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Informal Urbanism: Legal Ambiguity, Uncertainty, and the Management of Street
Vending in New York City.

By

Ryan Thomas Devlin

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

City and Regional Planning

and the Designated Emphasis

in

Global Metropolitan Studies

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Ananya Roy, Chair

Professor Nezar Al Sayyad

Professor Richard Walker

Spring 2010

Abstract

Informal Urbanism: Legal Ambiguity, Uncertainty, and the Management of Street Vending in New York City.

by

Ryan Thomas Devlin

Doctor of Philosophy in City and Regional Planning

Designated Emphasis in Global Metropolitan Studies

University of California, Berkeley

Professor Ananya Roy, Chair

In New York City conflict over street vending has evolved over the years, reflecting the political, economic, and social context of particular eras. This dissertation is focused primarily on the current era of vending regulation in New York and, more broadly, is concerned with the ways in which urban subjects are managed and urban space administered under neoliberalism. In New York, rather than being regulated in a straightforward manner that is guided by formal laws, the practice of street vending is managed informally on the part of store owners, building managers, police officers, even vendors themselves. The key mechanism through which this informal management occurs is legal ambiguity and uncertainty created by complex and convoluted vending laws, which leave vendors open to harassment and intimidation, particularly in high-value, central areas of the city under the control of Business Improvement Districts (BIDs). As vendors learn through experience the blocks or streets where they will receive the most harassment, they eventually police themselves, gravitating to parts of the city where property interests have less resources or influence to maintain effective control over vending. This produces a landscape of street vending where the spatial distribution of vendors is shaped less by actual laws, and is more of a reflection of the power, influence and resolve of individual property owners and property organizations such as BIDs. Through the case of street vending management, this study adds to our knowledge of spatial management in U.S. cities by showing the ways in which legal uncertainty and ambiguity can play a critical role in structuring space. For vendors, New York is not a city of clearly defined legal partitions or walls, but one of dispersed, shifting, and variegated regulations.

The dispersed and variegated nature of vending management also opens up opportunities for challenges and contestation. Vendors, despite mostly lacking citizenship and formal voting rights, nevertheless use a variety of tactics and strategies to contest their current situation. Vendors' political strategies focus heavily on demystifying vending regulations and holding the city and its enforcement agents accountable to the letter of the law. Where legal uncertainty and informal enforcement norms are some of the main tools used to control the spatiality of vending, clarifying murky regulations and demanding regularized enforcement, somewhat paradoxically, becomes a key strategy of resistance.

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comments, and help with this project. There were many busy people aside from vendors and their advocates who took time out of their schedule to speak with me about the issue, who I must also thank. Though we did not always see eye-to-eye on the vending issue, nearly all of the Business Improvement District personnel, city officials, politicians, and business advocates treated me with professionalism and respect, and provided critical insight to the street vending conflict in New York. For this, I am very thankful.

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Ryan Thomas Devlin
Arlington, VA
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Prologue

Conflicts over street vending in New York City are nothing new. In 1691 merchants in the colonial city were unhappy about itinerant street peddlers doing brisk businesses on the streets surrounding public markets (Bluestone 1991). At the behest of market merchants, the administrators of New York enacted the city's first vending laws, banning vendors from streets surrounding public markets until two hours after the market opened. Thus the opening shots were fired in what would become a perpetual battle in New York over street vending, the appropriate use of the city's sidewalks and the right to urban space.

The struggle between vendors, storefront merchants, property owners, and the local state has evolved over the years, reflecting the political, economic, and social context of particular eras. This dissertation is focused primarily on the current regime of vending regulation in New York and, more broadly, is concerned with the ways in which urban subjects are managed and public space administered in an era of neoliberal urban governance. By neoliberal urban governance, I mean a system of management where public investment in social and physical infrastructure has decreased, and privatized, market-based solutions to urban problems are favored (Harvey 1989). It is an environment where local revenue generation relies heavily on property taxes, and cities compete for investment by creating "good business climates", offering tax incentives and subsidies to developers, and generally prioritizing the needs of the real estate sector (Eisinger 1988). Finally, it is an urban condition where the frailty of public infrastructure dedicated to reforming or rehabilitating problematic subjects means urban problems tend to be "managed in place" through novel techniques of governance and control, rather than solved through centralized, state driven reform (Rose 1999).

My main argument concerns the ways in which street vending and urban space are governed in New York. Rather than being regulated in a straightforward manner that is guided by formal laws, the practice of street vending is managed informally, through negotiations, threats, harassment, and intimidation on the part of store owners, building managers, police officers, even vendors themselves. This informal system of spatial management is embedded in and necessitated by broader neoliberal regimes of urban governance in New York. The informal nature of both street vending practice and regulation allows the city a wide range of flexibility in managing the complex and contentious issue of street vending, without actually needing to put forth the resources needed to execute state-driven, large-scale reform. In effect, the city delegates responsibility of vending management to private interests, in some cases this means individual building or store owners, while in others, particularly in central, high-value areas of the city, quasi-governmental Business Improvement Districts (BIDs) take de-facto responsibility for managing vending in their districts.

Anti-vending interests use the complexity of vending law as a tool to control vending on their blocks and in their districts. The uncertainty and confusion caused by New York's convoluted vending code, compounded by the fact that most vendors are recent immigrants relatively unfamiliar with the U.S. legal system, leaves vendors open to intimidation and harassment from various enforcement personnel. As vendors learn through experience the blocks or streets where they will receive the most harassment, they eventually police themselves, gravitating to parts of the city where property interests

have less resources or influence to maintain effective control over vending. This produces an informal landscape of street vending, where the spatial distribution of vendors is shaped less by actual laws, and is more of a reflection of the power, influence and resolve of individual property owners and property organizations such as BIDs.

I use the term informality to describe the current vending situation in order to capture the ways in which activities (of both vendors and enforcement agents) that do not conform to written law are nevertheless generally accepted as the normal state of being. The informal is a condition usually viewed as something outside the state, off the grid of state power. But as this dissertation demonstrates, informality can also be used *by* the state as a mechanism of control. By maintaining much of vending in an uncertain legal condition, the city officials and quasi-governmental agencies such as BIDs gain a great deal of flexibility in dealing with the issue. This flexibility is crucial in an era of neoliberal urban governance, as it helps to smooth over the conflicting mandates of maintaining ordered public spaces and streamlining urban administration.

I also use the term informality in order to connect this research conceptually with the broader literature concerning informal urbanism across the globe. Much of this work, like my own, is concerned with the ways in which the condition of informality is intertwined with circuits of control, state and otherwise (Ward 1999, Roy 2003, Yiftachel and Yakobi 2004). Placing informality at the center of analysis in a study of spatial regulation is somewhat of a departure from the majority of studies in cities of the global North. After all, the informal city—the city of negotiations, of rule-breaking, of off-the-books urbanism, is often thought of to be a phenomenon exclusive to the global South. Cities of the developed world have supposedly left this sort of urbanism behind. Therefore, it should come as no surprise given the dominant analytical framework, that scholarly investigations into the regulation and policing of urban space in U.S. cities rarely focus on the role informality plays in structuring space and actions of urban subjects.

This dissertation attempts to bring a study of informal urbanism to the metropolitan core, in order to demonstrate the ways in which the informal is, in fact, an important organizing logic in the contemporary city. In the case of street vending, the condition of informality—the negotiation, reinterpretation of laws by private property interests, police, BID personnel, and vendors themselves—does not indicate a failure of control, but rather, a different sort of control: one that is dispersed, flexible, variegated, and well-suited to the imperatives of neoliberal urban governance. While it is true that the scale, scope and nature of informality in cities such as New York are different than in cities of the global South, informality is not absent in cities of the North and, in fact, may become more common as the state continues to recede from its social welfare responsibilities and inequality grows.

Street vendors and the practice of street vending figure prominently in this dissertation, but ultimately, it is not the social practice of vending or the social type of the street vendor that is under study here. It is vending law—how it was formulated, its complex relationship to the geographies of vending, and the way it is challenged—that is the focus of analysis. In what follows, I seek to deepen our knowledge of how space and urban subjects are managed in the neoliberal city, point out the ways in which informality is a key factor in this process, and, more broadly, present a complex and nuanced understanding of the relationship between law, space, and power.

Introduction

The chambers of the New York City Council were packed. It was January 31st, 2008 and the Council Committee on Consumer Affairs was holding a public hearing on the “Green Carts” bill. Green Carts was a public health initiative spearheaded by Mayor Michael Bloomberg, aimed at increasing the availability of fruits and vegetables in low income neighborhoods. The initiative would do so by creating specialized street vending permits good only for the sale of fresh produce in neighborhoods specifically designated by city health officials as severely underserved by food retailers. City health officials, community-based organizations, and food justice advocates likely expected a relatively painless hearing. The proposal enjoyed strong support from the mayor’s office and from the city council president, Christine Quinn. Moreover, the plan seemed like a popular one, generally praised as an innovative and efficient solution to providing low income residents with access to healthier foods. But as the hearing entered its third hour, the looks of exasperation on the faces of public health officials and food justice advocates suggested that they had no idea what they had gotten themselves into.

Business organizations, politicians and even some vendor groups spent the interminable hearing railing against the Green Carts bill. Unsurprisingly, deli and bodega owners in low income areas objected to the bill, claiming vendors would constitute unfair competition. But there was a good deal of testimony against the bill even from business and community groups not directly affected by the Green Carts legislation, who nonetheless came to the hearing to speak out against the plan. In the previous few decades, business owners across the city had worked to define vending as parasitic, rather than entrepreneurial activity. After so much effort spent convincing the city to curtail vending, they were concerned that the city was now issuing new licenses, even if those new vendors would be limited to low-income areas. Business interested suggested that if the city health officials were so worried about the lack of fruit and vegetables in low-income areas, that they give subsidies or tax breaks to storefront bodegas who sold produce, rather than support more street vending. In addition to broader arguments about the validity of street vending as a commercial enterprise, business interests cited the city’s poor track-record of vending enforcement and worried that the newly licensed fruit and vegetable vendors would switch to selling more lucrative products or that they would stray from designated low-income neighborhoods and set up in other areas.

Sponsors of the bill faced criticism from both ends of the conflict’s spectrum. Even though it would add 1,500 new food permits over the course of two years, some vendor advocates opposed the proposal, holding a protest on the steps of city hall, claiming that if the city truly wanted to help vendors, the cap on food vending permits, in place and (until this bill) unchanged since 1983, should be lifted entirely. Many council members used the hearing to grandstand for the business community, emphasizing how confusing and convoluted vending laws already were and warning that adding Green Carts would simply complicate matters even more. The audience of business owners and property interests erupted into applause many times as council members detailed the evils of street vending and the city’s poor record of managing the practice effectively.

All the while, public health officials and community activists listened incredulously. Their innovative—almost quaint—plan to bring fruits and vegetables to low-income communities using food carts topped by bright green umbrellas and staffed

by friendly vendors had just crashed against the perilous shoals of the street vending issue in New York City. The Green Carts initiative would eventually pass a council vote, but only thanks to some political arm twisting on the part of the mayor and council president, and after it was amended to reduce its scope.

The story of Bloomberg's Green Carts legislation—which was not even a vending bill, but rather an public health initiative which happened to use vendors to accomplish its goals—vividly demonstrates the fiercely contentious nature of the street vending conflict in New York City. It also shows the level of frustration nearly all stakeholders feel with the current situation. The situation today is one of legal confusion, high levels of informal practice (both by vendors and those attempting to regulate them), and day to day uncertainty on the sidewalks for vendors and their opponents. It is a situation which most stakeholders deem dysfunctional, but one which many are reluctant to change, for fear of what a different regulatory system would look like. During one interview, a Business Improvement District official describe the street vending issue to me as “a colossal public policy failure.”¹ To describe things in this manner, however, ignores ways in which the current regime of governance actually does work to structure the landscape of street vending, albeit not always in the ways that written laws dictate.

Street vending in New York is managed through countless negotiations, acts of intimidation, legal threats and harassment by building managers, private security personnel, city police officers, even vendors themselves. This process of spatial management does not always reflect formal law. Vendors are routinely chased from legal spots by building owners or the police, while at the same time, find areas of the city to do business that are technically off limits to vending, but where enforcement and harassment is relatively light. Due largely to its complex and convoluted nature, vending law is referenced, and hangs over interactions between anti-vending interests and vendors like a specter, feared by vendors but not fully understood by any of the actors involved. It serves only as a point of departure for negotiations and threats, rather than a guiding compass for organizing space. Ultimately, the landscape of vending reflects less what formal laws dictate, and more the power, influence and resolve of individual property owners or property associations such as Business Improvement Districts, to limit vending on their blocks or in their neighborhoods. In this way, because activities of both vendors and enforcement agents generally do not conform to written law, yet are accepted by most parties as the normal (if not optimal) state of being, I argue that street vending in New York is managed informally, rather than regulated in a straightforward sense.

