustain infringement of beggars' First Amendment freedom to speak in public.\textsuperscript{81} The court explained:

\begin{itemize}
\item \textsuperscript{71} Id. at 158.
\item \textsuperscript{72} Id. at 159.
\item \textsuperscript{73} Id. at 159-60.
\item \textsuperscript{74} Id. at 159.
\item \textsuperscript{75} Id. at 160. The Young decision was a bittersweet victory for the TA. One representative told \textit{Newsday}, "We can't be happy about it. It's really a victory over poor and unfortunate people." Hentoff. \textit{No Speech Rights for Beggars—Justices Don't Say Why Charities Can Still Solicit Funds}, \textit{Los ANGELES DAILY J.}, Jan. 10, 1991, at 6.
\item \textsuperscript{76} 775 F. Supp. 1315 (N.D. Cal. 1991).
\item \textsuperscript{77} There is DO significant difference between the terms "beggar" and "panhandler." \textit{Young}, 903 F.2d at 147 n.1. By the time Blair went to trial, he was gainfully employed and did not intend to resume begging. \textit{Blair}, 775 F. Supp. at 1318, 1320.
\item \textsuperscript{78} \textit{Blair}, 775 F. Supp. at 1318. Over 15 years after \textit{Ulmer}, the California legislators had not changed one word of 5 647(c). District Court Judge Orrick opined that state officials would continue to enforce that facially unconstitutional statute until a federal court took action. \textit{Id.} at 1320.
\item \textsuperscript{79} Id. at 1324.
\item \textsuperscript{80} Id. "[P]reventing an intrusion on the public at large is no more compelling a justification for this limitation on speech man is avoiding annoyance." \textit{Id.}
\item \textsuperscript{81} Id.
City streets are a public forum, one of the few remaining democratic spaces where the conventioneer, the gawking tourist, the eager consumer, the city resident, and the needy may mingle freely. Under this statute, City authorities claim the power to remove from this public forum those that through the exercise of their First Amendment rights, plus additional unspecified conduct, make the rest of us uncomfortable. The speech of the needy around us may well be subjectively felt as an unwelcome intrusion by some, but the expressive freedom guaranteed by the Constitution has never been costless. That speech may not be barred by a statute such as this.82

Judge Orrick acknowledged that state intervention was not completely thwarted by the ruling in Blair. The state could regulate intimidation, threats or coercion with separate laws intended to control that unwanted conduct.83

Loper v. New York City Police Department84

In the recent Loper decision, the district court reviewed section 240.35(1) of the New York Penal Law, a statute rooted in 1886 law, which made loitering and begging synonymous. "A person is guilty of loitering when he: . . . loiters, remains or wanders about in a public place for the purpose of begging . . ."85 In a four-year period, thousands of beggars were arrested under the statute.86

In the Loper decision, the court listed four interests which have to be balanced to determine the constitutionality of the statute: the beggars' interests; the audience's interests; the public's interests; and the government's interest in protecting the public.87 The beggars' interest is in soliciting funds and imparting the "critical message" that social and economic conditions and a lack of government services make begging necessary.88 The audience and the public are interested in receiving free-flowing information, having their personal privacy respected, and avoiding fraud.89 The privacy interests reach the "heart of one's right to be left alone, to decide whether or

82. Id at 1325.
83. Id. at 1324 n.10.
85. N.Y. PENAL LAW § 240.35(1) (Consol. 1989). "Its post-independence genesis may be found in a 1788 statute that classified as disorderly persons 'all persons who go about from door to door or place themselves in the streets, highways or passages, to beg in the cities and towns . . .'." 802 F. Supp. at 1032 (citation omitted).
86. 802 F. Supp. at 1033. See generally Orders to Move On and the Prevention of Crime, 87 YALE L.J. 603-26 (1978) (promoting statutes giving police authority to order loiterers and vagrants to move on as an alternative to arresting them under unconstitutional loitering and vagrancy laws).
88. Id. at 1042.
89. Id.
not to even be an actual audience member, and to enjoy public facilities without interference.”

Government officials attempted to justify the New York penal law as necessary to protect citizens from fraud. They contended that it was impossible to monitor whether beggars used money donated for “announced purposes” or for “more destructive ends, such as the purchase of tobacco, alcohol or drugs.” Officials further stated that section 240.35(1) helped to maintain public order by curtailing aggressive begging, traffic congestion and interference with commercial business.

The court ruled that the statute was unconstitutionally overbroad to achieve those laudable objectives because the State of New York already had laws making it unlawful to block traffic, harass pedestrians, trespass, or commit extortion and fraud. Notwithstanding the State's valid interests, "the interest in permitting free speech and the message begging sends about our society predominated.”

Each of the five decisions discussed above has had a significant impact on beggars’ freedom of speech and illustrates the tension between the rights of beggars and the public’s privacy interests. The aftermath of Young is illustrative of this impact. Immediately after the United States Court of Appeals for the Second Circuit released the Young opinion, officials in other cities began rousting beggars out of certain areas using Young as authority.

