

10-1-2001

Gift Encounters: Conceptualizing the Elements of Begging Conduct

Joe Hermer

Follow this and additional works at: <http://repository.law.miami.edu/umlr>



Part of the [Law and Society Commons](#)

Recommended Citation

Joe Hermer, *Gift Encounters: Conceptualizing the Elements of Begging Conduct*, 56 U. Miami L. Rev. 77 (2001)
Available at: <http://repository.law.miami.edu/umlr/vol56/iss1/5>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

Gift Encounters: Conceptualizing the Elements of Begging Conduct

JOE HERMER*

I

One of Michel Foucault's legacies to socio-legal scholarship is the way in which his work has provided us with a valuable resource to explore the relationship between power and law. The later Foucault in particular, in his writing on Governmentality and the Care of the Self,¹ provides us with a language to investigate how we are governed in everyday life, not just as sovereign subjects to be commanded and controlled in the majesty and authority of law, but how we are ordered in the production of our own subjectivity through a complex of discourses and practices, embedded in the mundane and taken-for-granted experiences of everyday life.

One of the challenges of adopting this productive view of power is how, in retaining an over-arching view of the constitutive nature of discourses, we can nevertheless apply conceptual tools to grasp and understand the spatial and temporal details of specific sites of social interaction. Indeed, it does seem to me that one of the weaknesses of much Foucaultian inspired work—which seems allergic to many of the techniques of mainstream social science for fear of automatically reinscribing positivism—is that questions of social agency and reciprocity are ignored in the impulse to construct a genealogy of particular trajectories of order. In particular, questions of reciprocity—of identity, memory, obligation and debt—are important with regard to the ways in which neo-conservative governments are configuring the relationship between law and regulation, often in forms which many would consider to be regressive.

In this Article, I focus on conceptualising an ephemeral, mundane form of interaction which has a significant reciprocal content: the impromptu of pocket change, in the context of charity from one stranger to another on public sidewalks and streets. Of course, this conduct is most

* Department of Sociology and Centre of Criminology, University of Toronto.

1. See Michel Foucault, *Technologies of the Self*, in *TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT* (L.H. Martin ed., 1988); Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* (G. Burchell, C. Gordon & P. Miller eds., 1991).

recognizable as begging or panhandling, and provides a significant instance of conduct that has been the target of significant regulation in the last two decades in the United States, Britain and, more recently, Canada. Indeed, legislation against visibly indigent importuning (including squeegee labour) has come to exemplify widespread programs of "civic sanitation" of homeless and poor populations, and has dramatized many of the most divisive controversies inherent in "post-welfarist" government reforms of criminal justice and social welfare programs.

I start by turning to the work of Erving Goffman to engage his notion of "encounter" as a way to begin to conceptualize the dynamics of passing-by interaction. Dissatisfied with the spatio-temporal narrowness of Goffman's notion of encounter, I re-orient his concept by locating it within the contradictions of "the gift" to construct a form of encounter which encompasses the temporal and spatial elements of begging interaction. I conclude by suggesting the utility of the concept of the gift encounter for our understanding of how begging is governed and the character of power that it represents.

II

Erving Goffman has, perhaps more than anyone else, provided us with a grammar to understand the character of "face to face" interactions of modern urban life. While Goffman examined a wide range of interaction scenes and institutions, I will instead focus on the narrow (and underdeveloped) band of his work which specifically deals with pedestrian traffic and public space interaction.²

In the opening paragraphs of the third essay in *Relations in Public*, "Supportive Interchanges," Goffman notes how Durkheim divided ritual into two classes, positive and negative.³ Positive ritual involves the paying of homage through offerings of various kinds, while negative rituals involve interdictions and avoidance, strategies of distancing and staying away which rely on the control and policing of what Goffman calls the "territories of the self."⁴ Goffman noted that in modern society, rituals with regard to the supernatural have "decayed" and lost their meaning. "What remains" according to Goffman, "are brief rituals one individual

2. See ERVING GOFFMAN, ENCOUNTERS: TWO STUDIES IN THE SOCIOLOGY OF INTERACTION (1961) [hereinafter GOFFMAN, ENCOUNTERS]; ERVING GOFFMAN, BEHAVIOUR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANIZATION OF GATHERINGS (1963) [hereinafter GOFFMAN, BEHAVIOUR IN PUBLIC PLACES]; ERVING GOFFMAN, RELATIONS IN PUBLIC: MICROSTUDIES OF THE PUBLIC ORDER (1971) [hereinafter GOFFMAN, RELATIONS IN PUBLIC].

