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Introduction

In 1691 the colonial government of New York City enacted a law restricting street trading in and around public produce markets. The law came in response to complaints from merchants about itinerant Scottish peddlers who had been doing brisk businesses on the streets outside the markets (Bluestone 1991). These immigrant peddlers were stealing business, it was claimed. Additionally, they dirtied the streets and generally created a public nuisance. Despite protests by the peddlers, the city complied with the demands of the merchants and the peddlers were forced to do business elsewhere. Thus the opening shots were fired in what would become a perpetual struggle involving business interests, city government and street vendors over the right to and proper use of the street in New York City.

The issues and players in the conflict over street vending today are, at least superficially, surprisingly similar to those of the late 17th Century, albeit on a much larger scale. Businesses and real estate interests still view street vendors as a nuisance, vendors still claim a right to do business on the streets, and city government continues to manage the issue through various tactics and strategies. This paper examines these tactics and strategies employed by New York City government to manage street vending in light of constant pressure from business and real estate groups to “do something” about the problem. I argue that the fostering and maintenance of a condition of uncertainty and illegibility is one of the main strategies employed by city government in order to regulate and control street vending. This strategy is a flexible, cost efficient alternative to large scale crackdowns or the maintenance of constant, aggressive enforcement, both of which I will show are more or less infeasible and undesirable from the standpoint of local government. Although examining the strategies of resistance employed by street vendors themselves is part of my larger project, this paper is not about the ways vendors claim a right to the city, but rather, it is about the role of uncertainty and illegibility in regulating, controlling and ultimately denying vendors a right to the city.

Street Vending in New York: The Current Situation

Before going into detail about the ways in which street vending is regulated and managed, it will be useful first to give a brief overview of the current vending situation in New York. It is estimated that there are roughly 10,000 street vendors currently doing business in New York City. Of these 10,000, only 3,583 are formally licensed (SVP ----). However, it should be noted that not all of the roughly 6,500 “unlicensed” vendors are doing business illegally. For instance, a New York State law enacted in the 19th Century still exempts war veterans from any city-imposed cap on vending licenses. Additionally, a New York City interpretation of the First Amendment of the U.S. Constitution deems the sale of printed material as an expression of free speech (Duneier 1999). Thus, vendors selling goods such as books and magazines are allowed to operate without a license. Veteran and “First Amendment” vendors make up a large share of the 6,500 “unlicensed” vendors, though there is no official number. Given these exemptions, it can be assumed that, if the number of 10,000 total vendors is more or less correct, the number of street

vendors that are operating *entirely* informally, that is, without a license or exemption is relatively small. This paper will focus primarily on licensed vendors and the ways in which they are driven in and out of temporary states of informality.

The vast majority of street vendors are foreign born, many of them recently arrived immigrants. English proficiency varies among vendors, with those hailing from nations where English is common and those with longer tenure in the U.S. obviously faring better. A large number of vendors know only basic English, many do not speak English at all. Vending niches tend to be occupied by one or two ethnic groups. For instance, food vending is dominated Bangladeshi, Egyptian and a smaller number of Afghani immigrants (SVP). Senegalese and other West Africans dominate the general merchandise market, selling goods such as handbags, watches and tourist knick-knacks (Stoller 2002). While the aforementioned vendors operate primarily in the central business districts of Manhattan, Chinese and Mexican street vendors typically do business in Asian and Latino neighborhoods, respectively (Lin 2000, Smith 1996).

The laws governing street vending are complex and convoluted. The body of vending laws has been built up over the course of nearly a century, with a number of laws either obsolete or contradictory. Additionally enforcement of vending laws falls under the jurisdiction of no less than six city agencies, often with conflicting mandates: the Department of Consumer Affairs, the Department of Health, the Department of Sanitation, the Parks Department, the Police Department and the Department of Transportation (Gaber 1993). I will not go into the details of the laws here, in fact, a detailed account of New York's vending laws would require its own small book. For now, it is enough to say that there are hundreds of laws regulating almost every aspect of street vending. I will go into more detail about the legal landscape of street vending later in this paper, where I will describe how the nature of vending laws produces a perpetual state of uncertainty on the street.