This variegated, decentralized, and privatized mechanism of vending management is embedded in, and necessitated by the current neoliberal regime of urban governance. Conflicting mandates to streamline city agencies, yet maintain ordered public spaces desired by property interests means the city, in essence, delegates the responsibility of vending management to private interests, who, due to the complexity of vending laws and severity of punishments for violations, are able to use threats and intimidation to limit vending in their districts. Additionally, by keeping most vending in an uncertain legal state, when called upon, the city can enact policies of strict enforcement to move vendors off certain blocks or out of specific neighborhoods. Because managing vending through informality allows the city to deal with the issue in a flexible, finically effective way, there is little impetus for the city to resolve the issue of street vending, either through

¹ Interview with a Manhattan Business Improvement District manager (April 2008).

legal reform, a restructuring of oversight responsibility, or social welfare programs to get vendors off the street and into markets—all of which would be politically and/or financially costly.

Informality, as a concept and phenomenon, is usually relegated to work dealing with cities of the global South and rarely arises in discussions about the organization of space in cities of the global North. Much of the work concerning spatial conflict in “developed” cities treats space as “a secondary surface upon which ‘external’ laws instrumentally ‘impact’” (Blomley 1994, 32). Space is shaped by law, for better or for worse, depending on who or what is being regulated. Therefore, the focus in studies of spatial regulation in the U.S. is often on the governing regimes shaping the law (Davis 1990, Smith 1996, Sorkin 1992, Sassen 2001). Little attention is paid to the ways in which the laws actually operate—that is, the way laws are implemented and interpreted by various subjects in space. To quote Blomley again, “law...is not simply imposed upon a local setting, but is instead interpreted in and through that setting” (1994, 46). Blomley is referring here to the process of legal formation, but his phrase holds just as true when speaking of implementation—that is, laws are formulated in the legislative chambers with a specific intention which does not always translate into reality when laws “hit the ground”.

This dissertation is concerned not only with the governing regimes that produced vending law, but also with the ways in which laws are interpreted, negotiated and experienced in the particular setting of a neoliberalizing New York City. There is a significant difference between intent of laws regulating vending and vending practice in the city. This condition is generally considered by most actors as the normal (if not optimal) state of being. In this way, informality plays key organizing role in the spatiality of street vending, and therefore, a different analytical approach than most studies of spatial regulation in U.S. cities is needed. It is an approach which requires disrupting established flows of urban knowledge and drawing on theories of informal urbanism produced in the context of the global South to understand processes occurring in the North.

Following much of the work undertaken on informal urbanism in the global South, this dissertation views the relationship between law and space not as instrumental, but, rather, as complex and contingent. While this is a study of street vending in New York, it is this relationship between law and space, not vendors as a social type, that is the “unit of analysis” of the study. This dissertation undertakes a comprehensive investigation of regulatory approaches to street vending in New York City, and places these approaches in social, political and economic context. It analyzes how vending laws were created through decades of political struggle, how they function to produce informality which is itself a mechanism of control, and, finally, how the current regime of spatial management is challenged by street vendors and their advocates. All of this provides a richer, more complete picture of the ways in which public space managed under neoliberal regimes of urban governance, and the relationship between law, space and power. In what remains of this introduction I will provide some practical background on street vending in New York City, before moving on to a more detailed discussion of the key theoretical arguments being made by this study. The introduction will conclude with a section detailing my methodological approach to studying the issue of street vending and spatial conflict in New York.

I. Street Vending 101: An Introduction to Street Vending in New York City

The practice of street vending in New York City has deep historical roots and a complex current reality. In the body of this dissertation, both the current moment and recent history of street vending will be discussed in detail, but it will be useful here to provide a concise summary of both the history of vending in the city and an overview of the current landscape of vending—including current regulations, vendor demographics, and other general information.

A. A Brief History of Street Vending in New York

From the beginning of European settlement, dating to its days as a small Dutch village huddled at the southern tip of Manhattan, New York has always been a compact city. This density, leading to high volumes of foot traffic, has also always made the city conducive to street vending. One of the first records of the practice comes from the late 1600s, when merchants were complaining about the presence of peddlers around municipal markets, eventually leading to the implementation of some of the first vending restrictions in the city (Bluestone 1991). The new law, enacted in 1691, banned all vending on streets surrounding markets until two hours after the markets closed. Street vending was banned outright by the city in 1707, but the rule was later rescinded because it was deemed unenforceable.

Street vending has always been an attractive economic strategy for newcomers to the city. By the 19th century, the streets of the city's growing immigrant neighborhoods were filled with vendors selling all sorts of goods. Various types of vendors quickly became familiar figures in the public life of the growing city. For instance, the creative songs and cries of “hot corn girls”, usually Irish or African American young women selling steaming corn on the cob, were a common sound in early 19th century immigrant districts. These young women were also a source of consternation for the city's elites, as they disrupted both class-based and gendered notions of the proper behavior in the public sphere (Burrows and Wallace 1999).. “Ole clothes” men were another familiar figure. Their practice of walking the streets collecting and selling used clothing was a particular nuisance to elites because, unlike other vendor types, they could often be found outside the slums, announcing their arrival by ringing bells, collecting discarded clothes of the wealthy and selling items to maids and live-in servants. Not all types of vendors were reviled by the upper class. “Apple Marys”, were mostly Irish women who sold apples on the streets of the Financial District. Perhaps inevitably, a mythology developed around these young women, as stories circulated of Apple Marys giving brokers stock tips during their lunch breaks. They seem to have been looked upon favorably, as a 1923 *New York Times* article looks back at the days when Apple Marys were a common sight in the Financial District, mourning the loss of this picturesque itinerant vendor.²

It is the pushcart that most people likely picture when thinking of the history of street vending in New York City, but the iconic pushcart markets that have come to represent immigrant life of the past did not come into being until the late 19th century. During most of the 19th century, the majority of vendors were itinerant. In some places vendors attempted to set up street stands, usually in the vicinity of municipal

² Austin, F.A. 1923, “Thinning Ranks of Sidewalk Vendors” *The New York Times*. 23 August.

marketplaces, but the Department of Public Works (DPW), which had the responsibility of keeping streets free from encumbrances, would clear vendors out.

During the late 19th century, as immigration increased, so too did street vending and DPW raids against the pushcarts became increasingly common, with city officials confiscating heaps of merchandise. For instance, during one raid, the chief of the city's Sanitary Division reported confiscating two tons of fruit and 500 pounds of fish.³ During another, in the "Hebrew Quarter", the take was a ton of chicken and a quarter of a ton of fish.⁴ But raids were only a temporary solution for the pushcart issue, as street vending was emerging as a both major mode of retailing and source of employment for in new immigrant communities. Eventually, the city stopped trying to prevent vendors from setting up markets and instead adopted an unofficial policy of tolerance, cracking down on markets when conditions became too crowded or unsanitary, but generally allowing them proliferate in immigrant districts across the city.

It is said that in 1886, the first informally tolerated permanent pushcart market was established on Hester Street in the Lower East Side. It was followed by markets on other main thoroughfares in immigrant districts (Bluestone 1991). By 1895, according to the *New York Times* there were 6,000 licensed vendors in the city doing business in dozens of markets.⁵ Eventually, city officials began a slow program of formalizing pushcart markets. In 1903, the city managed to move the most sanitarily troubling pushcarts—fish vendors—off the sidewalks of the Lower East Side and into a designated market area under the approach to the Williamsburg Bridge, which was still under construction at the time. In 1912, city officials discussed plans to ban pushcart peddling altogether below Houston Street (the northern boundary of the Lower East Side) and move pushcarts to enclosed markets under the city's major East River bridges, such as the Manhattan and Queensboro Bridges.⁶ The plan never got off the ground, however, scuttled in part by World War I, when food shortages made pushcart peddlers a critical source of inexpensive provisions (Bluestone 1991). After the War, instead of attempting to move vendors off the streets, city began officially legalizing pushcart markets, bringing them under the jurisdiction of the Department of Markets. By 1927, there were 7,000 licensed pushcart vendors operating in 60 officially designated street markets across the city, and 10-15% of all produce being sold in New York was sold by pushcarts.⁷

The 1920s were the heyday of pushcart markets, but the decade would also usher in trends which would ultimately lead to their demise. The Immigration Act of 1924 slowed the pace of newcomers to the city's immigrant neighborhoods, thereby reducing demand for markets and the supply of vendors. Additionally, the automobile was emerging as an important means of transport, and city officials across the country began to think about ways to retrofit the urban environment for car traffic.

³ *The New York Times*. 1885 "Another Raid on the Vendors: Dr. Edson Captures Several Tons of Bad Food." 21 August.

⁴ *The New York Times*. 1889 "Seized by Sanitary Officers." 25 November.

⁵ *The New York Times*. 1895 "Their Petition is Lost: Fruitless Search for a Complaint of Merchants Against Pushcarts." 24 October.

⁶ *The New York Times*. 1912 "Pushcart Markets." 21 November.

⁷ New York City Department of Markets Annual Report, 1927. *LaGuardia Papers*. New York City Municipal Archives.

By the 1930s, many within city government and the reform-oriented urban elite viewed pushcart markets as an artifact of primitive urban life, out of step with modern ideals of urbanism. Mayor Fiorello LaGuardia, one of the most fervent urban reformers in the city's history, vowed to move all pushcart markets indoors to enclosed market buildings. Aided by Federal Works Progress Administration (WPA) funds, the LaGuardia Administration undertook the ambitious project, constructing new market buildings across the city. The first to open, in 1936, was the Park Avenue Market in East Harlem, then a predominantly Italian neighborhood. Over the next few years, despite opposition from vendors, the LaGuardia Administration closed down street markets across the city, in the name of modernity and urban progress. In 1938 one of the city's oldest and most iconic pushcart operations, Paddy's Market along 9th Avenue in the predominantly Irish neighborhood of Hell's Kitchen, was closed to make way for construction of the Lincoln Tunnel. The march of modernization was more or less completed in 1940, when the city opened the Essex Street Market building in the Lower East Side, ending pushcart vending for good in the neighborhood where it was born. When it was all over, Fiorello LaGuardia had accomplished an impressive task. His administration closed down all the city's major outdoor pushcart markets and replaced them with smaller operations in market buildings. There were still a handful of pushcart markets operating by the time LaGuardia left office in 1945, but these small, vestigial markets, but they operated more as novelties—quaint reminders the immigrant experience of New York's past, rather than crucial components of neighborhood life.

During the middle of the twentieth century, with pushcart markets eliminated and the city enjoying general economic prosperity, street vending was not a major issue in New York. There were still itinerant vendors on the sidewalks selling things like hot dogs and knishes, but their numbers were relatively small. This would change during the 1960s and 1970s. Economic stagnation in New York, coupled with an increase of new immigrants after immigration reform in 1965 created a new demand for and supply of street vendors. There was no cap on vending licenses and while there were some streets off limits to itinerant vendors, the rules were generally not strictly enforced. Vending was made even more attractive when Mayor John Lindsay removed the ordinance requiring vendors to remain mobile, allowing them to set up on one corner for the entire day.⁸

Through the 1970s vending increased, especially in Midtown Manhattan, the city's central business district. Under pressure from property owners and business groups, who viewed vendors as tawdry additions to the Midtown streetscape and injurious to property values, mayor Abraham Beame ushered in a period which saw a flurry of new laws regulating and restricting street vending. In 1977, general merchandise vending was outlawed in all of Midtown Manhattan, followed by a 1979 law change which instituted the first hard cap on vending licenses in the city's history—limiting the number of licensed general merchandise vendors to 853. In 1983, food vending would come to be heavily restricted as well. These numbers, also previously uncapped, were limited to 3,000 full time vendors, and numerous streets in central areas of Manhattan were placed off limits. During the 1980s, bowing to pressure from the real estate sector Mayor Ed Koch fought a number of piqued battles with food vendors during his term as he tried, but ultimately failed, to add more streets to the 1983 restrictions. This tumultuous period will be discussed in much greater detail later in the dissertation.

⁸ Bennett, C. 1967, "Hot Dog Vendors Win City Victory." *The New York Times*. 31 March.

Though heavily regulated, street vending continued to increase throughout the late 1980s, and early 1990s. All that the license caps and street restrictions accomplished was to push many vendors into operating illegally. Unlicensed vending became especially common in immigrant and low-income neighborhoods in the city's outer boroughs and less central areas of Manhattan. Reminiscent of the turn of the 20th century, open-air street markets formed along some of these neighborhood's major commercial thoroughfares including 125th Street in Harlem, Fordham Road in the Bronx, and Fulton Street in Brooklyn's Bedford-Stuyvesant neighborhood. The unlicensed vending problem was large enough that a study by the Administration of mayor David Dinkins recommended lifting or increasing the license cap, to formalize vendors and bring them into the system.⁹ This idea never gained traction, and when Dinkins lost his reelection bid to Rudolph Giuliani, a very different approach to dealing with street vendors would take hold in city hall.

Giuliani won the mayoral election running on a law and order platform, and, following the "broken windows" theory of policing, promised to crack down on minor rule breaking in public space, claiming this would lead to a reduction in major crimes as well. Unlicensed vendors were an obvious target, and the Administration moved forward, clearing vendors off sidewalks and relocating them to designated market areas. While sounding very similar to Fiorello LaGuardia's pushcart initiatives of the 1930s, the Giuliani Administration's plans were much less thorough, and met with only moderate success. The market facilities were usually simply vacant lots, operated by local non-profits or religious groups, and many markets lasted only a few years, failing either due to vendor dissatisfaction, or the fact that the vacant lots became attractive sites for development as the real estate market heated up.