3. EMILE DURKHEIM, THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE: A STUDY IN RELIGIOUS SOCIETY (The Free Press 1947) (1915).

4. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2, at 28-61.

performs for and to another, attesting to civility and good will on the performer's part, and to the recipient's possession of a small patrimony of sacredness. What remains, in brief, are interpersonal rituals."⁵

These interpersonal rituals of modern life have a dialogistic character, which make up a "circle of civility."⁶ In a telling reference to Mauss, Goffman suggests that interpersonal rituals involve "prestation" and "counterprestation," reciprocating conversational gifts and gestures that together form a "little ceremony."⁷ To explore these social situations, Goffman developed the notion of the "encounter" for a "type of social arrangement that occurs when persons are in one another's immediate physical presence."⁸ An encounter involves the formation of a "we rationale," a sense, communicated through expressive signs of "the single thing that *we* are doing at the time."⁹ Encounters are a form of "focused interaction"¹⁰ where individuals share an interactional sacrament of "eye communion," a shared sense that the self is always dependent on the involvement of the other.¹¹

Goffman notes the social norms against stepping outside this "circle of civility" in public space are so strong, that various forms of lolling (as compared with loitering) must be masked by various acts of "side involvement" such as smoking, reading a newspaper or staring at otherwise unremarkable objects. Goffman cites newspaper reading as an exemplary form of "civil inattention," a useful prop that allows one to disengage from others under the cover of legitimate self involvement.¹² Such strategies allow individuals to excuse themselves from committing the improper performances of negative rituals, that of "cutting" someone, the slighting act of ignoring or denying an encounter overture. The social norm against "the cut" is, for Goffman, one of the strongest social taboos in middle class North America. Goffman implies that the avoidance of a cut is a necessary ingredient to the interaction of two parties who hate one another—a minimal acknowledgement of the other that stops the scene from breaking down into violence.¹³

Goffman's discussion of pedestrian traffic provides a vivid illustration of the interactional nature of the "eye communion" of public space,

5. *Id.* at 63.

6. *Id.* at 75.

7. *Id.* at 63. For more information on the work of Marcel Mauss see *infra* note 29 and accompanying text *infra* page 72-83.

8. GOFFMAN, ENCOUNTERS, *supra* note 2, at 17.

9. *Id.* at 18.

10. Unfocused interaction involves a fleeting proximity—such as when two people sitting in the same room are aware of one another. *Id.*

11. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2, at 91.

12. GOFFMAN, BEHAVIOUR IN PUBLIC PLACES, *supra* note 2, at 84.

13. *Id.* at 116.

in what he refers to as “by-passing” encounters.¹⁴ In passing-by, pedestrians signal their intentions while moving, a process that Goffman refers to as “body gloss,” of signaling ones’ intentions through a gestural syntax. By providing a “gestural prefigurement” a pedestrian transforms himself into a sign that can be read by other pedestrian bodies. And, as Goffman notes, the shell of the human body, unlike that of a car, can easily be maneuvered out of the way of incoming crashes: pedestrians can twist, duck, bend and turn sharply, and therefore, unlike motorists, can safely count on being able to extricate themselves in the last few milliseconds before impending impact.¹⁵ Informal rules are followed in pedestrian traffic which often appears to ‘loosely copy’ the formal rules of road traffic where pedestrians appear to flow in lanes, with the innermost part of the street the slowest.¹⁶ Pedestrians are capable of scanning for upcoming collisions and conduct a ‘body check on themselves’ to assure that, as a passer-by, they are capable of maintaining a ‘front’—a minor adjustment to clothing such as a woman covering her bare shoulder, would be a common example.¹⁷ Oncoming pedestrians engage in a sort of gestural dialogue, each signaling their course and intentions.¹⁸ “Streets can nicely provide the ingredients for a character contest.”¹⁹