II. Regulating Beggars’ Speech to Protect Both the Beggars' First Amendment Rights and the Public’s Rights of Privacy and Safety

Although beggars have a First Amendment right to beg, they do not have free rein to beg “at all times and places or in any manner that may be desired.” Even beggars and their lawyers have agreed that aggressive

90. Id. However, the right to privacy is tempered by the interest in exposure to expression.
91. Id. at 1046-47.
92. Id. at 1047 (“[P]anhandling is rife with possibilities for misleading those who are the subjects of the panhandler's entreaty.”).
93. Id. at 1045-46.
94. Id.
95. Id.
96. Chevigny, supra note 23, at 527 & n.10.
beggars' conduct should be controlled because aggressive begging scares people, making it difficult for other beggars to receive donations.98

However, "individuals in public places cannot expect the same degree of protection from contact with others as they are entitled to in their own homes."99 People cannot demand privacy while strolling through a city park.100 Nevertheless, some privacy rights exist even in a public forum. Consequently, a person's "right to be let alone"101 must be balanced with the beggars' right to communicate.102 The court in Loper laid out the following principle:

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of one idea simply because society finds the idea itself offensive and disagreeable. This principle imposes an inevitable burden on a certain segment of the society that requires them to sacrifice a portion of their privacy and comfort as they enter into the interpersonal world of the society that surrounds them. This principle requires a trade-off: When leaving the insular security of one's home and becoming a participant in the world organized by society, one interacts with its elements. This necessarily includes those who have different viewpoints and background. Paying attention is not a requirement. Instead, ignoring or answering back with more speech is a reciprocal privilege.103

Nevertheless, after balancing beggars' rights and the public's interests, speech restrictions are necessary in some situations.

A. Time, Place and Manner Restrictions

A possible approach to regulating beggars' communication in light of the balance of interests is to use content-neutral "time, place and manner" restrictions, which are constitutional as long as they serve a substantial government interest and do not unreasonably limit other means of communica-

98. See Efuntade, supra note 11. See also infra part III.A.3.


100. 802 F. Supp. at 1043-45 (comparing privacy interest in walking through courthouse corridor to a walk in the park and privacy in one's home).


103. Loper. 802 F. Supp. at 1047.
tion.\textsuperscript{104} State and federal governments should promulgate and enforce time, place and manner restrictions to protect beggars and the public. In accordance with organized solicitation principles, restrictions on begging in public places, traditionally reserved or designated for public expression, should be closely examined, thus ensuring that they serve a compelling government interest in a manner that is both unrelated to the content of the expression, and evenhandedly applied to all who desire to solicit funds.\textsuperscript{105}

In this context, courts have held that legitimate government interests include promoting motorists’ safety,\textsuperscript{106} preventing crime,\textsuperscript{107} avoiding pedestrian and traffic congestion,\textsuperscript{108} protecting citizens’ privacy,\textsuperscript{109} preventing fraud,\textsuperscript{110} preventing duress,\textsuperscript{111} and promoting the general public safety,

\begin{itemize}
  \item \textsuperscript{104} City of Renton v. Playtime Theatres, 475 U.S. 41, 48 (1986).
  \item \textsuperscript{105} ISKCON v. U.S., 112 S. Ct. 2701,2709 (1992) (if ISKCON is given access to solicit in airports, "so too must other groups"); Frisby v. Schultz, 487 U.S. 474, 481 (1988); Heffron v. ISKCON, 422 U.S. 640,648-49 (1981); Ater v. Armstrong, 961 F.2d 1224, 1227 (9th Cir., cert. denied, 113 S. Ct. 493 (1992) (statute applies to all who solicit contributions in the roadways); ACORN v. St. Louis County, 930 F.2d 591, 594 (8th Cir. 1991) (ordinance content neutral because justification of solicitors’ and motorists’ safety unrelated to content of speech); ACORN v. City of Phoenix, 798 F.2d 1260, 1267 (9th Cir. 1986).
  \item \textsuperscript{106} Ater, 961 F.2d at 1229 (promoting legitimate goals of roadway safety by prohibiting solicitation of funds on Kentucky roadway); St. Louis County, 930 F.2d at 596 ("The government need not wait for accidents to justify safety regulations.")
  \item \textsuperscript{108} Heffron, 452 U.S. at 650-52 (face-to-face solicitation more likely to impede normal traffic flow); Ater, 961 F.2d at 1229; St. Louis County, 930 F.2d at 594 (government interest in traffic efficiency is significant).
  \item \textsuperscript{109} Ward v. Rock Against Racism, 491 U.S. 781, 796 (1989) (protect public from unwelcome noise); Hynes, 425 U.S. at 616-17; United States v. Belsky, 799 F.2d 1485,1489 (11th Cir. 1986) (upholding postal service interest in flow of traffic to and from postal facility); City of Watseka, 796 F.2d at 1551; Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248,1251 (7th Cir. 1985) (securing citizens’ peaceful enjoyment of their homes).
  \item \textsuperscript{110} Lee, 112 S. Ct. at 2708 ("unsavory solicitors... commit fraud"); Riley v. National Fed’n of the Blind, 487 U.S. 789,792 (1988) (protecting public from fraud is sufficiently substantial interest); Fernandez v. Limmur, 663 F.2d 619,629 (5th Cir. 1981) (fraud statute violated First Amendment); Loper v. New York City Police Dep’t, 802 F. Supp. 1029, 1046-47 (S.D.N.Y. 1992), aff’d, 999 F.2d 699 (2d Cir. 1993). Some beggars admit that a few people believe they are homeless when they are not homeless. Mooar, supra note 7 (beggars renting nice apartment in the suburbs); Wheeler, Panhandlers, supra note 8, at 217-18 ("Not all beggars are as they appear; some are indeed ‘con men’ who have homes, are on welfare, or feel that they can make more money by begging than by working.").
  \item \textsuperscript{111} Lee, 112 S. Ct. at 2708 ("face-to-face solicitation presents risks of duress that are an appropriate target of regulation").
\end{itemize}
health, welfare and convenience. Nevertheless, in compliance with the O'Brien test, regulations protecting these government interests must be narrowly tailored to achieve the government's goals without unnecessarily intruding upon beggars' speech. Furthermore, it must leave open ample alternative channels of communication to beggars. The balance of this Article therefore analyzes time, place and manner restrictions which have been properly applied to other solicitors and should fairly be applied to beggars.

1. Time Restrictions: When Shall They Beg?

At times begging poses particular hazards; thus reasonable restrictions should be permitted to regulate such conduct during certain hours. For example, traffic flow and safety concerns may necessitate a prohibition against begging in places like Grand Central Station during rush hour.