Like Ed Koch, Giuliani would also targeted food vendors in Midtown and the Financial District. The Administration set up a mayoral panel know as the Street Vendor Review Panel, which operated largely behind the scenes and in cooperation with property organizations known as Business Improvement Districts to close hundreds more blocks to food vending in both Midtown and the Financial District. Despite strong protests from food vendor groups and their supporters, the Giuliani Administration moved forward with the plans. The Panel stopped its operations in 2000, after questions arose as to the legal validity of the decision-making process, but restrictions put in place during the 1990s by the panel remained on the books.

In an indirect way, the terrorist attacks of September 11th, 2001 provided some relief for vendors, as police manpower was reoriented towards security initiatives, and some neighborhoods experienced a decrease in vending enforcement levels.¹⁰ Additionally, for Michael Bloomberg, Giuliani's successor, the street vending issue was not high on the list of priorities. Part of this had to do with the fact that vending was already so heavily restricted, there was little more to be done. There were attempts to amend vending laws during Bloomberg's tenure, in ways both favorable and unfavorable to vendors, but not one proposed change even came to the floor for a vote in city council

⁹ *New York in Transition: Itinerant Peddlers and Vendors Everywhere*. A Report to David N. Dinkins, Mayor, Barry F. Sullivan, Deputy Mayor for Finance and Economic Development and Wallace L. Ford II, Commissioner, NYC Department of Business Services by the Small Business Advisory Board, Department of Business Services, 1992.

¹⁰ Interview with a neighborhood leader in SoHo, (November 2007).

chambers. The exception was the Green Carts program, passed in 2008. For most in the vending community, this minor change was not enough, and though throughout Bloomberg's term, vendors called for lifting or abolishing license caps, fairer, more predictable enforcement and the opening of more blocks to vending, vending laws remained unchanged. As the second decade of the twenty-first century begins, vending regulations in place today are still largely the product of the flurry of new laws created between 1977-1983, and the extensions of those laws made by Rudolph Giuliani in the 1990s. This period of legal formation, and the politics and discourses surrounding the process, will be dealt with in a more detailed and analytical manner in the first two chapters of the dissertation.

B. An Introduction to Vending Regulations

Street vending regulations are this dissertation's primary object of study, so they will be dealt with in more detail and in a more critical and analytical way later. Before delving deeper, however, an introductory primer will be helpful, both to orient the reader, and to serve as a reference point to turn back to if needed. This section details the lines of responsibility for legislation and oversight of vendors, and gives a detailed description of vending laws.

One of the reasons for the confusing nature of vending regulations is the fact that there are multiple agencies and governing bodies with the ability to produce and enact legislation. The primary legislative body in New York is the New York City Council. It is in council chambers where, pending mayoral approval, city vending laws originate. In addition to city laws regulating vending, vendors are also subject to agency rules. The city charter grants city agencies, such as the Department of Transportation or Department of Health and Mental Hygiene (DOH), rulemaking authority. Rules are enacted directly by agencies and are not subject to a vote. Rules generally cover less serious matters, such as traffic violations, the Health Code, and permitted behavior in public parks. Generally, violation of rules only leads to tickets and fines, rather than jail time. Both the Department of Consumer Affairs (DCA) and the Department of Health have rules regulating vending. The DOH rules deal mostly with food safety, while the DCA's rules generally overlap with existing city laws. Where rules and laws overlap or contradict one another, city laws take precedence, though in practice, overlapping rules and laws often cause much confusion among vendors and enforcement agents. Rules and laws can be divided into three types: those which establish different legal categories of vendors, those regulating the appearance and dimensions and placement of carts, and those placing certain streets off limits to vending.

1. Vendor Categories

Street vendors are divided into a number of different categories by city law, state law, and Federal judicial rulings. The city distinguishes between general merchandise vendors (commonly called general vendors), who sell all non-food items and food vendors, who sell prepared and unprepared foodstuffs. General merchandise vendors are regulated by the Department of Consumer Affairs, while food vendors are under the jurisdiction of the Department of Health. General vendor licenses are capped at 853, and have been since 1979. Food vendor licenses are uncapped, but the number of food cart permits—

necessary for the legal operation of a food vending business—are capped at 3,000 year-round permits. During the warmer months, 500 additional food permits are made available, good for use only between the April and October.¹¹

First Amendment vending, that is, the sale of goods deemed protected speech, has legal roots in both city legislation and judicial decisions. When the city capped merchandise licenses in 1979 at an extremely low number, they effectively closed the door to any new vendor interested in selling non-food items. This included any vendor selling books, pamphlets, political literature, or any other material that might be deemed protected speech under the First Amendment. Realizing the potential legal trouble the license cap created regarding constitutional law, in 1982, the city exempted vendors selling *exclusively* written material from the license requirement. The sale of visual art was not granted the same exemption. This was successfully challenged in 1994, when street artists claimed that visual art was also a means of communicating ideas and beliefs, and therefore should be afforded First Amendment protection.¹²

The military veteran vendor category is established by New York state law, and divides veteran vendors into three subcategories, each with their own level of exemption to city street restrictions and license caps. Non-disabled veterans are the least privileged subcategory. They are exempt from the city license cap, but they must follow all city rules regarding street closures. Disabled veterans are eligible to receive two types of licenses. Yellow licenses are also not subject to the city license cap and allow the license holder to vend anywhere in the city outside a delineated area of Midtown Manhattan known as the Midtown Box, even on streets that are off limits to other vendors according to city regulations. The only merchandise vendors allowed by inside the Midtown Box are 140 blue licensed disabled military veterans. These licenses were granted based on seniority, and allow holders to vend on side streets in Midtown. Due to the fact that they carry with them a nearly exclusive legal right to vend in Manhattan’s busiest district, blue licenses are the most coveted among vendors.

Vendor Category	Origin of License
General Merchandise	NYC Department of Consumer Affairs
Food	NYC Department of Health
Military Veterans	New York State
Park Concessions	NYC Department of Parks and Rec.
First Amendment	No License
Unlicensed	No License

¹¹ There is a third category of vending license granted by the city—park vendors, who are licensed by the Department of Parks and Recreation. However, these vendors are not included in this study because of the way park vending permits are distributed. The Parks Department accepts bids for various designated concession locations throughout the city parks system. The bidding for many park concessions can reach six figures, therefore the process is dominated by large food service corporations. Individual street vendors working in parks are most often employees of larger companies, not self-employed like most vendors on city streets. Therefore their experience as vendors, though often just as difficult in its own right, has more in common with employees of the food service industry than independent vendors outside of parks, and will not be covered in this particular study.

¹² Though the lawsuit was brought in 1994, thanks to a long appeals process that reached all the way to the United States Supreme Court, the matter was not resolved until 1997.

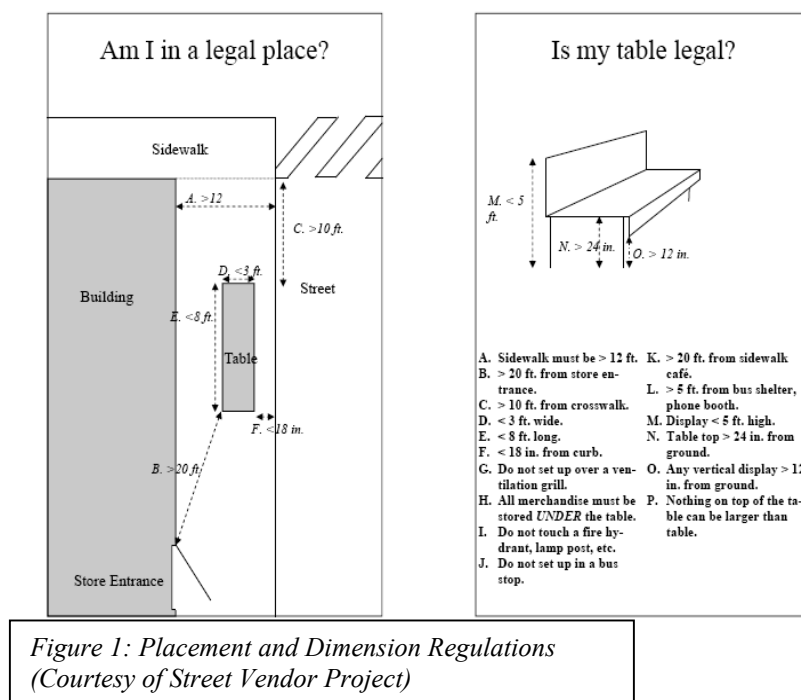
This leaves us with five legal categories of vendors, two created by city law, one a mix of local laws and federal judicial decisions, and one the result of New York state law. Unlicensed vending can be thought of as an unofficial sixth category as it is produced and maintained by city laws that keep the number of vending licenses at an artificially low number. The caps on general and food vending licenses and permits have been unchanged since 1979 and 1983, respectively. Because of the cap, currently the waiting list for a general vending license is more than twenty years long and has been closed. A visitor to the Department of Business Services website interested in becoming a general vendor is told, “unfortunately, with a legislative cap of only 853 licenses, and a waiting list of thousands, the chances of obtaining a license at this time is unlikely”¹³.

Despite the demands of vendor organizations to raise the license and permit caps to a more reasonable level, politicians and agency directors have been unresponsive. It is the unwillingness of city officials to make common-sense adjustments to the license cap, much more than some sort of criminal disposition on the part of vendors, that leads to the proliferation of unlicensed vending. It is for this reason that I refer to the unlicensed vending as an unofficial sixth legal category.

2. Placement, Dimensions and Appearance

There are laws and rules regulating the appearance, dimensions and location on the sidewalk of vending carts that every vendor must follow. These rules can be maddeningly detailed, with the details varying slightly depending on vendor category, adding to the complexity. For instance a food vendor selling his goods on top of a subway ventilation grate is operating legally, while if a general merchandise vendor does

the same thing, he or she is in violation of the law, and subject to a fine as high as \$1,000. Other placement regulations dictate the distance vendors must be from building entrances, street corners, bus stops, fire hydrants, etc. Thanks to this long list of regulations, it can be difficult for a vendor to find a legal spot to sell their goods, even on streets where vending is permitted.



¹³ Department of Business Services Street Vending Fact Sheet. Available at http://www.nyc.gov/html/sbs/nycbiz/downloads/pdf/street_vending.pdf (accessed March 2010).

There are also numerous detailed laws regulating the dimensions and appearance of vending carts and tables. The city health code gives food vendors another layer of rules to contend with.

With so many regulations, it is difficult for vendors to always be in full compliance. This is often not an issue, for just as it is difficult for vendors to conform to all the rules, it is tedious, time consuming, and logistically unrealistic for enforcement agents to ensure full compliance at all times. Where these minor rules become a source of difficulty for vendors is when enforcement agents use sudden inspections and strict enforcement as a tool of intimidation and harassment, forcing vendors to move from certain spots, even if the block is open for vending according to city street restrictions.

3. Street Restrictions

With the possible exception of the cap on licenses and permits, street restrictions are the most exasperating set of laws for street vendors. Vendors contend that even with a license or permit, it is difficult to make a decent living as a street vendor because so many streets in central areas of the city are off limits. Street restrictions were put in place in increments between 1977 and 2001, largely at the request of property interests in various city neighborhoods. General merchandise and food vendors are subject to different sets of street restrictions, with those pertaining to general vending being much stricter. The most heavily affected areas are Midtown Manhattan and the Financial District. Regulations in Midtown are particularly harsh, as general merchandise vendors are banned entirely, and most major streets and avenues are off limits to food vendors as well.

Like so much about vending regulations, street restrictions are a confusing mix of provisions with multiple sources of legal provenance. The most straightforward way a street can be put off limits is through city law or agency rule. A list of streets where vending is not permitted was established by the city council in 1979 for general vendors, and 1983 for food vendors. In addition to the city council, the Department of Consumer Affairs has the authority to close streets through the agency rulemaking process. This is actually the preferred method of closing streets for those intent on limiting vending because rules are not subject to a vote and can be enacted unilaterally by the agency. Agency rules carry more punitive weight than city laws. On streets that are off limits according to city law alone, police can only give a vendor a citation for vending in a restricted area, while in areas put off limits by agency rule, police can confiscate a vendor's merchandise as well as issuing a citation. As a result of this disparity, vendors generally only treat streets restricted by agency rules as off limits, selling with relative impunity on those streets restricted by city law alone.

The two other ways streets can be placed off limits owe their provenance to obscure clauses in the vending laws. One of these clauses, states that no vending is permitted in areas of the city zoned for high density commercial use (C4, C5, and C6 zones). Another bans vendors from sidewalks less than 12 feet in width. Both of these regulations are rarely enforced, and if enforced strictly, would significantly add to the areas where vending was off limits. In fact, nearly every sidewalk in the Financial District, which maintains New York's original 17th century street plan, is technically too narrow for vending. Yet vendors still do business in the area on streets not specifically placed off limits by agency rule or city law. The 12 foot law and zoning-based

restrictions are enforced irregularly, and, like minor rules regulating cart dimension and placement, are generally used as tools for intimidation and harassment.