Goffman posits passing-by encounters as a sort of zero-sum game of gestures, where a “circle of civility” produces a smooth flow of unmolested bodies. Goffman sees street scenes such as pedestrian traffic as a syntax of rules which must be obeyed if we are to remain civilized; to break this reciprocating circle is to make oneself vulnerable to the violence of the modern world, disorder which he depicts the police as incapable of controlling. “It is inevitable,” Goffman suggests, that citizens must expose themselves both to physical settings over which they have little control and to the very close presence of others over whose selection they have little say. “Such settings can bring disease and injury to those within them. And those present can introduce all of the basic dangers inherent in co-presence: physical attack, sexual molestation, robbery, passage blocking, importunity, and insult.”²⁰

Given the delicate and easily damaged character of interactional exchange that Goffman posits, it should be little surprise that he views the activities of importuners such as beggars as a direct threat to this

14. GOFFMAN, *RELATIONS IN PUBLIC*, *supra* note 2, at xii, 7, 16.

15. *Id.* at 8.

16. *Id.* at 9.

17. It seems to me that the British are especially attuned to including umbrellas in their body checks, as a sort of collapsible second skin that can be deployed as an unintentional weapon.

18. GOFFMAN, *RELATIONS IN PUBLIC*, *supra* note 2, at 13.

19. *Id.* at 15-16.

20. *Id.* at 329.

order, *rather than as a constituent part of it*. While Goffman says little directly about the importuning conduct of begging, it seems likely that he would view beggars in the same way as he does “importuning homosexuals”—as “communication exploiters” who abuse the civil “contact system” which enables people to remain open to encounter overtures and maintain a scene of civility.²¹

This view of those begging as communication delinquents who spoil the “eye communion” of public space, is dramatically confirmed by Goffman in his essay, “Normal Appearances,”²² in which he makes it clear that beggars are a direct threat to civility. Drawing on a literature describing pickpockets, grafters, private detectives, secret agents, and the like, Goffman describes individuals in public space as constantly exposed and at risk. He conjures up a sphere of vulnerability, where the pedestrian must be constantly wary of being attacked. In a passage which Tom Burns has characterised as “bleak and menacing,”²³ Goffman approvingly quotes Lévi-Strauss, who describes the “grotesque gestures” of importuning types—beggars, hawkers, peddlers and various types of touters—in the streets of Calcutta.

The Universal mendicancy is even more profoundly disquieting. One dare not meet a gaze frankly, for the simple satisfaction of making contact with another man; the slightest pause will be interpreted as weakness, as purchase for an importunity . . . The higher they place me the greater their hopes that the nothing they ask of me becomes something.²⁴

Leaving aside the disregard Goffman demonstrates for the historical and racial dimension of such a comparison, it is disappointing to realize Goffman’s inability to look beyond importuning conduct as a form of semiotic delinquency. Goffman relies on a Hobbesian view of human nature, where any pausing to consider the importuning of another is a weakness which exposes one to disorder and violence.²⁵ Remarkably, Goffman fails to understand this importuning scene not simply as disorder, but as a set of conventions which *make up* public order; in this case the accessibility of the “haves” as a legitimate target of the “have-nots.”²⁶ Indeed, it is both ironic and disappointing that Goffman, the greatest critic of the total institution, which as he reminds us, represents

21. GOFFMAN, BEHAVIOUR IN PUBLIC PLACES, *supra* note 2, at 141-43.

22. See generally GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2.

23. THOMAS BURNS, ERVING GOFFMAN 102 (1992).

24. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2, at 333 (elision original) (citing Lévi-Strauss).

25. Marshall Sahlins, *The Spirit of the Gift*, in THE LOGIC OF THE GIFT: TOWARDS AN ETHIC OF GENEROSITY 83-84 (Alan D. Schrift ed., 1997).