The legitimate government interests most often stated for time-of-day restrictions, primarily applied in the evening and after dark, have been protection of the citizens' privacy and prevention of crime. Most hourly constraints, however, have been struck down as unconstitutional because they prohibited speech "before [a word] . . . [was] even uttered" and were not narrowly tailored to accomplish the proposed goals of preventing crime or undue infringement on public privacy. For example, courts have in-
validated hourly restrictions when begging was prohibited during certain hours or on particular days of the week. The courts reasoned that solicitors would have been deprived of the opportunity to seek funds at the times solicitation would be most effective.\textsuperscript{118} In other words, time-based restrictions are a plausible method of protecting the public’s privacy and safety interests, but they must be narrowly tailored to protect beggars’ rights as well.

2. Place Restrictions: Where Shall-They Beg?

The First Amendment does not guarantee access to all government-owned or government-controlled property.\textsuperscript{119} However, beggars should be given the same access granted to organized solicitors. Therefore, beggars should be permitted to solicit contributions wherever organized solicitors are allowed to seek donations. Likewise, they should be prohibited from begging wherever organizations may not solicit. The constitutionality of place restrictions depends upon the forum beggars select.\textsuperscript{120} There are three types of fora where beggars are likely to engage in begging: traditional public fora, designated public fora and non-public fora.\textsuperscript{121}

\begin{itemize}
\item \textbf{Traditional Public Fora:} Places where anyone can speak.
\item \textbf{Designated Public Fora:} Places that are open to the public for the purpose of speech.
\item \textbf{Non-Public Fora:} Places that are not open to the public.
\end{itemize}


\textsuperscript{118} City of Watseka, 796 F.2d at 1556 (unconstitutional limitation of solicitation to hours between 5:00 p.m. and 9:00 p.m.); City of Frontenac, 714 F.2d at 820 (holding ordinance prohibiting door-to-door soliciting and canvassing between 6:00 p.m. and 9:00 p.m. on weekdays not narrowly tailored to advance city’s legitimate objectives and violative of First Amendment rights).

\textsuperscript{119} See generally Harry Kalven, Jr., The Concept of the Public Forum: Cox v. Louisiana, 1965 SUP. CT. REV. I.

\textsuperscript{120} See also New York Community Action Network, Inc., 601 F. Supp. at 1070 (most working people away from home until 6:00 p.m.).

\textsuperscript{121} See also Comelious, 473 U.S. at 800-02; Hague v. Committee for Indus. Org., 307 U.S. 496, 515-16 (1939): The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order, but it must not, in the guise of regulation, be abridged or denied.
a. Traditional Public Fora

Begging is entitled to First Amendment protection in most traditional public fora.\(^1\) Traditional public fora are places which have been tradition-ally devoted to assembly and debate.\(^2\) Consequently, regulation of speech in traditional public fora is subject to the highest scrutiny.\(^3\) Public streets, city roadways and parks are traditional public fora "immemorially [] held in trust for the use of the public,"\(^4\) Public sidewalks,\(^5\) bandshells in public parks,\(^6\) state capitol grounds\(^7\) and public bus terminals are additional examples of public fora.\(^8\)

In traditional public fora, people can normally control whether they listen to what is happening around them. They can also avert their eyes or walk away. In most instances, restrictions on a speaker's right to express herself in these fora may be unconstitutional because of the diminished privacy interests in such places.\(^9\) However, restrictions may be permissible when the public forum holds a captive audience, in which case the confines of the area prevent escape from the unwanted speech.\(^10\)

---

1. Rose, supra note 8, at 205.
8. Loper v. New York City Police Dep't, 802 F. Supp. 1029, 1043-44 (S.D.N.Y. 1992), aff'd, 999 F.2d 699 (2d Cir. 1993) (enforced even when the expression is obscene or offensive).
9. Id. at 1044-45. Here, the court seems to agree with Young, since Young involved unwilling subway riders who were trapped in the transit system. See also Rose, supra note 8, at 218-19.
b. Designated Public Fora

Begging is also entitled to First Amendment protection in designated public fora.\(^{132}\) Designated public fora is public property, such as municipal auditoriums and university meeting rooms open to students, which the government opens to part or all of the public for use as a place for expressive activity.\(^{133}\) As in traditional fora, regulation of speech in designated public fora is subject to the highest scrutiny.\(^{134}\)

c. Non-Public Fora

The third type of fora is non-public fora, public property that is neither traditional nor designated for expressive activity.\(^{135}\) Non-public fora include ingress and egress walkways to post office buildings,\(^{136}\) sidewalks and streets on military reservations,\(^{137}\) public buses,\(^{138}\) subway and street cars,\(^{139}\) jails and prisons,\(^{140}\) publicly owned airport terminals,\(^{141}\) government and other public buildings, such as municipal auditoriums and university meeting rooms open to students, which the government opens to part or all of the public for use as a place for expressive activity.\(^{133}\) As in traditional fora, regulation of speech in designated public fora is subject to the highest scrutiny.\(^{134}\)

\(^{132}\) Rose, supra note 8, at 205.


\(^{135}\) Perry Educ. Ass’n, 460 U.S. at 46 (First Amendment does not guarantee access to all property owned and controlled by the government). See also Cornelious, 473 U.S. at 811 (non-public forum “not dedicated to general debate or the free exchange of ideas”).


\(^{139}\) Lehman, 418 U.S. at 304 (“No First Amendment forum is here to be found.”); Young v. New York City Transit Auth., 903 F.2d 146,161-62 (2d Cir.), cert, denied, 498 U.S. 984 (1990).