C. A Profile of New York's Street Vendors

Though the idea has been floated from time-to-time, in recent history there has been no serious attempt by the city to determine exactly how many street vendors are doing business on the sidewalks of New York. A few of the numbers are known. There are 853 licensed general merchandise vendors, and 3,000 food vendors operating with city permits (this number increases to 3,500 during the summer months). Additionally, there are roughly 1,700 military veteran vendors, who are sanctioned by state law. This places the number of vendors operating year-round with some sort of license at about 5,500. The two unknowns when establishing a population figure for vendors are First Amendment and unlicensed vendors. First Amendment vendors are exempt from city licensing requirement, and the city makes no attempt to keep track of their numbers. Unlicensed vendors are, of course, operating illegally, and therefore not counted by any official agency. Various estimates of the unlicensed and First Amendment vendor populations place it at a combined 5,000-6,000 vendors, giving us an total estimate of 10,000-12,000 vendors on the city's streets.¹⁴

Reflecting the city in which they do business, street vendors are an extremely diverse group in terms of race, ethnicity, nationality, and socio-economic status. They range from the homeless man trying to make a few dollars selling books or trinkets, to successful food vending operations that likely rival the proceeds of small restaurants. In general, the more modest operations are those which sell non-food items, while food vending tends to have a higher ceiling of potential success. But within these parameters lies a tremendous amount of variability.

At the bottom of the socio-economic ladder of street vending would likely be unlicensed vendors. Unable to obtain licenses because of the cap, these vendors turn to selling a variety of items which are amenable to a mobile lifestyle of evading police and other enforcement agents. In central areas of Manhattan, unlicensed vending is dominated by West African immigrants, mostly from Senegal, selling tourist-oriented goods such as knockoff handbags, watches and sunglasses. In outer-boroughs and less central Manhattan neighborhoods, unlicensed vending is generally carried out by members of the dominant ethnic group in the particular neighborhood. Chinese vendors ply their trade in Chinatown, West Indians in the Caribbean immigrant neighborhoods of Brooklyn, and Mexicans in Latino neighborhoods across the city. Particularly common are Mexican women, selling flowers, peeled mangos, or food other items from shopping carts. In fact, unlicensed vending as practiced by Mexicans in New York is one of the few street vending "sectors" where women predominate.

In general, legal vending categories are dominated by one or two ethnic groups, reflecting a more general trend of ethnic succession and ethnic niche formation (Waldinger 1996). Though there is a good deal of ethnic variation in the category, non-military general merchandise vendors tend to be West African immigrants. Many of these

¹⁴ *Peddling Uphill: A Report on the Conditions of Street Vendors in New York City*. The Street Vendor Project, Urban Justice Center. New York, 2006.

vendors started out as unlicensed vendors while waiting for their names to come up on the city waiting list for general merchandise licenses.

Another option for vendors waiting for licenses is to turn to First Amendment vending. Ethnically, first Amendment vending is divided among its subcategories. The sale of books and other printed material has long been dominated by U.S. born vendors, usually African Americans, with a smaller percentage of white vendors. The sale of artwork is more varied ethnically. Practicing artists selling their original work are mostly, though not exclusively, U.S.-born whites. The sale of prints and other more commercially-oriented artwork is dominated by Chinese vendors, as well as vendors of a variety of Himalayan nationalities such as Bhutanese, Nepalese and Tibetans. Chinese immigrants also dominate the street-art trade—that is, the practice of drawing quick portraits for tourists or writing a customer’s name in ornate Chinese characters.

Military veteran vendors are more or less split between U.S. born whites and African Americans. Within the category of military veteran vendor there is a great deal of variability in socio-economic condition. Some veterans are relatively successful businessmen, with both stable lives and vending operations, while others are homeless or transient men sometimes struggling with substance abuse and/or mental illness. The latter group are often recruited by new immigrants to participate in what has been termed the “rent-a-vet” scheme. The non-veterans, usually Chinese immigrants are unable to obtain a vending licenses because of the cap, and will basically use veterans as a front for their vending operation. The non-veteran runs the business—securing merchandise, managing inventory, and performing all the logistical legwork that a veteran struggling with addiction or mental illness likely could not handle. All the veteran has to do is sit at the table and collect the money. The veteran and non-veteran are usually together at the table, but in order to maintain technical legality, the veteran must be the one to make the sale, i.e. he must physically collect the money from the customer, which he then hands to the non-veteran. At the end of the day, the veteran receives a cut of the earnings. Depending on the nature of the business relationship between the veteran and non-veteran, this arrangement can be either mutually beneficial or exploitative.

More than any other license category, a food vending license brings with it the potential for turning a vending operation into a lucrative business. But even within this category there is great deal of variation. At the bottom of the ladder are vendors selling hot dogs and pretzels, and nut vendors. These two operations share ease of entry and little necessary skill, as the foodstuffs being sold are already prepared, and the carts only serve to keep the goods warm. But due to the nature of the product sold, profits are low and room for business growth is minimal. Fruit vendors, would also fall into this category of “entry-level” food vending. Larger profits are possible in food vending operations where food is prepared at the cart or truck. These vendors are able to offer more variety—from Halal meat and rice, to tacos, Chinese dumplings, dosas, even desserts.

Depending on their cooking skills, business savvy, and vending location these vendors can earn a quite respectable living selling goods on the sidewalk. For instance, one food vendor I spoke with, who ran a popular operation in Midtown, while not disclosing his income to me, nevertheless earned enough to expand his business to multiple carts across the neighborhood, pay to store these carts in Midtown garages (which can cost hundreds of dollars a month) and as the sole earner, provide a

comfortable middle-class life for a family of four in Queens, while still sending money to relatives in his home country.

Food vendors are a diverse group, but tend to hail from a variety of predominantly Muslim countries across the Middle East and South Asia (hence the rise of the Halal meat cart as a popular New York street food option).¹⁵ The most common nationalities include Bangladeshis, Afghans and Egyptians. Turkish immigrants dominate the subcategory of fruit vending. While these nationalities are the most common, they by no means represent the entire landscape of food vending. As new immigrant groups arrive in the city, they inevitably bring with them the street foods of their home nations, creating a kaleidoscope of ethnic food options on the city's sidewalks. For instance, trucks and carts selling tacos and other Mexican fare have become more and more common in the city, mirroring the increase of Mexican immigration to New York over the last few decades.

II. Informality and Urban Governance in Neoliberal New York

In this section, I will place this study of street vending in New York in theoretical context and clarify the specific theoretical interventions that this case study makes. I will begin by discussing the concept of informality—both its intellectual genealogy and how the concept is being used in this study. I will then move on to a discussion of the implications for studying the issue of informality, usually something associated with “mega-cities” of the global South, in New York—in many ways the paradigmatic global and neoliberal city.

A. Informality: A Conceptual Overview and the Relation to Street Vending in New York

The concept of informality is multi-faceted, an umbrella term which encompasses a number of different theoretical approaches and practical applications. Even after (or perhaps because of) years of work concerning the topic, the term “informality” remains one of considerable conceptual ambiguity. If one broad generalization can be made about informality studies, it is that they all are concerned with understanding social, spatial and/or economic activity which does not conform to official rules and policies regulating such practices. The informal is necessarily a relational condition, and the concept assumes a analogous formal world from which it deviates.¹⁶ In any case, the purpose of

¹⁵ A 2007 *New York Times* article on changes in the vending landscape suggested that grilled Halal meat has replaced the hot dog as the quintessential New York street food. (See Knafo, S. 2007, “Decline of the Dog” *The New York Times*. 29 July).

¹⁶ Informality is usually distinguished from criminality by scholars. Sociologist Alejandro Portes provides a useful explanation of this distinction. He conceptualizes informal activity as that which can be done legally, such as building a house or selling of food on the sidewalk, but is being carried out in violation of laws regulating such practices. Criminality, on the other hand, involves practices, such as the sale of illegal drugs or sex, which are always illegal and cannot be performed legally in the particular context where they occur. Even using this definition, it does not take long to come up with examples where the distinction may blur. For instance, because the sale of marijuana for medical use is legal in some states, does this mean that the illegal sale of marijuana for general use in these states should be considered informal activity rather than criminal? Obviously, despite Portes’ relatively straightforward distinction, the division between criminality and informality should be conceptualized more as a spectrum than a solid line.

the section is not to resolve the ambiguity surrounding the term, but rather, present a brief intellectual genealogy of the concept and discuss where and how the study of street vending in New York fits into larger debates about informality.

The issue of informality as a subject of academic inquiry can be traced to a specific moment: a conference entitled “Urban Unemployment in Africa” held by University of Sussex’s Institute of Development Studies (IDS) in September of 1971 (Bromley, 1978a). At this conference Keith Weeks presented a paper entitled “Informal Income Opportunities and Urban Employment in Ghana”, probably the first time the term and concept “informality” was used in its present day context. The IDS at University of Sussex was an important research node in a web of development studies and policy analysis that included organization such as the United Nations, World Bank, and International Labor Organization (ILO). After its introduction, the concept of informality was increasingly incorporated into numerous academic papers, government reports, and policy studies. A dense network of cross-referencing research emerged during the 1970s as the concept of informality gained traction.

Under this initial approach, which focused exclusively on cities in the global South, informality was linked to underdevelopment. Informality was associated with traditional, pre-capitalist practices of rural migrants in large cities. In general, the classic view of informality viewed the practice as marginal, something outside of modern capitalist society. It was assumed that, as market forces and development gained traction, informal socio-economic practices would disappear and the urban poor would gradually be absorbed into the formal sector (Portes and Sassen-Koob, 1987). For instance, street traders were expected to be pulled into the industrial labor force as development levels increased. Policy recommendations emanating from this perspective usually recommended strategies to incorporate informal actors into the mainstream economy—a sort of gentle (or sometimes not so gentle) push towards modernity (Blomley 1978b, De Soto 1989).

During the late 1970s and early 1980s a new framework for understanding poverty and development began to take hold among some scholars. In her influential work *The Myth of Marginality* (1976) Janice Perlman called into question the notion that the urban poor were somehow marginal to and outside of the mainstream capitalist society, and demonstrated the ways in which they were integrated into the urban political economy, albeit in an unequal and often exploitative way. This, and work like it, influenced scholars working on informality to reexamine and challenge conventional wisdom that viewed the formal and informal as mutually exclusive analytical categories. Studies began exploring the ways in which the two categories were, in fact, related to one another, and even mutually dependent. The emerging argument was that informality should not be viewed as something outside of capitalist development, but rather, something produced by and related to the formal political-economy (Blomley 1978a, Blomley 1978b, Morales 1997, Crichlow 1998). The intellectual imperative for a number of scholars was now to discover, describe and understand those relationships between formal and informal.

By the 1980s the empirical evidence on the ground was undermining the orthodox view of informality, and validating those who argued that informality was not simply an artifact of underdevelopment. In many countries and according to numerous measures, industrialization and development increased during the 1970s and 80s, yet the size of the

informal sector remained constant, and in some cases even grew (Portes and Sassen-Koob 1987). Additionally, scholars were beginning to uncover evidence of a growing informal sector in cities of the global North, such as New York, Miami, and Los Angeles (Fernandez-Kelly and Garcia 1989, Portes 1989, Sassen-Koob 1989). A small group of economic sociologists pioneered the systematic study of informality in the United States during the 1980s. These scholars linked growth in the informal sector to shifts in the larger global economy, claiming that under advanced industrialization and global city formation, conditions were ripe for the formation of an informal economy.

By identifying and studying informal activity in the United States, scholars working on the informal sector helped to disentangle the concept of informality from teleological notions of development and reposition it as something associated with economic polarization and capitalist imperatives of production. They showed that informality does not grow or decrease in concert with development levels, but rather, is a function of economic inequality and the level of state involvement to address those inequalities. For instance, the growth of informality in New York parallels its transition from a social welfare-oriented local state under embedded liberalism to a more neoliberal mode of urban governance characterized by, among other things, curtailed government services and social welfare programs to aid the poor.

While work on the informal economy has been productive and successful in focusing our attention on informal processes in the global North, it is focused almost exclusively on the informal as an economic sector—the reasons for growth and the nature of its relationship to the formal sector. There is almost no geographic component to this literature, and it cannot help us understand processes and conflicts that occur when informality manifests itself in space. For this, we need to turn to another body of literature which I call the informal urbanism approach. The work under this approach is much more spatially oriented, as it is produced mostly by scholars in the fields of architecture, urban studies, and geography. It is also focused largely on cities of the global South, where spatial manifestations of informality, such as squatter settlements and street bazaars, play a larger, more dramatic role in structuring urban form. Nevertheless, this approach is useful for framing issues related to street vending in New York for three main reasons. First, this approach conceives of informality “...not as an object of state regulation, but produced by the state itself” (Roy 2005, 149). Attention is directed therefore, to the ways in which the condition of informality can actually work to facilitate projects of urban governance in a variety of ways.