26. BURNS, *supra* note 23, at 102.

a form of social control he condemns as nothing less than “grotesque,”²⁷ seems blind to the power relations of public space importuning, of the “grotesque” gestures of the hungry and poor.

At this point, I am going to refrain from carrying on with a critique of Goffman, and instead focus on the more vital issue: how can we take Goffman’s notion of “encounter” which posits an immediate, zero-sum, atemporal game of interaction, and re-cast it in such a way that captures the complexity of importuning conduct—and the relations of power embedded in such interaction. My strategy is to re-construct Goffman’s concept of encounter by re-casting it within a “sociology of giving,”²⁸ which is concerned with how practices of giving play a central role in the moral economy of everyday life.

As Mauss notes in his famous essay on the reciprocity of the gift exchange, the gift can never exist without obligation, without the expectation of first accepting the gift and then returning it.²⁹ Of course, Goffman does draw on the reciprocal nature of the gift in his notion of encounter.³⁰ But he does so in a narrow way that excludes the act of material giving and taking between strangers: he reserves the notion of gift and giving for the intimate and private relations of those who know one another.³¹ Although Mauss focused specifically on the circle of gift giving and sacrifice inherent in “archaic societies” (most notably in the potlatch), he still noted that the cultural expectation of the gift remains central to the everyday of twentieth century life. “A considerable part of our morality and our lives themselves are still permeated with the same atmosphere of the gift, where obligation and liberty intermingle. Fortunately, everything is still not wholly categorized in terms of buying and selling.”³²

This permeation is perhaps most vividly illustrated by Richard Titmuss in his brilliant study of blood donation. He describes blood donation as an institutional web of gift relations which generates a profound complex of trust and altruism, fusing the politics of welfare with “the morality of individual wills.”³³ We have seen, however, in the blood contamination scandals in France and Canada during the 1980s,

27. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2, at 336.

28. See, e.g., HELMUTH BERKING, SOCIOLOGY OF GIVING (1999); THE LOGIC OF THE GIFT: TOWARDS AN ETHIC OF GENEROSITY (Alan D. Schrift ed., 1997).

29. See MARCEL MAUSS, THE GIFT: THE FORM AND REASON FOR EXCHANGE IN ARCHAIC SOCIETIES (1990).

30. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 2, at 63.

31. See *id.* at 188-237.

32. MAUSS, *supra* note 29, at 65.

33. RICHARD TITMUSS, THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY 12 (1970).

how this complex can break down within state-sponsored practices of altruism, with deadly results for the vulnerable.

A central theme of Mauss's work is that the gift makes the person who accepts it inferior. There is never any such thing as a "free gift," Mary Douglas reminds us in her reading of Mauss.³⁴ The gift recipient is somehow always placed in a context of reciprocity and indebtedness. The gift of charity can create particular obligations as it involves a notion of sacrifice by the giver. Mauss notes that "alms are the fruits of a moral notion of the gift and of fortune on the one hand, and a notion of sacrifice, on the other."³⁵ "Though we laud charity as a Christian value," Mary Douglas writes, "we know that it wounds."³⁶ This wound is at least partially inflicted with the contradiction that those to whom we feel the most indebtedness—those who give selflessly as a charitable act—at the same time attempt to place themselves outside the realm of reciprocity. The evocation of charitable selflessness evokes an even stronger notion of debt.³⁷ Gift giving can never escape the "logic of exchange," the expectation that the gift is to be paid back.³⁸ As Alvin Gouldner argued, the "norm of reciprocity" plays a central role in structuring obligation and responsibility in everyday social relations.³⁹

This paradox is further heightened by the highly visual character of the gift which evokes an element of unexpectedness and surprise: the essential quality of the gift as a visual act, as something that has to be unwrapped, revealed to our eyes for it to be truly real.⁴⁰ Gifts are able to act at a distance for absent givers, often under the sign of apology. Certainly, the giving of an apology is perhaps the most subtle but widespread example of the paradoxical nature of the gift: apologies allow for an expression of self-admonishment and wrong-doing which disarms the moral claim of the victim. In daily encounters, it is still considered poor manners in all but the most extreme circumstances not to "accept" an apology when given, even if the apology is not believed to be sincere. Some commentators, in the wake of the recent conduct of former President Clinton, have suggested that the apology has become a central trope of political discourse in the late twentieth century.