Theoretical Context

I argue in this paper that street vendors in New York are denied a right to the city by a strategic deployment of illegibility and uncertainty which leads to a specific and unique form of informality. It seems rather counterintuitive that city agencies and laws charged with regulation and control would foster such an environment of informality and uncertainty. But we must remember that informality cannot be conceptualized as a process that occurs *outside* of the state, but rather as a phenomenon produced by the state (Roy 2005). Failure of the state to regulated urban informality should not necessarily be seen as a "random occurrence" or "unwelcome result of scarce resources" (Fernandez Kelly and Garcia 1989), rather, it is at times a flexible strategy for dealing with complex issues. Roy shows in her work on Calcutta the ways in which informality is fostered as a flexible state strategy for the management/control of poverty in that city. What is created is the city of constant crisis, "...a crisis that must be managed and regulated" by the state apparatus, usually to the disadvantage of informals (Roy 2004, 160). Additionally, scholars such as Saskia Sassen (1991), Manuel Castells and Alejandro Portes (1989) have convincingly shown that urban informality in the developed world is not a marginal practice existing outside of late capitalism. It is not simply a backwards urbanism imported to the First World city by Third World immigrants, rather, it is tied up with and produced by the current political-economic structure of the advanced capitalist city.

If we reject the assumption that the current situation is simply a matter of laws that do not work or is simply a case of Third World immigrants bringing a “backwards” informal economy to the First World, then what is actually going on? There must be deeper, more complex homegrown processes occurring in New York City in regards to street vending and urban informality. If this is the case, Nikolas Rose (1999) provides a useful analytical framework to help us think through the seemingly counterintuitive processes occurring on the streets of New York.

In his book *The Powers of Freedom* (1999) Rose takes up Foucault’s concept of governmentality and attempts to demonstrate how regimes of discipline and control have evolved over the course of history, specifically how these regimes have been shaped and influenced today by the rise of neo-liberalism. Rose argues that beginning in the late 19th Century, but increasingly in the first half of the 20th Century, government and governmentality operated from a “social” point of view. A vast set of “moral technologies” (Rose 1999, 103) arose during this period with the goal of shaping and reforming the populace into rational, well behaved, and self governing citizens. The emphasis of governance and control was always on the “social” good, for above all, the “social state” was grounded in the modernist belief that “the gradual betterment of the conditions of all forces and blocs within society...could be achieved” (ibid 135).

According to Rose, the rise of neoliberalism marked the death of “the social” in Western political thought. Neoliberalism has influenced important and significant shifts in the nature of the regulatory regimes of modern day society. No longer are these regimes driven by the imperatives of social reform, but rather, the new imperatives of social regulation are increasingly framed in financial and market terms. A discursive shift took place as regimes of control became “administrative rather than therapeutic” (ibid 235). The apparatus of governance “no longer phrases itself in the language of obligation, duty and social citizenship” (ibid 166), instead “it...focus[es] on the delivery of services, and [is] judged according to its capacity to produce results” (ibid 151).

The financial imperatives of the “new public management” necessitated the dismantling of the entire apparatus of social reform and the implementation of new, creative, decentralized regimes of control. Rather than problems to be solved, issues such as street vending became crises to be managed. While there is an almost unbroken lineage of conflict over the street vending in New York City dating back to the late 17th Century, the modern day struggle has taken a unique form, very much in line with the propositions put forth by Rose.

Take by comparison former mayor Fiorello LaGuardia’s crackdown on pushcart peddlers in the 1930’s. LaGuardia’s anti-vending policy was framed in the language of social reform. Thousands of immigrant vendors across the city were moved from the streets into indoor markets constructed at a significant cost in various immigrant neighborhoods across the city. The stated intention of LaGuardia’s campaign was not only to rid the streets of vendors, but also to reform the immigrant peddler. LaGuardia boasted that he had “made merchants” out of swarthy immigrant street peddlers (----). William Fellows Morgan, Commissioner of Markets (the city agency that oversaw the move from the street to indoor markets) further demonstrated the reform-oriented nature of the project in a speech assessing the progress of the market policy.

“In short, it may be said that the experiment, and it was admittedly one, of enclosing a pushcart market has exceeded the expectations of its most pronounced backers. The psychological effect on the peddlers themselves has also been noteworthy; raised overnight to the status of small independent merchants in a modern building, they are showing an initiative that had long been atrophied by the conditions of the old dirty outside markets.” (New York Times, 9/16/1936).