The second useful aspect of this approach is its more nuanced understanding of the relationship between law and space. In studies of spatial regulation undertaken in the global North, this relationship is often viewed as fixed, straightforward, and absolute. Perhaps in part because work by the informal urbanism school is undertaken in the context of the global South, there is more of a focus on understanding the disjuncture between formal law and spatial manifestations of the law and how laws are reinterpreted by actors on the ground based on social need. The law is seen not as a blueprint for structuring urban space, but rather, as just one of many factors working to produce urban form.

Thirdly, the informal urbanism school of thought, unlike the informal economy approach, provides ways to think about informality in political terms. By conceptualizing informality as a form of “alternative urbanism”, wrapped up in complex processes of

urban development and poverty, rather than simply as a failure of the state or as a marginal practice of the poor, many scholars working under the informal urbanism approach view the informal claim to urban space itself as a loosely articulated, but quite forceful challenge to spatial reordering in the neoliberalizing city. Informal use of urban space is viewed as existing at the “horizon of politics”, as the “the outer limits of aspiration and inspiration within which concrete plans, strategies and hopes among the poor are nurtured” (Appadurai 2001, 30). Rather than being understood as spatial disorder, informality can be reconceptualized as a sort of spatial precedent setting that informs an alternative and contextual politics. It is a politics born largely out of non-political, everyday activity of the poor that is necessary to meet daily needs. For Bayat, this micro-politics of space, what he calls “quiet encroachment of the ordinary”, can lead to real shifts in urban spatial arrangements, for “while advances are made quietly, individually and gradually, the defense of their gains is often, although not always, collective and audible.” (Bayat 2000, 547).

Conceptualizing informality in this way allows us to move beyond an analysis of isolated spatial “tactics” (De Certeau 1998), where every individual transgression can be seen as constituting “resistance”, and focus on the ways in which individual and collective action by certain groups can congeal into a real challenge to the normative spatial order set by the city and development interests. It is these potential “spaces of insurgent citizenship” (Holston 1999), that have been largely ignored in the U.S. context. As street vendors make their various claims urban space, the urban informality approach allows us to understand this situation not simply as one of general disorder or ephemeral transgression, but of urban actors making claims on urban space.

Though this study draws heavily on the informal urbanism approach to understand informality and street vending in New York City, the way I use the concept of informality is a bit different and should be laid out clearly. The informal urbanism approach is largely concerned with the ways in which informal practices of the poor produce new urban forms that do not follow formal systems of urban development. The informal refers primarily to a process of spatial formation. This study is less concerned with this aspect of informality largely because, with a few exceptions in less central neighborhoods, street vendors in New York are rarely able to congregate in large numbers for long durations of time in order to coalesce into a relatively new urban form like informal vendor bazaars and street markets of the global South.

The informal as studied in this project refers more to extra-legal processes of negotiation, management and control that occurs on the sidewalks between vendors, property owners and enforcement agents, which in turn have spatial consequences. This process of spatial management is informal because, though activity by both vendors and anti-vending interests does not always reflect laws as they are written, it is nonetheless generally viewed by most people involved in the conflict as the normal state of affairs. The informal processes that I am interested in studying is the space between legal codes and social reality, between the law as it is written, and the law as it is interpreted and put into action by various actors on the ground.

This space of dissonance between legal intent and actual implementation is often viewed as a space of freedom and wiggle room, a space outside conventional power relations of state and subject. Bayat argues that “[informality] reclaims significant political space from the state” (1997, 15), while Laguette claims informality as

representing the “freedom of the subject” from state designs (1994, 24). Both scholars owe much of their understanding of informality to Michel de Certeau, whose work focused on the ways in which spatial tactics of individual actors and reinterpretations of urban space inevitably undermined grids of power established by the state (de Certeau 1998). Even in planning literature, an understanding of the informal has emerged that conceives of it as a space of casual interaction outside overbearing bureaucracy that allow actors to get things done (Innes et. al. 2007), or as “third places” formed by immigrants and the urban poor that exist outside strict planning and zoning laws, and therefore, outside state power (Banerjee 2001, 17; Day 2003).

One of the key arguments about informality being made in this dissertation is that the space opened up by the disjuncture of formal laws and actual practice cannot be conceptualized as a space free from power or control. Rather, as I will demonstrate in the following chapters, informality emerges as a flexible, decentralized *mechanism of control*. Power relations do not simply disappear because laws are not working as they should, they are rearticulated and rearranged. In New York, the task of limiting and controlling vendors is shifted from formal laws as they are written, to informal systems of spatial management which produces a landscape of vending whose contours ultimately conform to desires of the more powerful and influential real estate and business interests in the city.

B. Rethinking Global City Urbanism: Studying Informality in New York

Despite lacking an eponymous “school” of urban theory, the city of New York holds just as prominent a place in U.S. urban studies literature as Chicago or Los Angeles. New York, particularly the New York of the late twentieth century, has been a paradigmatic site for two major threads of urban theory: global city theory and theories of gentrification and urban “revanchism”. Both approaches seek to describe and analyze dramatic changes in the economic, social, cultural and political landscape of New York and other First World metropolises at the close of the twentieth century. Global city theory focuses on New York’s role as command center of global capital and the consequences this has for spatial form, local politics, land markets, etc. The gentrification/revanchism literature deals more specifically with the ways in which political-economic restructuring shaped urban space, often in exclusionary ways that increase and reinforce spatial, political and economic inequality.

Under the global cities approach, New York is a city of stark contrasts, a result of its role as a node in the flows of global capital (Sassen 2001). High revenue financial institutions and their well-paid employees drive up the cost of real estate, pushing less productive firms and people to the periphery. The result is the emergence of a “dual” or “partitioned” city, one of increasing segregation produced by growing economic inequality, and reinforced by policy approaches which favor the interests of capital at the expense of the poor (Mollenkopf and Castells 1991; Marcuse and Van Kempen 2002). When the poor are inserted into the local economy, it is in a secondary role, often in downgraded, informalized, and relatively marginalized sectors (Castells and Portes 1989; Sassen-Koob 1989). In this rather dystopian city of contrasts, spatial inequality reflects and reinforces political and economic inequality, and the questions of belonging and

spatial rights are viewed as relatively settled. Because it is so hardened and partitioned, urban space ceases to be a site of progressive political possibilities.

Adding detail and flesh to macro-level processes described by global city theory, Neil Smith used the concept of “revanchism” to frame a swiftly changing New York City at the close of the twentieth century (Smith 1996). To characterize New York as a “revanchist city” meant emphasizing the aggressive, almost vengeful nature of gentrification and the policies that facilitated the process. The poor were often forcibly, sometimes violently displaced from formerly neglected areas, as capital flowed into the city’s real estate market and city leaders attempted to lay the groundwork for reinvestment through harsh policies and police tactics. Rudolph Giuliani, with his anti-crime and quality of life campaigns was the poster-child of this aggressive reorganization of public space (Smith 2000, Vitale 2008). The gentrification literature emphasizes the ways in which the phenomenon was not a natural market process, but rather directed by planners and urban policy makers who enacted exclusionary laws and formulated redevelopment plans to facilitate reinvestment, while not taking into account the needs of the poor. Across the city, large-scale redevelopment projects such as the South Street Seaport (Boyer 1992) and Times Square (Fainstein 2001, Sagalyn 2001), as well as neighborhood gentrification in areas like the Lower East Side (Smith 1996, Mele 2000), Chinatown (Lin 1998), and East Harlem (Davila 2004) reshaped urban space in ways that displaced small businesses and low income, often minority residents.

Both the global cities and gentrification literatures portray New York in a decidedly negative light, at least when it comes to issues of social justice and urban inequality. In these framings New York is the dual city, the partitioned city, revanchist city, where exclusionary laws, in general, work as they were intended to, structuring unequal rights to the city’s spaces. But, as Jane M. Jacobs astutely warns, these approaches, while useful in their critical analysis, nevertheless, “tend to deactivate space by seeing the city as the uncontested imposition of imperial territorial arrangements” (1996, 21). At their most extreme, the gentrification and global cities approaches can naturalize inequality, portraying New York as almost inevitably exclusionary, a city and its citizens held hostage by the workings of powerful global capital interests.

Without minimizing the ability of real estate and business interests to structure space and exclude, in this dissertation challenges the image of New York developed by urban scholars over the last few decades. At issue here is not whether or not business and property interests have the ability to exert influence over urban space, but rather, the manner and certainty in which this occurs. Most literature assumes a rather instrumental relationship between commercial interests and the local state, and by extension, laws and space. Following the desires of business and real estate interests, the city becomes a carved up into zones of haves and have-nots, with the lines dividing these two spheres clearly defined. The point being made by this dissertation is that legal ambiguity and uncertainty can play just as important a role in structuring urban space in exclusionary ways. For vendors, New York is not a city of partitions, it is a shifting landscape of exclusion and permissiveness, of light enforcement and crackdowns. It is through this decentralized and often unpredictable regime of spatial control that vending comes to be managed. And, to reiterate a point made in the previous section, it is important to understand legal uncertainty and informality as a rearticulation of spatial control, rather than the absence of it.

Because it is so dispersed and uncertain, this control is not absolute. Thanks to the limits, conditions and exceptions placed on vending law through a contentious political process of lawmaking, the resulting regulations served to complicate rather than settle the question of who has a right to urban space. Laws, in large part due to their complexity, encourage informalized, decentralized and privatized spatial management and negotiations on the part of all actors involved. Therefore study of street vending reveals a landscape of spatial control that is effective yet uneven, and demonstrates the ways in which spatial regulation is much more dispersed, contingent, even negotiable than it is often portrayed in the literature concerning New York City at the close of the twentieth century.

An understanding of the role informality plays in organizing space is important not just for an understanding of street vending in New York, but for that of urbanism in general in cities of the global North. Where it emerges in cities of the global North, informality is often explained away as an anomaly—the result of bureaucratic inefficiencies or the inability or unwillingness of new immigrant groups to conform to spatial norms of “developed” cities. This dissertation makes the argument that informality is not some sort of accidental side-effect of immigration or poor governance, but rather an emerging mode of governance in its own right. In U.S. cities, where a reduced capacity/commitment of the state to address growing inequality continues, informality increasingly will emerge as an important organizing logic of spatial practice and urban management.

This raises important questions for the field of planning, and planners operating in U.S. cities. What does it mean for planning when space, especially in immigrant communities, comes to be organized more by informalized practice and negotiation than actual plans and laws? I argue that an important first step for progressive-minded planners in the U.S. is to recognize informality as a process embedded within the particular political/economic realities, produced by increasing inequality, and enmeshed within circuits of power. Only by fostering a better understanding of how informality is produced can planners attempt to address it in effective, just, and comprehensive ways.

III. Methodology, Research Questions, and Structure of Dissertation

A. Research Questions and Methods

As described in the previous section, in many ways, New York is often portrayed as the epicenter of urban revanchism, home to numerous projects of spatial exclusion and restructuring. It is certainly not a place one would expect to see thousands of street vendors, many of them informal or unlicensed, doing business on the sidewalks of some of its most high-value neighborhoods. But there they are. Most of them, minorities and new immigrants, the very “underclass” who were supposed to have been pushed to the social and spatial margins of the city. They are there, around the corner from the shops of Fifth Avenue, on the sidewalks of an otherwise increasingly sterilized Times Square, along Wall Street, in SoHo, and other central areas.

The rollout of street vending regulations during the late twentieth century fits well with existing literature concerning urban restructuring and its effects on urban space. But the persistent presence of street vendors on New York’s sidewalks despite new

regulations is an anomaly on which existing theoretical frameworks of New York are silent. Unlike other groups targeted by property interests and quality of life campaigns, vendors showed resilience, challenging outright spatial exclusion and maintaining a (sometimes tenuous) presence on the city's sidewalks. Even when the city succeeded in enacting regulations, these laws rarely worked to structure space and the practice of vending in straightforward ways. This anomaly, then, becomes a research opportunity. Following Burawoy's (1991) concept of extended case method, this dissertation seeks to broaden our understanding of spatial regulation in the contemporary city by utilizing the case of street vending in New York to refine and extend existing theoretical frameworks. In much of the existing work on spatial regulation in New York and other cities of the global North, analysis occurs at the level of structural factors shaping space. Rarely do they incorporate fine-grained participant observation and in-depth interviews of regulated subjects and those doing the regulating in order to understand how laws are experienced day to day. By taking an ethnographic approach, this project provides a richer picture of how spatial regulation is formulated, enacted and contested.

Fieldwork for this project occurred over 21 non-contiguous months in New York City, with the bulk of on-site fieldwork undertaken between June 2007 and August 2008. The three primary methods utilized were participant observation, semi-structured in-depth interviews, and archival research. In order to provide a clearer picture of the research approach and process, I will describe methods in relation to the specific research questions they were being used to answer. The project was guided by three major research questions. First, what is the genealogy of current vending regulations? That is, how and why did they come into being and what were the political, spatial and economic factors influencing the scope and structure of current regulations? Second, what is the actual effect of laws on the ground and how are regulations experienced by vendors? If—as most involved in the vending conflict contend—laws do not work as they should, what are the extra-legal, informal mechanisms by which street vending is managed? Third, how do vendors, lacking traditional political power, challenge the current situation and claim a right to urban space?