\(^{141}\) ISKCON v. Lee, 112 S. Ct. 2701, 2708 (1992). Until \(\text{Ue}\) was decided, the courts of appeal were split on the question of whether airports were public fora. \(\text{Id. at 2705 n.2. See also 14 C.F.R. § 159.94 (1993)}\) (Federal Aviation Administration's regulations regarding solicitation of funds in airports); Barbara L. Hall Comment, The Second Circuit Takes Off in a New Direction:
ment office buildings, race tracks and sports stadiums, schools, hospitals, public libraries, apartment hallways, and city council chambers. Solicitation by organizations has been disallowed in these places; hence, they should be off-limits to beggars as well:

When self-governing men demand freedom of speech they are not saying that every individual has an inalienable right to speak whenever, wherever, however he chooses. . . . Anyone who would . . . irresponsibly interrupt the activities of a lecture, a hospital, a concert hall, a church, a machine shop, a classroom, a football field, or at a home, does not thereby exhibit his freedom. Rather he shows himself to be a boor, a public nuisance, who must be abated, by force if necessary.

In non-public fora, place restrictions are held only to a reasonableness standard provided they do not suppress speech based on disagreement with the speaker's viewpoint.

d. Situations Warranting Reasonable Restrictions or Prohibitions

Certain places pose particular hazards or concerns which warrant reasonable restrictions or prohibitions on begging activity.

(1) Begging in the Streets

Begging in the streets should be forbidden absolutely. Highway begging is a serious problem in many metropolitan areas. Beggars in some cities converge on cars in traffic and harass the occupants for contributions. Moreover, some beggars set up street enterprises: they solicit donations to


See also John Sarna, Advocates Are Cheered by Ruling on Begging, NAT'L L.J., Feb. 12, 1990, at 17 (quoting Professor tribe: "'[S]pecial purpose places [are public fora where] people can expect to be protected from being accosted.").

145. ALEXANDER MEIKLEJOHN, POLITICAL FREEDOM 28 (1965).


147. ACORN v. City of Phoenix, 798 F.2d 1260, 1268-70 (9th Cir. 1986); ACORN v. St Louis County, 726 F. Supp. 747,752 (E.D. Mo. 1989) (upholding St. Louis ordinance prohibiting soliciting while standing on roadway).
reserve parking spaces for drivers on busy streets where parking is scarce, or wash car windows when the driver pauses at a traffic light.  

Highway begging can also be dangerous. Beggars who walk with moving traffic can sustain serious injury or death. Such injuries occur when beggars approach occupants of cars, misjudge the sequence of traffic lights and fail to return to a safe place before the light changes.  

Begging on streets also creates traffic congestion. It exacerbates traffic delays and backups because of the response it requires from the occupants of vehicles on the road. The donor must reach for money and replace a wallet or purse before returning her attention to driving the vehicle. For the reasons stated above, the government has obvious and compelling interests in prohibiting begging on the streets:  

[T]here are indeed substantial differences in nature between a street, kept open to motorized vehicle traffic, and a sidewalk or public park. A pedestrian ordinarily has an entitlement to be present upon the sidewalk or on the grounds of a park and thus is generally free at all times to engage in expression and public discourse at such locations. This is obviously not true of streets continually filled with pulsing vehicular traffic. Consequently, more so than with sidewalks or parks, courts have recognized a greater government interest in regulating the use of city streets.  

Thus, the dangers of begging in the streets warrant place restrictions prohibiting such activity.

148. REPORT ON PANHANDLING, supra note 9; City of Phoenix, 798 R.2d at 1270-71 n.11 (statute prohibiting people from soliciting contributions from occupants of any vehicle property promoted public peace and protected motorists from harassment as they were temporarily confined in their vehicle waiting for the traffic light to change). See generally MELVILLE B. NIMMER, NIMMER ON FREEDOM OF SPEECH, A TREATISE ON THE THEORY OF THE FIRST AMENDMENT § 1.02 [F][2] (1984); G. Michael Taylor, Comment, I'll Defend to the Death Your Right to Say It ...But Not to Me—The Captive Audience Corollary to the First Amendment, 1983 S. I.I. U. L.J. 211,211-12; Margaret A. Warder, Crack Down on “Squeegees,” Those Street-Corner Extortionists, N.Y. TIMES, Dec. 21, 1993, at A29 (window washers damage cars when donations are denied).

149. Mooar, supra note 7, at B5 (where interviewee worried that someone was going to get killed). See also St. Louis County, 930 F.2d at 583-84, 596; City of Phoenix, 798 F.2d at 1269; Matthew Kelly, Bugged by Beggars, WASH. POST, May 15, 1993, at A24 (where editorialist opined that motorists are entitled to “panhandlers sanctuary” in their cars).

150. City of Phoenix, 798 F.2d at 1268-69. However, “successful solicitation goes beyond pure speech in the response it demands on the part of the audience [by requiring] individuals to respond by searching for currency and passing it along to the solicitor.” Id at 1269. See also United States v. Kokinda, 497 U.S. 720, 734 (1990) (similar pedestrian donor’s response).

151. City of Phoenix, 795 F.2d at 1267 (declining to decide whether stations were perpetual public fora or public fora only while in use by motor vehicles). See also Cox v. New Hampshire, 312 U.S. 569, 576 (1941) (cities may constitutionally prohibit parades and demonstrations on streets without special permit).
(2) Begging on Sidewalks

Begging should be permitted on sidewalks, assuming there is no fence or other indication that a special enclave is intended.\textsuperscript{152} For example, the sidewalks bordering the United States Supreme Court building should be open for begging because they "compris[e] the outerbanks of the Court grounds [and] are indistinguishable from any other sidewalks ... which are normally open for expressive activity."\textsuperscript{153}

Not every sidewalk, however, is a public forum.\textsuperscript{154} In United States \textit{v. Kokinda},\textsuperscript{155} the United States Supreme Court held that regulations prohibiting solicitation on walkways leading to post offices did not violate the First Amendment.\textsuperscript{156} The Court declared that the postal service's compelling interests in preventing traffic congestion and disruption of postal service business were sufficient to sustain the constitutionality of such total bans on solicitation.\textsuperscript{157}