34. Mary Douglas, *Foreward: No Free Gifts*, in MARCEL MAUSS, *THE GIFT: THE FORM AND REASON FOR EXCHANGE IN ARCHAIC SOCIETIES* vii (1990).

35. MAUSS, *supra* note 29, at 17.

36. Douglas, *supra* note 34, at viii.

37. Ralph Waldo Emerson, *Gifts*, in *THE LOGIC OF THE GIFT: TOWARDS AN ETHIC OF GENEROSITY* 27 (Alan D. Schrift ed., 1997) (1844).

38. See generally MAUSS, *supra* note 29.

39. See generally Alvin W. Gouldner, *The Norm of Reciprocity*, in *FOR SOCIOLOGY: RENEWAL AND CRITIQUE IN SOCIOLOGY TODAY* (1973).

40. Marilyn Strathern, *Partners and Consumers: Making Relations Visible*, in *THE LOGIC OF THE GIFT: TOWARDS AN ETHIC OF GENEROSITY* (Alan D. Schrift ed., 1997).

In exploring the paradoxical character of the gift in his work *Counterfeit Money*, Derrida draws attention to the linkage between notions of time and the gift.⁴¹ Derrida carries out an analysis of what he calls the “gift event” where the gift can never exist as an independent act; it must be part of a field of consciousness that involves memory and debt. “The gift that cannot be given away ceases to be a gift,” comments Lewis Hyde, a paradox which rests at the heart of the creative process for artists who see their expression as gift-like, yet must still make a material living: there is nothing in the giving labour of art that will automatically “make it pay.”⁴² At the same time, the very essence of the gift event as a selfless, forgotten act is undercut by the act of giving. As Derrida suggests.

For there to be a gift, there must be no reciprocity, return, exchange, countergift, or debt. If the other *gives me back* or *owes me* or has to give me back what I give him or her, there will not have been a gift, whether this restitution is immediate or whether it is programmed by a complex calculation of a long term deferral.⁴³

It is in this sense that Derrida suggests that Mauss speaks about *everything but* the gift.⁴⁴ Prestation, contract, exchange, countergift, sacrifice—actions that rely on debt and remembering, destroying the very essence of the gift. Derrida suggests that “the truth of the gift is equivalent to the non-gift or to the non-truth of the gift.”⁴⁵ The gift is a temporal “present” which can never be sustained.⁴⁶

In a position similar to, but distinct from, Derrida’s, Bourdieu points out that the “dual truth” of the gift involves self deception, it is “a lie told to oneself.”⁴⁷ This dual truth of giving makes the “gift” a deeply ambiguous, even dangerous event. Bourdieu notes that the gift always takes place in the temporal context of a counter-gift sometime in the future, and thus make up a symbolic “gift economy” which acts to structure relationships of obligation.⁴⁸ And because the gift is always expressed in the language of obligation, such giving sets up acts of “legitimate domination.”⁴⁹ This gift economy is central in the exercise of symbolic power relations, described by Bourdieu as “power relations

41. JACQUES DERRIDA, *GIVEN TIME: I. COUNTERFEIT MONEY* (1992).

42. LEWIS HYDE, *THE GIFT: IMAGINATION AND THE EROTIC LIFE OF PROPERTY* 273, xiv (1979).

43. DERRIDA, *supra* note 41, at 13.

44. *Id.* at 24.

45. DERRIDA, *supra* note 41, at 27.

46. *Id.* at 15.

47. Pierre Bourdieu, *Marginalia—Some Additional Notes on the Gift*, in *THE LOGIC OF THE GIFT: TOWARDS AN ETHIC OF GENEROSITY* 232, 321 (Alan D. Schrift ed., 1997).

48. *Id.* at 234.