Archival research was the primary method used to address the first question, concerning a legal genealogy of current vending laws. Few secondary sources exist concerning the history of street vending in New York, so primary sources accessed through city archives and other archival databases were critical to constructing a comprehensive history of the politics behind the production of vending regulations at the end of the twentieth century. Electronic databases were used to access archived newspapers and other periodicals. The New York City Municipal Archives and City Hall Library were the main sources of other archival material, including records and reports of city agencies, transcripts of public hearings and city council meetings, legislative reports, and the archived files and correspondences of the mayoral administrations of Edward Koch, David Dinkins and Rudolph Giuliani. The agency records of the New York City Department of Business Services (DBS), obtained through a Freedom of Information Act (FOIA) request, were used to research the Street Vendor Review Panel, a Giuliani-era mayoral panel housed administratively within DBS, and responsible for closing streets in the late 1990s. The private archives of the Street Vendor Project (SVP), a non-profit vendor advocacy group, were another important source of information. Finally, as the

period under study was relatively recent, 1977-2001, in-depth interviews with key figures in the recent history of vending regulation were critical sources of information.

In order to answer the second research question, concerning actual effects of vending legislation on the ground, two methods were used: participant observation and in-depth interviews. Participant observation was undertaken with street vendors as they worked, in order to understand how regulations affected their day-to-day operations. Relatively unstructured, informal conversations revealed much about the ways in which spatial management unfolds in decentralized, informalized ways. In addition to this type of interaction, volunteer work with the Street Vendor Project afforded many opportunities to interact with vendors and learn about issues facing them on the sidewalks. A dozen vendors were asked to participate in formal, semi-structured in-depth interviews, which augmented data gathered through participant observation. In-depth, semi-structured interviews were also undertaken with various other people involved in the vending conflict, including local politicians, city officials, civil servants, and Business Improvement District (BID) personnel. These interviews provided insight into the ways in which those attempting to manage vending proceed in the face of legal complexity and uncertainty. It should be noted that all interview subjects were granted anonymity, and every effort has been made in this dissertation to avoid providing any information that might identify interview subjects. Only those who explicitly waved confidentiality are identified by name.

In order to investigate vendor politics—the subject of the third research question—both participant observation and in-depth interviews were utilized. The Street Vendor Project, being the largest, most influential vendor organization in the city, was the primary subject of participant observation. Between June 2007 and August 2008 I attended monthly meetings of the SVP, as well as protests, press conferences, organizational events and fundraisers in order to understand their political approach. In addition to participant observation with the Street Vendor Project, multiple in-depth interviews were carried out with leaders of smaller vendor organizations across the city, including VAMOS Unidos, ARTIST, Big Apple Food Vendors (now defunct, but active during the 1980s and 1990s) and the Red Hook Vendors Association. Interviews were also carried out with individual vendors, business leaders and lobbyists, as well as former and current local politicians in order to understand the political landscape of street vending in New York.

B. Notes from the Field: The Research Process, Challenges, Limitations and Opportunities

Field work for this dissertation took me across a broad spectrum of New York, from boardrooms of Business Improvement Districts to frigid street corners, from the grandeur of City Hall to the basement file storage areas of city agencies. Along the way, there were a number of challenges, which sometimes led to opportunities or encouraged new ways of thinking, and other times simply remained a point of frustration.

As outlined earlier in the introduction, this project is fundamentally about vending laws and how they function to structure street vending and urban space. I heard about various rules from vendors during preliminary fieldwork and read about them in newspaper articles, but these secondary accounts of the law were often confusing, and

sometimes seemed contradictory. Reading about the way a law was enforced here, hearing about another law there, I felt as if I was only getting a confusing and incomplete glimpse of various tips of the larger legal iceberg. So one of my first tasks was to track down the vending code and read it for myself, in order to get a comprehensive understanding of vending laws as a whole. Surprisingly—and, it would turn out, revealingly—this was not such a straightforward task. I soon learned there was no centralized list of vending laws, but various regulations scattered throughout different city agencies and levels of government. While sifting through the various sources of regulation, I no doubt felt the same bewilderment as vendors or even police and other enforcement agents when attempting to follow or enforce the law.

In fact, relative clarity concerning vending law came only after two long meetings with Sean Basinski, the director of the Street Vendor Project, a vendor advocacy organizations. Basinski is a lawyer, who regularly assists vendors who want to dispute tickets in administrative court, making him very familiar with both the laws as they are written, and how they are enforced. We combed over each provision line by line, with Basinski explaining how they were enforced, and how they interacted with other laws.

With a solid foundation in both the letter of the law, and the vagaries of its application, I set out to perform interviews for the study. Through the interviews, I intended to learn first hand from vendors how they experienced laws and their enforcement on a day-to-day basis. I also sought to find out how politicians, city administrators and those in the business and real estate industry viewed the current situation.

Both types of interviews—those on street corners and those in boardrooms and offices—presented unique challenges. In terms of interviewing street vendors, language was a significant issue. Being unable to hire research assistants fluent in languages such as Wolof or Urdu, and able to communicate with vendors only in English and basic Spanish, I was limited in my options for vendor interviews. Though this certainly presented obstacles to gaining a complete picture of street vending in New York, it did not rise to the point of undermining the study. In fact, language barriers helped influence the direction of the study in fruitful ways. I went into this project intending to study informal vending which I initially defined as unlicensed vending. The experiences of these vendors was originally going to play a much larger role in the study. However, given that most unlicensed vendors tend to be recently arrived immigrants, finding a representative sample of vendors with whom I was able to communicate proved difficult. Focusing more on licensed vendors, who generally have a better command of English than their unlicensed counterparts, led me towards what I ultimately found to be a more compelling story and question: how legal ambiguity, irregular enforcement and informal tactics of spatial management work to structure the landscape of even licensed vending in the city.

Gaining vendors' trust was also a challenge when performing interviews and carrying out informal discussions during participant observation. Most vendors are relatively friendly, and were willing to engage in small-talk about business, but once they started to be questioned about their knowledge of vending laws or run-ins with the police, even if I identified myself as a researcher, they understandably became wary of the purposes of the conversation. For this reason, I relied heavily on snowball sampling, gaining one vendor's trust and working through his or her contacts. I would often meet

vendors at monthly membership meetings of the Street Vendor Project, and build out contacts from there. Very seldom did I approach a vendor on the street cold, and begin asking questions.

While gaining their initial trust was sometimes difficult, once vendors were comfortable, most of them were quite forthcoming, even eager, to discuss how laws affected their daily practice. This was in stark contrast to interactions with political figures, city employees and most Business Improvement District personnel. In part due to all the legal uncertainty and unresolved legal issues surrounding the practice, street vending is a very litigious issue. In fact, an entire vendor category—First Amendment vendors—owes its existence to a successful lawsuit. Therefore, most people with some level of authority were quite careful in choosing their words when discussing vending with me, sometimes even having lawyers attend our meetings, presumably to monitor the direction of our conversations. This led to concerns that the information I was getting from them was simply the “company line”, and not necessarily insightful. In one particularly frustrating interview, I was told repeatedly by BID personnel that their Business Improvement District had nothing to do with influencing vending legislation, and that they just try to keep an eye on vendors and ensure legal compliance in their district, nothing more. Yet, a previous visit to the municipal archives revealed a strong lobbying campaign by this BID to encourage the city to increase vending restrictions in their district. In this instance, I decided against confronting them with the information, as I had some other key questions I wanted to ask them, and did not want to risk the interview. While there were also plenty of informants who, for various reasons, decided to be quite direct with me, this example gives an idea of how oblique some of my conversation with people in power were.

As the primary researcher of a project that relies heavily on interviews and participant observation, I am aware of the narrative authority I possess and of the responsibility that comes along with it. Fieldwork for this study produced hours of audio recordings, pages of field notes and interview transcriptions, and ultimately, I am the one deciding which voices get heard and how the story is told and how my voice gets inserted into the vending debate. Street vending is such a contentious issue in New York City because it is a struggle over wealth and livelihood, but also, in a way, over a city’s soul—the constitution and essence of its public sphere and the fidelity of its promise as a place of opportunity for those who work to achieve it.

It would be disingenuous to suggest that I am a neutral observer of this conflict. After spending two summers working with the Street Vendor Project during preliminary research and 15 months of fieldwork attending monthly meetings and events and getting to know individual street vendors, I developed an admiration both for the resolve of individual vendors to work towards a better life for themselves and their families, as well as the collective work they did at the Street Vendor Project, sacrificing their time to advocate for the rights of themselves and all street vendors. At the end of each member meeting, the roomful of vendors from all corners in the world who find themselves in New York, united by a singular purpose, link hands and shout “vendor power” in English, Spanish, French, Bengali, Wolof, Chinese, Arabic and a handful of other languages. It is hard not to find a scene like this compelling.

Yet despite a lack of absolute objectivity, I nevertheless strive to present an accurate portrayal of the situation, lay out all the conflicting arguments, and let these

arguments speak for themselves. The guiding principle underlying this project during both fieldwork and writing was to make certain that every interview subject should be able to read the finished product and, while perhaps not agreeing with my conclusions, not feel as if I misrepresented their point of view or the situation. I have done my best as a researcher to ensure this is the case.

C. Structure of Dissertation

The organization of the dissertation reflects the three research questions. It is divided into two parts and four chapters. Part One, which includes the first two chapters, deals with the first research question, analyzing the political process behind the construction of vending laws. Part two, consisting of chapters three and four, takes up the other two research questions and concerns the current moment. Chapter Three analyzes the actual effects of laws on the ground and describes the ways in which the condition of informality works as a mechanism of regulation. Chapter Four meanwhile, discusses the ways in which vendors challenge the current regulatory framework through various political strategies.

Chapter One focuses on the ways in which vending, specifically general merchandise vending (the sale of all non-food items), came to be problematized in New York during the late twentieth century, an era of fiscal crisis and economic restructuring. I demonstrate in this chapter the ways in which the nature of street vending and public space regulation was intertwined with broader political and economic contexts. In order to accomplish this goal, the chapter provides historical comparison, placing the regulatory approach of a neoliberalizing New York at the close of the twentieth century in contrast with the vending and public space reforms of Fiorello LaGuardia during the 1930s, when New York was a quintessential city of embedded liberalism. Vending laws were not only constructed in a top down manner, but by vendors themselves through legal challenges. Therefore, Chapter One also discusses the ways in which harsh restrictions on vending led certain vendor groups to challenge regulations through lawsuits, which produced important exceptions to city vending laws. This demonstrates the double nature of the law: at once excluding and serving as shelter against exclusion.

Prior to the legal changes of the late twentieth century, all vendors in New York, regardless of merchandise being sold, were subject to the same levels of regulation. One of the most important changes made by the city during the late twentieth century was the separation of vendors into two legal categories: general merchandise and food vending. Food vendors came to be regulated in a vastly different fashion than their general merchandise vendor counterparts, and therefore, an analysis of food vending regulation warrants its own chapter. Chapter Two analyzes the acrimonious process of regulating food vendors at the close of the twentieth century. It examines the efforts of two mayoral administrations, those of Koch and Giuliani, to limit the presence of food vendors, particularly in Midtown Manhattan. Chapter Two discusses the ways in which food vending was problematized by city officials and property interests, and just as importantly, how food vendors were able to challenge elite-driven representations of space and put forth their own narratives of the proper image of New York's public spaces. This chapter demonstrates how the process of spatial regulation, even in "revanchist" New York, did not always unfold as an uncontested imposition. Rather, laws

regulating food vending were the product of multiple competing narratives about the right to the city's sidewalks, valid forms of entrepreneurship, and the proper use and image of public space.

After providing historical background about the creation of vending laws in Chapters One and Two, Chapter Three begins the analysis of the current situation—that is, the effects of laws and how public space and street vending are presently managed in New York. Chapter Three begins with a discussion of the dysfunctional nature of current regulations and analyzes the ways in which various, sometimes conflicting, layers of laws make consistent enforcement and compliance difficult. It then goes on to demonstrate how—given the convoluted, contradictory and uncertain nature of the laws—vending is actually managed in New York. Through a presentation of ethnographic data, I show how vending and public space are dealt with in a largely informal, decentralized, and privatized manner. The chapter will conclude by making the argument that, while not ideal for any one group, the current situation is ultimately acceptable to the largest, most powerful property interests in the city, often organized into Business Improvement Districts (BIDs), who are able to mobilize resources to keep vending at manageable levels in their own districts.

Finally, Chapter Four deals with various strategies employed by vendors to challenge the current situation and push for changes in the regulatory framework. After a brief global overview of street vendor politics, I discuss the political situation facing vendors in New York, and how it is relatively unique in the global landscape of vendor politics. I argue that, more so than any other factor, legal differentiation of vendors into multiple categories inhibits broad-based organizing, limiting their political influence.

After outlining the challenges to organizing facing street vendors in New York, the chapter then goes on to discuss how, in light of these challenges, vendors proceed to make claims on New York City's public spaces. Absent traditional political power of the ballot box and unable to coalesce into a unified movement, immigrant street vendors nonetheless contest the current situation and make claims to space in a variety of ways, from attempts to direct discourse about vending in order to legitimize the practice and gain popular support, to education campaigns aimed at teaching vendors about the law and their rights, to individualized tactics of negotiation and evasion

Chapter One

From Subjects in Need of Reform to Problems in need of Exclusion: Shifting Regimes of Vending Regulation in New York.