Begging should not be permitted on such walkways; they are not thoroughfares.\textsuperscript{158} Rather, they are on government property, owned by the postal service and dedicated solely for the purpose of providing an ingress or egress for customers who patronize the post office.\textsuperscript{159} The fact that postal entrances are open to the public does not establish them as traditional public fora.\textsuperscript{160}

For national defense reasons, begging also should not be permitted on sidewalks inside military reservations\textsuperscript{161} which are separated from city streets and sidewalks.\textsuperscript{162} Similarly, begging should be banned on certain sidewalks around the United Nations building.\textsuperscript{163} Like other solicitors, beggars would block entrances and exits, thereby making it difficult for people

\textsuperscript{152} United States \textit{v. Grace}, 461 U.S. 171,180 (1983). \textit{See also ISKCON v. Lee}, 112 S. Ct. 2701, 2706 (1992) ("separation from acknowledged public areas may serve to indicate [hat the separated property is a special enclave subject to greater restriction").

\textsuperscript{153} Grace, 461 U.S. at 179.

\textsuperscript{154} See United States \textit{v. Belsky}, 799 F.2d 1485, 1488-89 (11th Cir. 1986); United States \textit{v. Bjerke}, 796 F.2d 643, 648 (3d Cir. 1986) (post office sidewalks should not be used to solicit funds).

\textsuperscript{155} Id. at 720 (1990).

\textsuperscript{156} Id. at 731-37.

\textsuperscript{157} Id. at 732-36.

\textsuperscript{158} Id. at 727; Bjerke, 796 F.2d at 648-49 (post office walkways cannot be confused with municipal sidewalks).

\textsuperscript{159} Kokinda, 497 U.S. at 727-28.

\textsuperscript{160} Id. at 728.


\textsuperscript{162} Id. at 830 (civilians free to visit but not to solicit at Fort Dix).

to enter or leave the building quickly, and preventing law enforcement of-
ficers from monitoring security.\footnote{164.}{Id. at 120-22.}

Begging on sidewalks within close proximity to automated teller ma-
chines ("ATMs") and banks should also be prohibited.\footnote{165.}{Lopcr v.
New York City Police Dep't, 802 F. Supp. 1029,1040 (S.D.N.Y. 1992), aff'd.
999 F.2d 699 (2d Cir. 1993) (regulation prohibiting begging in immediate vicinity of ATMs
would probably survive scrutiny).}
Bank customers conducting financial transactions at ATMs are easily intimidated by beggars
asking for money. These customers comprise a captive audience that is
both exposed and vulnerable. In fact, many of these customers have stated
they have paid "extortion money" to avoid being robbed.\footnote{166.}{REPORT ON
PANHANDLING, supra note 9, at 3.}

(3) Begging in Parks

Begging in parks should be restricted.\footnote{167.}{Clark v. Community for
National Capital Region Parks, 36 C.F.R. § 7.96(h) (1993) (soliciting money prohibited); National
Archives & Records Admin., 36 C.F.R. § 128O.8(d) (1993) (no charitable, commercial or political
parks historically available for exercising rights); Loper, 802 F. Supp. at 1044 & n.21.}
The government has a sub-
stantial interest in keeping parks intact and attractive for the millions of
people who visit them. These parks may become damaged or inaccessible to
visitors if unrestricted begging is permitted.\footnote{168.}{Clark, 468 U.S. at 298.}
"Lafayette Park [in
Washington, D.C.] and others like it are for all people, and their rights are
not to be trespassed even by those who have some 'statement' to make."
\footnote{169.}{Id. at 296, 300 (Burger, C.J., concurring) (emphasis added).}
In light of the substantial government interest in protecting the parks, rea-
sonable restrictions on begging in these areas should be allowed.

(4) Begging at Special Events

Begging during special events should be limited to particular areas. In
the Supreme Court held that Minnesota state fair officials could restrict an or-
ganization's solicitation of donations to an assigned booth in a particular
location at the fair.\footnote{171.}{Heffron, 452 U.S. at 654-55. Accord Hynes v. Metropolitan Gov't of
Nashville & Davidson County, 478 F. Supp. 9 (M.D. Tenn. 1979), aff'd, 667 F.2d 549, 550-51 (6th Cir. 1982)
(Tennessee state fair rule prohibiting solicitation of funds except from assigned booths found
and rev'd in part, 628 F.2d 282,286-87 (4th Cir. 1980) (Maryland booth
signed booth. In the court's view, the state's interest in avoiding crowd flow problems and concern for public safety justified such restrictions. These same restrictions should apply to beggars. Because solicitors and beggars both appeal for money, no distinction should be made between the two.

(5) Begging in Places with a Captive Audience

Beggars' rights are less likely to prevail over the government's interest in protecting its citizens when the listener is unable to avoid the communication. In all of the fora discussed above, a person who does not want to communicate with beggars can ignore them or move on. Persons who are confined on public transportation or in cars stopped at traffic intersections, however, are unable to escape unwanted intrusions from beggars.

Captive audiences require additional protection from beggars. Indeed, the United States Supreme Court upheld a statute banning certain advertisements from subway cars to avoid the risk of imposing upon passengers, even though such advertisements would not have been banned in traditional or designated public fora. The Court considered both the advertisers' and the passengers' rights:

In asking us to force the system to accept his message . . . the petitioner overlooks the constitutional rights of the commuters. While petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it. . . . [T]he right of the commuters to be free from forced rule violated First Amendment because no serious disruptions shown and no showing that less restrictive regulation would not accomplish same result).
intrusions on their privacy precludes the city from transforming its vehicles of public transportation into forums for the dissemination of ideas upon this captive audience. 177

To protect captive audiences from unwanted communications, reasonable regulations on solicitation should be permitted.