Whether it was genuine in its day or not, the language of reform that pervaded past conflicts is now largely absent from the discourse over street vending in New York. Large scale solutions or crackdowns have also, for the most part, been abandoned. The exception in recent years is former mayor Rudolf Giuliani’s highly publicized, yet ultimately quite limited “quality of life” campaign against street vendors in the mid 1990’s. Giuliani gained much press for his aggressive offensives against street vending in certain neighborhoods, mostly notably 125th Street in Harlem, but, like a number of Giuliani’s projects, the sum of his hard-line theatrics amounted to much less than its parts. For instance, in a highly publicized crackdown of unlicensed West African street vendors on 125th Street in October of 1994, Giuliani flooded the thoroughfare with hundreds of police officers on foot and horseback (Stoller 2002). The show of force was impressive, but limited and certainly not sustainable. The press generated from the episode allowed Giuliani to continue to build his reputation as a “law and order” mayor. Few articles mentioned that most of the 125th Street vendors simply moved to other parts of the city, where they would deal with more subtle, uncertain forms of enforcement (Stoller 2002).

Giuliani’s moments of bluster notwithstanding, the vending conflict in New York during the late 20th Century, and especially under the present mayoral regime of Michael Bloomberg can be characterized as the constant management of a crisis. Uncertainty of enforcement and the illegibility of vending laws lead to a situation in which even licensed vendors operate in an environment in which formality/informality, legality/illegality are not discrete categories, but rather fluid conditions. This environment of uncertainty and illegibility allows city agencies charged with the enforcement of vending laws to operate with a significant level of flexibility. Vending enforcement today occurs on a street-by-street, case-by-case basis. The regulatory arm of New York City government is able to lay relatively dormant when conflicts are at a minimum, but can be quickly mobilize to deal with individual or neighborhood complaints by anti-vending interests such as individual building owners or Business Improvement Districts. The following section will demonstrate in more detail how this process works.

Laws, Real and Imagined

Conventional wisdom dictates that street vending laws, like most laws regulating commercial activity, should have the effect of creating an ordered, more or less predictable environment for business. In reality, the body of vending laws in New York City are one of the largest contributors to the condition of uncertainty and unpredictability that street vendors encounter on the city’s sidewalks. The sheer number

and convoluted nature of street vending laws means that both street vendors and police officers, who are in charge of day-to-day enforcement, exist in a state of mutual ignorance of the laws. Vending laws are often enforced on an ad-hoc basis, usually in response to a complaint from an individual building owner, store manager or neighborhood business group. Often, vendors are given citations for breaking laws that do not exist, or are interpreted incorrectly by police officers.

The “20ft rule” is a good example of the uncertainty created by vending laws (SVP). The law states that street vendors cannot operate within 20ft of a business entrance. A few vendors carry measuring tape to ensure conformity, but most simply “eyeball” the distance. This is usually suitable for all involved, as police seldom waste the time to measure the distance of every vending table from every building entrance while out on the beat. But if pressure is put on a certain police precinct to crack down on vendors, the “eyeball” rule goes out the window. Police will measure the distance of the vending table to the building entrance. A distance of 19’10” is grounds for a citation that can be as high as \$250. To make matters even more uncertain, as written the law does not specify from what point of the table to what point of the building entrance the distance should be measured. With a bit of creative geometry, the police are able to cite almost any vending table for violating the 20ft rule. [Illustration]

In addition to laws regulating such details as the size of vending tables and the proper distance of vendors from a curb or doorway, there are numerous laws regulating the time and place street vendors can do business. The laws regulating the hours when vending is permitted on different streets across the city are as complex and variable as parking regulations. Unlike parking regulations though, there are no signs on individual streets telling vendors when they can or cannot do business. One block may be open for vending from 7am-7pm, Monday through Friday, while another block on the same street may have radically different hours. For instance [example]. The sum of these individual street regulations is a complex map of restrictions that ultimately prevents street vendors from doing business in the busiest areas at the most lucrative times. Vendors are often confined to side streets with little or no foot traffic. Many vendors, citing financial necessity, simply take a chance and set up in restricted areas. Others are unaware that they are in a restricted area and are cited. Additionally, often resulting from mutual ignorance, though at times being acts of conscious misconduct, police incorrectly cite vendors for being on the wrong street at the wrong time, when in fact their spot is legal.

If cited for a violation a street vendor has the right to argue his/her case in front of a municipal judge at the Environmental Control Board (ECB), the agency ultimately in charge of enforcing regulations and administering fines. For a number of reasons, however, most vendors have little choice but to forgo a defense, even for citations they know to be incorrect. The ECB operates very much like a traffic court, in which defendants, after registering their presence, take a number wait for their case to be called. Vendors might wait 5 minutes or an entire morning or afternoon. There is no way of knowing, and most vendors cannot sacrifice an entire morning or afternoon away from their business. If they do choose to appear, the proceedings can be confusing and intimidating, even for a native English speaker. No legal representation or translator is provided by ECB. Vendors must go by themselves before a [municipal?] judge to argue their case. Without sufficient knowledge of English or a detailed comprehension of vending laws (which are only printed in English) vendors simply cannot defend