The opening shot in New York City's modern-day battle over street vending was fired in 1977, with the passage of Local Law 77. The law, which outlawed general merchandise vending from most busy commercial areas of the city—including all of Midtown Manhattan—was the city's first major change to vending regulations in nearly 40 years. It would be followed, over the course of the next few decades, by many other legal interventions implemented by the city to curtail and control vending. These included a cap on licenses, further street restrictions, and countless minor rules regulating the placement, size and appearance of vending tables and carts.

Street vending regulations were completely overhauled during the late twentieth century. Nearly every law regulating vending today was put in place between 1977 and 2001. It is tempting therefore, to conceive of the legal changes of the late twentieth century as a regulatory break, with 1977 the starting point of an unprecedented rollout of a new, repressive regime of public space and street vending regulation. But street vending is an old practice in New York and has been subject to regulation of varying degrees of severity since at least the 1700s (Bluestone 1991). One of the key flaws in much of the critical literature concerning the assault on public space in the contemporary city is an implicit comparison of the current moment to a vaguely articulated “golden age”, when urban space was more inclusive and democratic (Fainstein 2001, 207). To be sure, the modern era of vending regulation must be understood as intimately intertwined with New York City's fiscal crisis and subsequent turn toward urban neoliberalism. But the reforms of the late 1970s and early 1980s were more of a rearrangement and recalibration of spatial regulation than a clean break from less restrictive times.

This is the first of two chapters which will analyze the contested project of street vending regulation in New York City at the close of the twentieth century. Following the idea that the increased regulation of vending must be seen as part of a continuum, this chapter begins its analysis in the 1930s, when mayor Fiorello LaGuardia attempted to address the issue of street vending in the city through wholesale reforms of both urban space and urban citizenship. He moved vendors off the streets, re-housed them in publicly financed market buildings, and, according to the LaGuardia Administration officials, successfully lifted peddlers up to the status of legitimate merchants. This approach of wholesale reform will then be contrasted with the ways in which vending came to be problematized, regulated and managed during the late twentieth century—a time of dramatic urban restructuring in New York City, which saw a transition from the quintessential social state of embedded liberalism to an era of urban neoliberalism (Harvey 2005, Sites 2003). Despite its broad scope and harsh character, the regulatory project of the late twentieth century was not an uncontested imposition. Street vendors challenged and were able to place limits on exclusions enacted by the city. The final section of this chapter, therefore, will examine two significant and successful legal challenges to exclusionary policies enacted by the city, demonstrating the ways in which

the law does not only act to exclude, but can also serve as a source of shelter for certain marginalized groups.

This chapter will also demonstrate how, over time, shifting priorities of vending regulation lead to shifting geographies of spatial conflict. During the 1930s, the project was one of integration and modernization. Therefore it was the city's "backwards" immigrant districts that were targeted for reform, as attempts were made by city administrators to bring vendors and residents of these areas into the fold of modernity. This stands in contrast to the geographies of regulatory priorities in the late twentieth century. The focus of regulation shifted to the core areas of Manhattan, particularly Midtown and the priorities shifted from reform to exclusion. A bunker mentality emerged as Midtown and other central areas were viewed as islands of fiscal productivity in a sea of urban decline, and measures were undertaken to ensure that street vendors did not interfere with the image of order and prestige that real estate and business interests were trying to produce.

Chapter One will focus primarily on the case of general merchandise vending (the sale of all non-food items). While little distinction between food and non-food vending was made during the early twentieth century, after 1977 the two practices were treated much differently by the city. Therefore, the politics surrounding the regulation of food vending, being significantly different than those related to general merchandise vending, warrants its own chapter, and will be dealt with in Chapter Two.

I. "I Have Made You Merchants!": Social and Spatial Reform in an Age of Embedded Liberalism

New York's legendary pushcart markets are an icon of the city's immigrant past. The institution began in 1886, when a handful of pushcart vendors in the city's Lower East Side set up shop on Hester Street, in defiance of a city ordinance mandating they remain ambulatory (Bluestone 1991). Soon, a bustling market grew along Hester Street, followed by dozens more pushcart markets across the city. Unable to shut them down or limit their formation, the city decided instead to formalized pushcart markets, bringing them under the supervision of the Department of Markets. By 1927 there were roughly 7,000 pushcart vendors operating in 60 city-regulated open-air markets throughout New York.¹

The pushcart markets were an important part of immigrant life in New York around the turn of the twentieth century. They provided employment for thousands of newcomers while at the same time supplied communities with all types of affordable goods—from fruit, eggs and fish to clothes, religious items and books.² The exponential growth of pushcart markets in New York provoked a strong reaction from city elites, whose descriptions of the "exotic" immigrant markets were characterized by a mix of voyeuristic fascination and disgust. For instance, early social reformer Lawrence Veiller, in a city-commissioned study of the pushcart markets commented that pushcarts:

¹ New York City Department of Markets Annual Report 1927. *LaGuardia Papers*. New York City Municipal Archives.

² *Push Cart Markets in New York City: A Preliminary Report*. United States Department of Agriculture Bureau of Agricultural Economics in Cooperation with the Port of New York Authority. Washington, D.C. April 1925.

... while adding materially to the picturesqueness of the city's streets and imparting that air of foreign life which is so interesting to the traveler, lending an element of gaiety and charm to the scene which is otherwise lacking, the practical disadvantages from the undue congestion of peddlers in certain localities are so great as to lead to a demand in many quarters for the entire abolition of this industry, if it may be dignified by that term.³

In the analysis of many reformers, urban space and social practice were intimately intertwined; the effects of immigrant practices on urban space, and the effects of urban space on immigrant actions, were all seen as part of the same problem. This mindset is vividly illustrated by a passage from Jacob Riis' well known book, *How the Other Half Lives*:

“[The Italian] promptly reproduces conditions of destitution and disorder which, set in the framework of Mediterranean exuberance, are the delight of artists, but in a matter of fact American community become its danger and reproach...he reduces what he finds to his own level, if allowed to follow his natural bent” (Riis 1971[1890], 43).

Approaching the pushcart issue from the perspective of spatial determinism, reformers viewed immigrant neighborhoods as vicious feedback loops of immorality, sloth and primitivism. The spatial practices of the immigrant tarnished urban space, while at the same time, spaces of immigrant neighborhoods reinforced negative spatial practice. This feedback loop was deemed detrimental to the city and to society as a whole. The modernization of urban space, therefore, required the modernization of the immigrant, and vice-versa.

If late nineteenth century definitions of pushcarts as problematic spatial practice relied heavily on cultural critiques of pushcart vending as backwards and out of step with a socially constructed “American” norm, the growth of automobile traffic during the early twentieth century added a modernist element to the pushcart critique. Immigrant pushcart markets were deemed anti-modern impediments to the emerging technology of the automobile and, by extension, to general urban progress. “The streets are meant for traffic and the sidewalks for pedestrians,” argued Commissioner of Markets Williams Fellows Morgan in 1938.⁴ Morgan went on the claim that pushcart markets were “antiquated and unnecessary” and merchants were “a danger to themselves and to others by creating traffic congestion.”⁵ After hundreds of years of acting as spaces of play, work, and commerce, streets and sidewalks came to be conceptualized as exclusively spaces of circulation, rather than spaces of social life (Bluestone 1991).

A key theme running through discourse concerning pushcart vending during the late nineteenth and early twentieth centuries was a call not simply for elimination of pushcart markets, but rather for their reform and transformation. The most comprehensive and far-reaching reform effort would be taken up in the 1930s by Fiorello LaGuardia. LaGuardia was one of the most dynamic and zealous mayors in New York's history. The son of a Jewish mother and Italian father, he was a physical embodiment of immigrant New York. LaGuardia was a populist reformer with an paternalistic determination to

³ Report of the Mayor's Push-Cart Commission, 1906. (p. 15) The City of New York. *The LaGuardia Papers*. New York Municipal Archives.

⁴ *The New York Times*. 1938. “LaGuardia Renews War on Pushcarts” 22 March.

⁵ *ibid.*

rescue immigrants from their own backwards ways. He was also a man of his age, infatuated with progress and the ameliorative possibilities of modern city planning and civil engineering.⁶ It should come as no surprise then, that his two passions converged on the project of ridding the New York of outdoor pushcart markets.

The centerpiece of LaGuardia's pushcart reform effort was the construction of enclosed public markets in immigrant neighborhoods to house street vendors displaced from the city's sidewalks. The market buildings were a significant undertaking, funded largely through federal dollars channeled to the city by the Works Progress Administration (WPA). The first market was constructed in East Harlem, a predominantly Italian neighborhood in the 1930s and LaGuardia's former congressional district. Vendors were moved off of Park Avenue and into an enclosed structure built underneath the elevated railroad viaduct which runs down the center of the avenue. In the following years, as vendors were forced off the streets, market buildings replaced outdoor markets in immigrant neighborhoods across the city. The market construction initiative culminated with massive Essex Street Market, built to re-house the pushcart vendors who operated on the city's Lower East Side.

In the minds of the LaGuardia Administration, the public markets would not only serve to clear the streets of the New York, but also modernize and reform the manner in which immigrant merchants and consumers did business. At the opening of the Essex Street Market, LaGuardia, in characteristic theatrical style, took credit for transforming and modernizing pushcart merchants in addition to modernizing urban space:

LaGuardia launched into his address, and, suddenly, in the middle of it stooped and picked up an apple from one of the stands. "There will be none of this," he said as he pretended to spit on the apple. . . Pointing to his listeners in their crisp white coats, he concluded "I found you pushcart peddlers . . . I have made you MERCHANTS!" (Wasserman 1998, 334).

The sentiment was echoed by LaGuardia's Commissioner of Markets, William Fellows Morgan, at the opening of the enclosed Park Avenue Market in East Harlem:

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.⁷

Carried out with benevolent language of moral transformation and social improvement, the pushcart reforms of the early twentieth century must, nevertheless, be conceived of as embedded within a larger context of social control and spatial reorganization which was undertaken to further a liberal, modernist ideal of a properly functioning, efficient and financially productive city. Vendors were not asked whether or not they wanted to be modernized, it was a change imposed upon them. Many vendors protested their move off the streets. As the *New York Times* observed, despite rhetoric put

⁶ For a vivid description of LaGuardia's love of infrastructure improvement and urban modernization, see Caro (1974).

⁷ *The New York Times*. 1936. "East Side to get New City Market" 16 Sept.

forth by public officials about helping immigrant vendors improve their lot, “they are pushcart peddlers—and they like it.”⁸

The reform of the spatial and social practices of pushcart peddlers was a top-down undertaking, informed by problematizations of immigrant life emanating from what Nikolas Rose terms, “enclosures of expert power” (Rose 1999). In this case, the experts were city planners, public health officials, politicians and business leaders. Therefore, even though pushcart regulation under LaGuardia operated through the language of concern for immigrant improvement and produced well-funded physical infrastructure projects—both elements largely absent from modern day approaches—one must avoid idealizing the past and steer clear of simplistic characterizations that construct LaGuardia’s reform-oriented approach as the “good” counterpart to today’s “bad” regulatory regime. Both past and present approaches represent regimes of spatial control that responded to developmentalist imperatives and were undergirded by elite conceptions of the proper use of urban space. The difference lies in the ideological, social and economic framework within which they were embedded. During the age of New Deal liberalism, the regulatory regime focused on social reform and rehabilitation of problematic actors inhabiting the city’s public spaces. By contrast, the regime of the late twentieth century would do away with language of rehabilitation, delegitimizing vendors as a social group and replacing notions of social reform with those of social exclusion.

II. The Problem of Vending: Regulating Space in an era of Fiscal Crisis

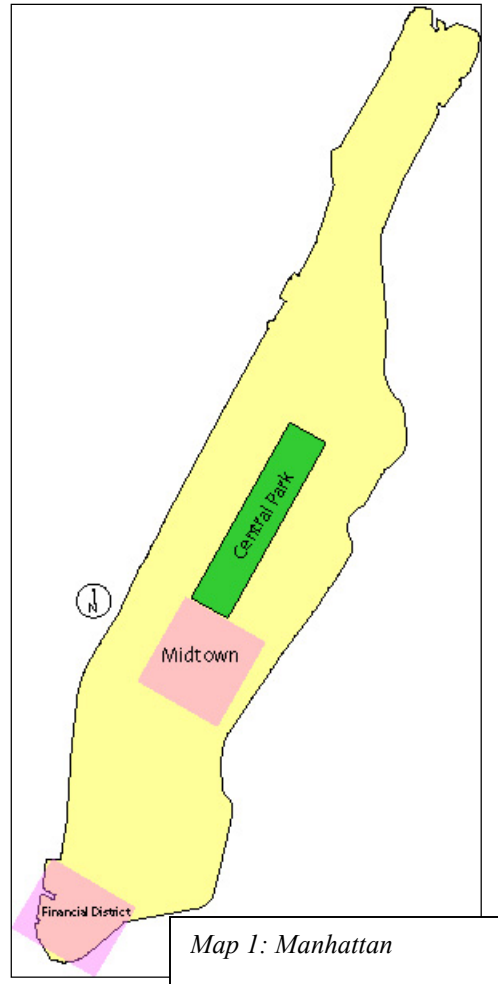
Fiorello LaGuardia’s pushcart reforms came to a close in the early 1940s. By then, nearly every open-air pushcart market had either been moved indoors or eliminated entirely. Between the early 1940s and the late 1970s, vending was not an issue of top concern for city administrators in New York. World War II, immigration restrictions, and general economic prosperity reduced both the number of people taking up street vending and the demand for vendors. There were still street vendors doing business on the city’s sidewalks during these intervening years, but their presence was rarely defined by politicians or business leaders as a major problem.