(6) Begging in Residential Neighborhoods

The scope of the First Amendment freedom of expression encompasses door-to-door solicitation of financial contributions in residential neighborhoods. 178 Persons who are approached on their private property have alternatives to communicating with beggars;179 they may avoid any unwanted contact by posting signs indicating that no solicitation is allowed, asking beggars to leave or closing the door to end the contact with the beggar.180 Additionally, local municipalities have a responsibility to assist residents in maintaining the peace and enjoyment of their home by enforcing trespass laws. The state’s “interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.” 181

Thus, both the public’s privacy interest and beggars’ First Amendment rights must be considered when place restrictions are enacted. Citizens want to choose when and where they will receive information.182 However,


180. City of Waukegan, 796 F.2d at 1550-51, 1557; Wisconsin Action Coalition, 767 F.2d at 1257 (posting signs to avoid solicitation); Massachusetts Fair Share, Inc. v. Town of Rockland, 610 F. Supp. 682,689 (1985); New York Community Action Network, Inc. v. Town of Hemstead, 601 F. Supp. 1071 (E.D.N.Y. 1984) (resident can close her door or post “no soliciting” sign); Citizens for a Better Env’t, 511 F. Supp. at 107.


182. Loper v. New York City Police Dep’t, 802 F. Supp. 1029, 1042-43, aff’d, 999 F.2d 699 (2d Cir. 1993). See also T.M. Scanlon, Jr., Freedom of Expression and Categories of Expression, 40 U. PITT. L. REV. 519, 524 (1979) (“What audiences generally want... is to have expression available to them should they want to attend to it”).
except in fora containing captive audiences, beggars have a constitutional right to communicate. This right must be honored even when the audience is unwilling to listen.183

3. Manner Restrictions: How Should They Beg?

a. Distinguishing Peaceful From Aggressive Begging

While peaceful and non-confrontational begging may be restricted, aggressive begging should be prohibited altogether. Polite, passive begging is not illegal. Peaceful beggars asking for money "in a nice way" do not pose a threat to society.184 In contrast, some requests for financial assistance unduly encroach upon a person's consciousness and privacy.185 Indeed, "[t]he increasing desperation of the very poor has made them turn up the[ ] pitch on their appeals" and the public's alarm at intrusive begging tactics has intensified.186 While many beggars are soft-spoken or silent, others are loud and belligerent. These itinerant beggars frequently disrupt traffic, and assault, detain, intimidate, threaten or follow pedestrians. On a daily basis, residents and commuters in New York City experience beggars walking about subway cars telling tales of woe, including contraction of the AIDS virus, while passengers cringe in their seats.187 Businesses are also gravely affected by begging. One merchant anticipated a loss of $277,000 in business because tour groups would no longer patronize his establishment after beggars harassed tourists there.188 This

183. Rose, supra note 8, at 198. See also FCC v. Pacifica Found., 438 U.S. 726,749 & n.27 (1978) ("Outside the home, the balance between the offensive speaker and the unwilling audience may sometimes tip in favor of the speaker, requiring the offended listener to turn away.");

184. Loper, 802 F. Supp. at 1046. "The simple question is: 'Can society bar all forms of begging?' The simple answer is: 'No.'" Id. at 1039. See also Wheeler, Panhandlers, supra note 10, at B4 (quoting District of Columbia Councilmember James Nathanson).

185. See Court as Scarecrow, supra note 6.

186. See Court as Scarecrow, supra note 6 (associating begging problems in subway system with growing number of homeless people).


188. Wheeler, Tour Group, supra note 19, at D3. The United States Supreme Court has also noted the disruptive effect that solicitation may have on businesses. Lee, 112 S. Ct. at 2708;
type of behavior should not be tolerated. Personal abuse is not communica-
tion of information or opinion that is protected by the Constitution. 189
"[T]he constitutional status of begging does not involve giving beggars an
unlimited right to harass potential donors." 190 A total ban on this aggressive
behavior would therefore be constitutional. 191

b. Regulating Aggressive Begging

In Cantwell v. Connecticut, 192 a religious solicitation case, the United
States Supreme Court ruled that the State had obvious power to prevent or
punish any person who caused "clear and present danger of riot, disorder,
interference with traffic upon the public streets, or other immediate threat to
public safety, peace, or order . . . ." 193 Beggars frequently engage in such
conduct.

A recent occurrence in the District of Columbia illustrates the "clear
and present dangers" of begging. In retaliation for being asked to move
from the front of a restaurant, a beggar followed the owner inside the res-

taurant and struck him with such force that he broke the owner's jaw. 194 In
such instances where beggars engage in violent conduct, the government
has access to legislative weapons which are much less intrusive than a blan-
et ban on begging. 195 Courts have suggested a declaration and enforce-
ment of laws against fraud, trespass, breach of peace, assault, burglary and
other offenses committed by aggressive beggars. 196 Laws should also pro-
hibit beggars from engaging in any unwelcome physical contact, threaten-
ing gestures, harassment, attacks and continued begging after a person

Kokinda, 497 U.S. at 732-33; Heffron v. ISKCON, 452 U.S. 640, 663 (1981) (Blackmun, J.,
concurring in part and dissenting in part). See also Linda Wheeler, D.C. Limits Aggressive Pan-
handling. WASH. POST, June 2, 1993, at Al (panhandlers scare customers away).
190. Webster, 802 P.2d at 1342 (Utter, J., concurring in part and dissenting in part).
191. Loper, 802 F. Supp. at 1040; C.C.B., 458 So. 2d at 49.
192. 310 U.S. 296 (1940).
193. Id. at 308.
195. Loper, 802 F. Supp. at 1040 (statute cannot cut off all means of begging); Blair v.
Shanahan, 775 F. Supp. 1315, 1324 & n.10, 1325 (N.D. Cal. 1991); Alternatives for Cal. Women,
Inc. v. Contra Costa County, 193 Cal. Rptr. 384, 392 (1983). See also Riley v. National Fed'n of
the Blind, 487 U.S. 781,795 (1988) (state can protect citizens from fraud without improper rules
prohibiting speech); Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620,637-38,
reh'g denied, 445 U.S. 972 (1980); People v. American Youth Sports Found., 239 Cal. Rptr. 621,
624-25 (1987); Knapp, supra note 8, at 423 (dealing with solicitor's fraud).
196. See, e.g., Loper, 802 P. Supp. at 1045-47; Blair, 775 F. Supp. at 1324.
refuses to make a contribution. This approach is far more acceptable than an outright ban on begging.