themselves, even against blatantly incorrect citations. Some vendors bring a friend or even a son or daughter into the hearing room with them to translate, but most simply avoid the process altogether. This is a significant problem given that a number of citations written by police are erroneous. One vendor advocacy group with experience assisting vendors at ECB estimates that half of the tickets vendors receive are erroneous and could easily be dismissed if the vendor had a basic knowledge of the laws and English.¹ Ultimately, rather than navigate an unfamiliar, intimidating and at times impenetrable bureaucracy, most vendors simply pay fines for citations that may or may not be correct. The ECB is the final element in a web of indecipherable laws and procedures that surrounds street vendors on a daily basis and maintains a constant state of uncertainty and unpredictability.

Rather than establishing discrete categories of formality/informality, of legality/illegality, the vending laws in New York City produce a unique form of informality. It is an informality that is fluid and contingent. This type of informality is a condition that can be tactically mobilized by anti-vending interests in a flexible, decentralized, and often invisible battle against street vendors. Why might this situation exist in New York? What are the incentives for maintaining the conflict over street vending at a low level of street-by-street, case-by-case enforcement? In the following section I posit two possible explanations, neither of them mutually exclusive, and both in need of more investigation.

Drawing once again from Nikolas Rose, one possible explanation for the current situation is that this is a prime example of the “new public management”. Fiscal austerity and accountability prevents government agencies from proposing or enacting any comprehensive solution or reform-oriented project to ameliorate the situation. Therefore, the “vending problem” is to be managed rather than solved. Creative mechanisms, of which illegibility of vending laws is just one, are deployed to continually shift the problem around, to manage the issue by dealing with problems as they arise and deploying decentralized, often temporary enforcement measures.

A second possibility, which can of course coexist with the first has more to do with local circumstances including the history and “cultural landscape” of New York City. In New York, perhaps more than in any other U.S. city, street vending as a practice is intimately intertwined with the city’s cultural heritage. Mythic stories of Italian and Jewish immigrants working as pushcart peddlers, eking out a living on the Lower East Side, however overblown, are important components of New York’s identity as the quintessential capitalist city, as a place where anyone, if they work hard enough can “make it”. These narratives are of course “myths”, but they are myths that resonate with the public, enter into the public discourse and ultimately may have an effect on the city’s political landscape.

¹ The Street Vendor Project (SVP), is a small advocacy group run out of the Urban Justice Center, a larger legal advocacy non-profit organization. The main purpose of SVP is to organize street vendors into a grassroots social movement. In addition, vendors who join SVP receive legal representation for citations. The one lawyer on staff at SVP is at ECB several times a week to represent vendors. According to this lawyer, the dismissal rate for citations in cases he assists with is 57%. He made a point to note that the vast majority of these dismissals were for citations that were incorrect *on their face*, and required little or no legal argument.

Preliminary investigation into the matter has shown that New York City politicians (Rudy Giuliani being the exception) are largely unwilling to take a publicly anti-street vending stance, much to the frustration of business and real estate groups who would prefer a vendor-free city. How strong a role the city's history and cultural identity plays in this matter is up for debate and in need of more investigation. Vending as it exists today, even if it had no history in the city, is a difficult, emotional, complex and seemingly intractable issue, just the sort of problem that intelligent politicians usually avoid getting themselves entangled in until it is no longer avoidable. But the history of street vending in New York City no doubt plays some part in the current situation. For example, two recent former mayors, Ed Koch (1978-1989) and David Dinkins (1989-1993) attempted during their terms to take a stand against street vending. But their stances were undermined by the personal connections that both life-long New Yorkers had to street vending. Ed Koch's father, a Jewish immigrant, was a street vendor and David Dinkins himself was a street vendor on the sidewalks of Harlem in his youth. Once the press got a hold of this information it became increasingly difficult for these politicians to keep anti-vending initiatives on the front of their agenda.

The mythic history of New York City as place of opportunity for any newcomer willing to work hard, and as a place where street vending has always been an important strategy employed by said hardworking newcomers may in fact play a role in the reluctance of individual politicians to visibly challenge street vendors and put forth a centralized, well funded anti-vending initiative. Actions such as these risk going against the tide of New York's cultural history and are seemingly best avoided. Until more research can be done to test this hypothesis, it remains speculation at best, but there is a significant possibility that the long history of street vending in New York plays a significant role in structuring the current struggle and debate.

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