49. *Id.* at 237.

that are set up and perpetuated through knowledge and recognition, which does not mean through intentional acts of consciousness. In order for symbolic domination to be set up, the dominated have to share with the dominant the schemes of perception and appreciation through which they are perceived by them . . . they have to see themselves as they are seen.”⁵⁰

For Bourdieu, the gift economy plays a central role in the production of the symbolic violence of everyday relations. David Cheal draws on Bourdieu in his study of personal gift giving in Winnipeg, Manitoba. For Cheal, gifts such as wedding presents and Father’s Day cards have a “free-floating” presence within a “moral economy of interpersonal relations,” and carry out forms of interaction that otherwise are only weakly institutionalized.⁵¹ For Cheal, a “gift economy” is highly moral in nature, making possible the “extended reproduction of social relations.”⁵²

I propose to expand and re-orient Goffman’s notion of encounter to take account of the “gift economy” and “gift event” which begging conduct is a part of. This re-orientation will allow us to escape a narrow “zero sum”, a temporal notion of civility which Goffman constructs. The concept of the *gift encounter* encompasses this re-orientation. Begging does not simply generate an immediate and passing encounter, but rather is constituted by, and is experienced and regulated within, a much wider social field of memory, debt, obligation and reciprocity. Indeed, efforts to control begging can be viewed as fundamentally about the control of a particularly ambiguous and anxious form of gift giving that takes place primarily between strangers, between people who have little personal connection to one another, and who must structure their fleeting relationship in terms of dominant norms of charity, work, and feelings of social responsibility. And of course, it is precisely this wider political field which contextualizes the interaction between the begging and the begged that has been the target of widespread neo-conservative reforms in Canada, the United States and Britain.

I define gift encounter as a focused form of social interaction, occurring in public space, which involves the importuning of an object from one stranger to another in the context of charity, desert and need. A gift encounter is constituted by three elements: a) the conduct of the importuner; b) the conduct of the passer-by; and c) an object importuned and potentially given and taken. These three inter-related elements encompass all forms of begging conduct in public space, be it a home-

50. *Id.*

51. DAVID CHEAL, *THE GIFT ECONOMY* (1988).

52. *Id.* at 19.

less person cadging change, or a licensed collector importuning for a national charity. Gift encounter elements are shaped and ordered by a range of social norms and forms of regulation, including laws that attempt to control or prohibit visibly indigent begging. The central concern of officials in ordering gift encounters is to address the central paradox of “the gift”, that is to ensure that there is a “re-gift”, that something is given back to the giver in some material form. And it is this concern with enforcing a contractual form of exchange that is as the centre of gift encounter governance. The struggle over the control of the gift encounter is the struggle *over the moral character of the re-gift, of the act of somehow creating a “pay back” for the thing given sometime in the future.*

The struggle over the control of the re-gift can be demonstrated in the two competing forms of gift encounters which can be considered to be at opposite ends of a spectrum of importunity in public spaces. At one end is visibly indigent begging, where the importuner is not capable of returning a material re-gift. The initial gift is made without the expectation of return, an act of charity that often involves some sort of faith in the character of the importuner—that the given object of money, for example, will not be translated into a morally suspect gift of alcohol or drugs, but will be spend on food and shelter. Visibly indigent begging can be considered an *open gift encounter*, where elements of the gift encounter are configured in such a way that no stable or visible re-gift is offered back—the homeless person cannot “pay back” the gift of pocket change. It is the open character of visibly indigent begging that has been historically the target of regulation, where the gift encounter elements are closed in to create some form of re-gift and reciprocity. The often illegal open gift encounter, considered socially dangerous because of the lack of reciprocity, can be contrasted with the closed gift encounter of official charity collections, where the three elements are licensed to structure an official re-gift to some morally worthy and usually blameless “absent victim” sometime in the future. A City of Saskatoon, Canada by-law’s definition of “pan-handle” provides a classic example of this formulation:

“Panhandle” means to beg for or ask for money, donations, goods or other things of value, without consideration, whether by spoken, written or printed word or bodily gesture, but does not include soliciting for charitable purposes by an organization with permission to do so from the City.⁵³