B. Legislation: Alternative Approaches to Balancing the Rights of Beggars and the Public

Some cities have already enacted legislation which balances beggars' rights against the public interests in privacy and safety. San Francisco, Atlanta, Seattle and Santa Barbara have recently adopted anti-aggressive panhandling laws. In addition, the District of Columbia passed the Panhandling Control Act of 1993 ("the Act") in response to a number of citizen complaints regarding beggars blocking entrances to public and private buildings, taunting the elderly and intimidating residents, tourists and visitors. Additionally, citizens complained that "confidence operators," who were not homeless, were masquerading as beggars.

The Act expressly permits peaceable begging in some places but prohibits aggressive panhandling throughout the city. The penalties for violating the Act are a maximum fine of $300, imprisonment for no more than

197. Blair, 775 F. Supp. at 1325. The legislature can "reduce the perceived evil of street intimidation for money. The people of San Francisco deserve the entitlement to expect police protection from any such intimidation, coercion, or threat for aims." Id. See also ISKCON v. Griffin, 437 F. Supp. 666, 673 (W.D. Penn. 1977) (after altercations developed, court forbade ISKCON members from touching prospective donors without their consent). See also Helen Hershkoff, Aggressive Panhandling Laws, 79 A.B.A. J. 40 (June 1993) (laws necessary to stave off urban decline and for protection of vulnerable people from verbal and physical intimidation); Wheeler, Panhandlers, supra note 10. During a recent television broadcast, an ACLU representative offered a contrary view. He intimated that although begging may be annoying, people cannot be locked up for being annoying. Panhandlers: Are Beggars Getting More Aggressive? (WTTG television news broadcast. Mar. 31, 1993). See also 14 C.F.R. § 159.94(h) (1992).

198. See, e.g., Blair, 802 F. Supp. at 1045-47 (suggesting alternatives to complete ban on begging).

199. Teir, supra note 7 (discussing urban cities' attempts to regulate aggressive panhandling); Dennis Culhane, Where Should the Homeless Sleep?: Shelters Lead Nowhere, N.Y. TIMES, Dec. 19, 1993, § 4, at 13 (San Francisco and Seattle residents "fed up" with aggressive panhandlers); Timothy Egan, In 3 Progressive Cities, Stem Homeless Policies, N.Y. TIMES, Dec. 12, 1993, at L26 ("Attitudes about homeless people shift from pity to impatience.").


201. REPORT ON PANHANDLING, supra note 9, § 2.

202. REPORT ON PANHANDLING, supra note 9, § 3(a). The following conduct is prohibited under the Act:

(a) No person may ask, beg, or solicit alms, including money and other things of value, in an aggressive manner in any place open to the general public, including sidewalks, streets, alleys, driveways, parking lots, parks, plazas, buildings, and grounds enclosing buildings.

(b) No person may ask, beg, or solicit alms in any public transportation vehicle: or at any bus, train, or subway station or stop.
ninety days and/or community service. All three penalties may be assessed in appropriate instances. Legislators may look to model statutes and ordinances to draft regulations that do not infringe upon beggars' right to speak or unnecessarily impose upon a citizen's privacy. The task of drafting such legislation should be left to the legislature, not the courts. We must be mindful, however, that the legislative process may not be expeditious. "When a leg-

(c) No person may ask, beg, or solicit alms within 10 feet of any automatic teller machine (ATM).
(d) No person may ask, beg, or solicit alms from any operator or occupant of a motor vehicle that is in traffic on a public street.
(e) No person may ask, beg, or solicit alms from any operator or occupant of a motor vehicle on a public street in exchange for blocking, occupying, or reserving a public parking space, or directing the operator or occupant to a public parking space.
(f) No person may ask, beg, or solicit alms in exchange for cleaning motor vehicle windows while the vehicle is in traffic on a public street.
(g) No person may ask, beg, or solicit alms in exchange for protecting, watching, washing, cleaning, repairing, or painting a motor vehicle or bicycle while it is parked on a public street.
(h) No person may ask, beg, or solicit alms on private property or residential property, without permission of the owner or occupant.

Punishment for crimes associated with solicitation of funds is not a new phenomenon. See, e.g., Cantwell v. Connecticut, 310 U.S. 296, 306 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly, penal laws are available to punish such conduct"). C/ Loper v. New York City Police Dep't 802 F. Supp. 1029, 1032 n.8 (S.D.N.Y. 1992), aff'd, 999 F.2d 699 (2d Cir. 1993) (noting stiff English punishment included whipping children, strict discipline and hard labor).


islature undertakes to address social problems, [we ought] not to fault it for failing to address every instance immediately.\textsuperscript{207} At the same time, we should reasonably expect the legislature to promulgate laws to sufficiently and effectively protect both the beggars and the public.

Conclusion

Begging is much more than "an abstract question of free speech."\textsuperscript{208} Even the most marginal among us is entitled to protection under the First Amendment.\textsuperscript{209} Organized solicitation is permitted and regulated. Begging should be permitted and regulated as well.