Note how this definition encompasses the three gift encounter ele-

53. The Panhandling Bylaw No. 7850, § 3(f), City of Saskatoon, Canada By-Laws (2001), available at http://www.city.saskatoon.sk.ca/org/clerks_office/bylaws/7850download.doc.

ments to prohibit open gift encounters to the homeless, while at the same creating an exception for a gift encounter for an official charity which can administer a re-gift to a worthy victim. And of course, it is the possible presence of a visible re-gift that homeless people use as a point of resistance, often attempting to color their importuning with a demonstration of skill, talent, product or service of sort (as a form of “consideration”) in the activities of squeegee cleaning, busking and homeless paper selling.

III

A caution should be immediately registered: a concept is a thematic and intellectual form of scaffolding which must give way at some point to a re-oriented or adjusted perspective or idea. Indeed, the most productive concepts are those which have a sort of self-destructive quality to them; they reach beyond themselves in a way that has tremendous exploratory and descriptive power, yet in doing so the concept itself is rendered exhausted in a new space of inquiry. With this in mind, a few tentative suggestions can be made about the possible application of the gift encounter as a concept for our understanding of the socio-legal character of begging regulation.

The concept of the gift encounter is useful in laying bare the normative and discriminatory character of begging governance, dramatized most vividly in the way in which visibly indigent people are a target of order and punishment, while official charity collection is constructed as a legitimate and morally worthy activity which dramatizes a particular expression of middle class probity. Certainly, when one examines attempts to govern gift encounters through the configuration of the three elements to produce a particular re-gift, it is clear that the outlawing and criminalization of visibly indigent gift encounters is nothing less than a socially vindictive and disgraceful attack against some of the most marginalized and desperate people in society who require gifts of pocket change in order to survive, and, in taking a gift, have nothing material to give back. Indeed, laws targeting visibly indigent begging can be viewed as a sign of how neo-liberal contractualism has penetrated the micro-management of strangers who communicate to one another in the most fleeting circumstances of public spaces.

For those of us interested in testing the constitutional soundness of anti-begging legislation, the gift encounter provides a sort of elemental template to dismantle anti-begging offence sections, and lay them bare against a wider social landscape where freedom of expression and a right to the liberty and security of the person are enshrined civil rights. In disrupting the taken-for-granted character of how street begging is

seen as isolated incidences, the policing of visibly indigent begging can be clearly linked to wider rationalities of social welfare reform in particular, where the control of open gift encounters is, for example, enforced in “welfare to work” initiatives where recipients are presumed to be work-shy and must be made to “pay back” a “civil” society. Indeed, current efforts to prohibit visibly indigent begging can be viewed as an effort to control the compassionate impulses and feelings of the passerby, a central theme of vagrancy law since the turn of the nineteenth century.⁵⁴ As the celebrated Police Magistrate Patrick Colquhoun stated in 1806, “begging is a species of extortion to which the tender hearted are chiefly exposed.”⁵⁵ And it is this construction of the compassion of the open gift encounter as a “problem” of government that rests at the heart of current efforts to control and prohibit visibly indigent begging.

The gift encounter is useful in that it allows us to think in complex ways about the nature of the relationship between regulation, law, and power. Gift encounters are the subject of the full majesty of “the law,” but they are also governed by the most subtle and informal tactics of order—what I have called elsewhere “technologies of compassion” such as token or “diverted giving” programs. The public space gift encounter is a noteworthy example of a historically-specific site of social interaction which is constituted by a complex of discourses and practices. By conceptualizing the elements of begging conduct, we can avail ourselves of a conceptual tool to explore a question that Foucault, in his later work, suggested was key to understanding the nature of modern power: How shall I conduct myself in relation to the conduct of others?

54. JOSEPH HERMER, *POLICING COMPASSION: BEGGING, LAW AND POWER IN PUBLIC SPACES* (forthcoming 2002).

55. PATRICK COLQUHOUN, *A TREATISE ON INDIGENCE, EXHIBITING A GENERAL VIEW OF NATIONAL RESOURCES OF PRODUCTIVE LABOUR* 75 (1806).