Beggars may annoy and disturb some people.\textsuperscript{210} However, "the fact that some people may find beggars unsightly, annoying, or even frightening, provides no basis for banning begging, any more than the fact that some people find survey-takers or leafleeters or picketers annoying or even frightening could justify a ban on their activities."\textsuperscript{211} Beggars have a right

\textsuperscript{207} Auburn Police Union v. Carpenter, 798 F. Supp. 819, 827 (D. Me. 1992). The First Amendment does not command perfection. In a statute affecting speech, some degree of over-inclusiveness and under-inclusiveness is generally unavoidable." Id. at 828 (emphasis added).

A related issue is whether police will enforce new regulations. Two dozen District of Columbia officers said they would simply warn panhandlers, and that they would give panhandler complaints low priority because they were too busy with more serious calls. The officers expressed further reluctance to arrest panhandlers because complainants are not likely to take time from work to appear in court and the jails are already overflowing with other criminals. See Wheeler & Duggan, supra note 98.

Some non-regulatory methods of discouraging begging have been implemented. For example, a Washington, D.C. group has published a pamphlet entitled "Your Nickels and Dimes Don't Add Up to Change." Their philosophy is that giving money to a panhandler encourages other panhandlers to congregate in the same area. Instead, the association advises donors to make donations to particular organizations dedicated to providing food, shelter and counseling to needy people. See Wheeler, Arrested, supra note 9. Other advocates use redeemable food vouchers for exchange at New York supermarkets. See Adelson, supra note 9; Mary B. Tabor, Voucher Plan to Aid Beggars in Place on West Side, N.Y. TIMES, Dec. 20,1993, at B1 (offering vouchers for food on personal items instead of money).

\textsuperscript{208} Mordecai Rosenfeld, Does Odysseus Ride the "A " Train?, N.Y. LJ., June 4, 1990, at 2 (lamenting that judges who do not ride the subways do not realize the exigencies of begging: "Isn't it better to have them beg on the subway, where it never rains or snows and is never cold, man on the open, unprotected streets . . . ?").

\textsuperscript{209} Hentoff, supra note 75 ("Daniel Pollitt, a University of North Carolina law professor, teaches that the living Constitution is also an enlarging document—thereby protecting those among us who become marginal.").


\textsuperscript{211} REPORT ON PANHANDLING, supra note 9, at app. (Testimony of Arthur Spitzer on behalf of the American Civil Liberties Union of the National Capital Area).
to solicit money for their livelihood in appropriate circumstances.\footnote{\textit{Young} v. New York City Transit Authority, 25 SUFFOLK U. L. REV. 805, 811-12 (1991) (First Amendment "does not permit the burdening of free speech merely because the public is uncomfortable with the message").} In the interest of peace, however, the government must impose reasonable time, place and manner restrictions to protect the public from aggressive beggars. As many metropolitan areas have been forced to discover, this goal can and must be accomplished without imposing a complete ban on begging.\footnote{City of Seattle v. Webster, 802 P.2d 1333, 1343 (Wash. 1990), cert. denied, 111 S. Ct. 1690 (1991) (Utter, J., concurring in part dissenting in part); Elizabeth McGlynn, Comment, Constitutional Law—A Denial of First Amendment Protection for Begging in the Subway—Young v. New York City Transit Authority, 25 SUFFOLK U. L. REV. 805, 811-12 (1991) (First Amendment "does not permit the burdening of free speech merely because the public is uncomfortable with the message").} The First Amendment demands it.

\footnote{\textit{Mooar}, supra note 7. One man collected $298 in one day, much more than some people collect for working all day. Christine Brennan, \textit{U.S. Kayaker Navigates Streets in Search of Cash}, WASH. POST, May 12, 1993, at A13 (Olympic team member begging monetary gifts to finance his trip to the Olympics). Another beggar admitted to collecting up to $100 per day, \textit{Mooar}, supra note 7. One woman admitted that she moved from her usual place of begging in downtown Washington, D.C. to Georgetown, an affluent neighborhood, because she could make more money in Georgetown—$30 to $45 in two-and-one-half hours. \textit{Random Charity} (ABC television broadcast, May 13, 1993). \textit{Cf.} Stuart Miller, Holidays Hit Homeless Hard, THE WASH. SQUARE NEWS, Dec. 14, 1993, at 2 ("Today, I'll be lucky if I make five bucks.").}

\footnote{\textit{Id.} There are other methods of regulating organizational solicitation which may be applicable to beggars. Courts suggest that appropriate registration, licensing, identification and permit procedures could be used to prevent fraud and encroachments on privacy. See New Jersey Citizen Action v. Edison Township, 797 F.2d 1250,1264,1262-65 (3d Cir. 1986) (identification requirements may be constitutional, but fingerprinting may not be constitutional without showing of significant criminal behavior among beggars). See also C.C.B. v. Florida, 458 So. 2d 47,50 (Fla. App. 1984) (suggests narrowly drawn permit system); State v. Hundley, 142 S.E. 330, 332 (N.C. 1928) (upholding municipal license requirement for charitable and religious begging). See generally Peddlers, Solicitors and Transient Dealers, 60 AM. JUR. 2D § 67 (1987). \textit{Cf.} Loper, 802 F. Supp. at 1047 (doubting that society would "license the truly needy").}\n
\footnote{\textit{Id.} Fee assessments against solicitors have been unsuccessful and probably will not prevail against beggars for obvious reasons—beggars may not be able to pay die fees. Therefore, filing fees for applications, daily solicitation fees, and identification badge fees may be invalid restraints. "Freedom of speech ... [is] available to all, not merely to those who can pay their own way." \textit{Murdock v. Pennsylvania}, 319 U.S. 105, 111 (1943). Some believe that begging does not yield an economic waterfall. Subway riders, for instance, "are a parsimonious lot, so that soliciting alms from them [is] an inefficient use of a beggar's time——The occasional rider who donated a quarter considered himself to be a philanthropist" \textit{Rosenfeld}, supra note 208 (referencing studies showing that those contributing did so with nickels, pennies or dimes).}