This would change, however, during the 1970s, when tight labor markets and a general economic downturn coupled with an influx of new immigrants and counterculture youth led to an increase in the scale and visibility of street vending in the city. Moreover, while mid-century itinerant vending had been largely limited to the occasional ice cream or hot dog carts, during the 1970s, general merchandise vending became the trade of choice for many newcomers to the city. Merchandise vending was attractive to both new immigrants and itinerant hippie-era youth as, compared to food vending, it required much less initial capital. In fact, all one needed was a table and the merchandise itself. Unsurprisingly, most of these new vendors headed to Midtown Manhattan. According to vending rules enacted during the 1940s, this part of the city was technically off limits to vendors, but existing laws carried only light penalties and police were less than enthusiastic about enforcing them. By the mid-70s, then, street vending was once again being defined by politicians and business leaders as a “crisis”.

⁸ *The New York Times*. 1940. “The Opening of Essex Street Market.” 5 Jan.

The reemergence of street vending as a priority issue on the political agenda and the method by which vending regulation was carried out during the late twentieth century must be placed in context. The nature of new vending regulations cannot be separated from, and must be understood as intimately intertwined with, New York City’s fiscal crisis and the rise of urban neoliberalism. After New York City’s brush with default, perhaps more so than ever before, the fate of the city was tied to the fate of market actors, particularly those in the property sector. Few geographic areas were seen as being more important to the city’s fiscal health than Midtown Manhattan and it should therefore come as no surprise that initial vending regulations focused on this central area. Midtown is a large, dynamic, multi-use area with many well known enclaves and landmarks: the theaters and lights of Times Square, the upscale shops along Fifth Avenue, architectural monuments such as Grand Central Station and Rockefeller Center, to name only a few. Though Manhattan contains a second major office district—the Financial District centered along Wall Street in Lower Manhattan—Midtown has undeniably long been New York City’s central “showcase” district. It should come as no surprise, then, that notions of Midtown’s spatial primacy intersected with discourses of fiscal crisis and recovery to play a significant role in structuring vending laws.

Property and business interests in Midtown argued that the increase in street vendors detracted from the business environment of this important and prestigious area. Vendors created “a honky-tonk atmosphere” in what was supposed to be an upscale district.⁹ The president of Saks Fifth Avenue called vendors “disgraceful” and, speaking in explicitly spatial terms, claimed the quality of their goods was better suited for bohemian Greenwich Village, concluding, “they’ve turned the finest shopping area in the world into a peddler’s paradise.”¹⁰ “There’s only one solution,” argued the executive vice president of the Fifth Avenue Association, “the peddlers shouldn’t be here. They threaten to ruin the quality of the central business district, without which, *New York would have nothing.*”¹¹ Discourse surrounding the vending situation in Midtown exuded a bunker mentality during the 1970s. The city, teetering on fiscal insolvency, with crime and abandonment increasing in several neighborhoods, needed Midtown. It needed to maintain an image of prestige and exclusivity in a least one



⁹ *The New York Times* 1971, “The Illegal Peddling of Handicrafts-‘Better than Having a Job’”, 10 June.

¹⁰ *ibid.*

¹¹ Dickenson E, 1976, “Between Street Peddlers and Police, a Ritual Confrontation.” *The New York Times*, 1 January. [emphasis added]

city neighborhood. Midtown was defined by property and business interests as a vulnerable island of fiscally productive space amidst a sea of urban decline. The financial health of Midtown, according to commercial interests, was too important, too central to the city's well-being, to allow street vendors to place it in jeopardy.

In addition to these spatialized arguments against street vending in high value areas, anti-vending interests put forth fiscal arguments against the practice. With the city engulfed in a municipal budget crisis, a fine line was drawn by politicians and urban elites between social groups defined as burdens versus those seen contributors to the city's financial well-being (Sites 2003, 39).

Vendors were on the wrong side of this dividing line. They were portrayed as little more than fiscal parasites by city elites. For instance, a 1972 report by the New York City Economic Development Administration claimed that street vending cost the city \$116 million a year in lost revenue, which included \$44 million in lost sales tax and \$10 million in lost income tax.¹² A 1976 study claimed that vendors as a whole owed the city \$15 million dollars in unpaid summonses.¹³ Throughout the 1970s, articles in the popular press and studies commissioned by government agencies and private interests groups portrayed vendors as tax evaders, scofflaws and general drains on the city's coffers. There was little suggestion that these problematic actors could be reformed or shaped into productive citizens; rather, the solution was to regulate them out of space and criminalize their very presence.

This regulatory assault began with Local Law 77 of 1977. It was the first major change to vending regulations since the 1940s and it had a dramatic effect on the landscape of street vending, particularly for general merchandise vendors. The law established two categories of vendors, placing them under the oversight of two separate city agencies. Food vendors would now be regulated by the Department of Health, while general merchandise vendors (those that sold everything other than food) would be under the jurisdiction of the Department of Consumer Affairs.

In addition to splitting oversight of food and general vending between two agencies, the Local Law 77 banned general vendors from *all* of Midtown Manhattan, establishing what has come to be known as the "Midtown Box", a restricted zone encompassing nearly 250 blocks.¹⁴ By contrast, food vendors faced no new street restrictions. This uneven treatment would continue two years later, with the passage of Local Law 50 of 1979 which implemented a cap on general merchandise vending licenses. The cap was set at 853 and was the first hard cap on vending licenses in the city's history.¹⁵ By contrast, the law did not place any limit on food vending licenses. It should be noted that despite a waiting list for vending licenses thousands of names long, the cap instituted in 1979 has never been adjusted and remains at 853 to this day.

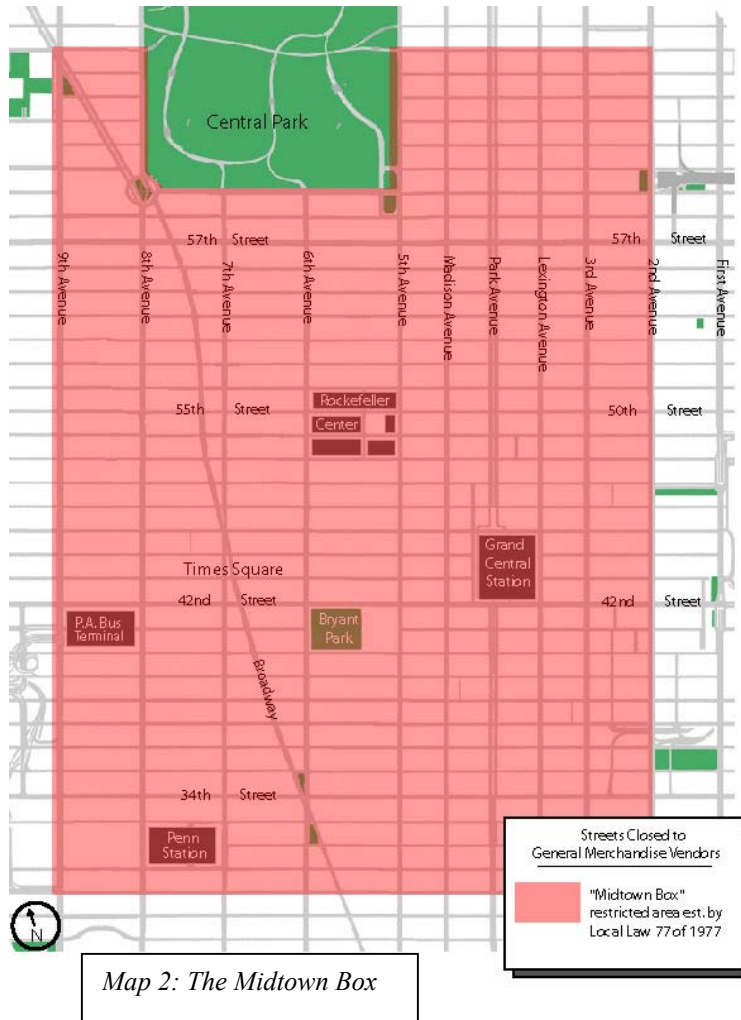
¹² "Peddlers' Lax Tax Stand Pushes City into Action" Edward Kirkland. *The New York Daily News*. 8/28/1972.

¹³ "\$15M Lost on Ignored Summonses" George Artz *The New York Post*. 11/20/1976

¹⁴ LL77 bans general merchandise vendors from entire area bounded by 2nd Ave on the east, 9th Avenue on the west, 30th Street to the south and 65th Street to the north.

¹⁵ The language of the law capped licenses at the number of licenses existing on Sept. 1st, 1979, which was eventually determined to be 853. When the bill was first introduced in August 1978, initial estimates predicted a cap number of roughly 1,100. But many in the vending community claimed that in the months leading up to the passage of the law the city refused to issue new licenses and stopped renewing existing licenses, thereby lowering final cap number.

The radically different treatment of general merchandise and food vendors by the city is explained in part by the fact that general merchandise vendors were more easily defined by anti-vending interests as illegitimate in Midtown’s upscale spaces. They were less organized than food vendors politically, and lacked food vendors’ loyal and broad customer base.¹⁶ Additionally, the nature of a general merchandise operation—selling inexpensive merchandise such as jewelry and other accessories from card tables—was more easily linked discursively to criminality. There was an air of illegitimacy in selling watches and jewelry for bargain prices even though the percentage of vendors selling stolen goods was deemed to be small.¹⁷



Lawmakers justified differential treatment of food and general vending in objective terms. In a legislative report, the City Council Committee on Consumer Affairs argued that general vendors tended to carry a greater array of goods and, therefore, the average buyer spent more time browsing at a merchandise table than at food carts, creating crowds and increasing congestion.¹⁸ This was the only justification publicly given for the different level of restrictions faced by food and general vendors. Moreover, the city council did not carry out any studies—in fact, produced absolutely no evidence whatsoever—to back up the claim that general vending caused more congestion than food vending.

If the legislative language was measured and objective, focusing on criteria such as sidewalk crowding

¹⁶ The politics of food vending will be discussed in more detail in the following chapter.

¹⁷ Dullea G, 1978, “Those Upwardly Mobile Street Peddlers” *The New York Times*, 11 December; *The New York Times* 1978, “Striking a Bargain over Peddling” 23 December.

¹⁸ Proceedings of the City Council of the City of New York, 1977 *Report of the Committee on Consumer Affairs in Favor of Approving and Adopting a Local Law (Intro No. 1021-A) to Amend the Administrative Code of The City of New York, in Relation to the Licensing and Regulation of Peddlers and Repealing Certain Sections in Regard Thereto*. 11, October 1977.

and congestion, popular rhetoric surrounding the restrictions on general vending was anything but. For the city's property and business sector, as well as for politicians eager to gain their favor, the new restrictions were a major achievement. They were framed as measures to take back the city's prestigious spaces from parasitic street vendors. Politicians, in particular mayor Abraham Beame, who presided over the city's fiscal collapse of 1975, were eager to demonstrate responsiveness to commercial interests on the vending issue. During the mayoral hearing on the proposed law, Beame stated that the ambitious reform of vending laws would not have been possible if not for "... the continuing concern and attention of the business community, which kept the peddler issue near the top of their priority list to help improve the business climate in this City."¹⁹ In a separate public hearing, Mayor Beame clearly delineated his allegiances by stating that, in supporting the vending bill, he and the city council were demonstrating their "...commitment to the various business and commercial interests in the city, that [we] would make every effort to upgrade our great commercial and cultural districts and *return the streets to the law-abiding citizens of this city.*"²⁰

Not all city officials were comfortable with the scope of the new regulations. Elinor Guggenheimer, commissioner of the Department of Consumer Affairs, argued in her testimony before the city council that the new regulations "address in great detail the problems stated by the business and community groups but do not respond at all to the problems articulated by the peddlers" and that it was "hypocritical to allow peddling in the City of New York and then to outlaw such activity in all of the areas where it is financially viable," adding that such strict spatial exclusion would simply invite rule breaking. She closed her testimony by arguing that "there must be places where people normally shop in which peddling is allowed."²¹ Her objections fell on deaf ears.

During the late 1970s, general merchandise vending was defined by city officials and business elites as a problematic practice. It interfered with circulation of pedestrians by causing congestion, represented "unfair" competition to storefront businesses, tarnished the image of Midtown as elite space, and drained the city of revenue in an era of fiscal crisis. But if general merchandise vending was defined as a problem, the regulatory approach rolled out in the late 1970s did little to "solve" that problem in a comprehensive way. Banning vendors from Midtown and capping the number of vending licenses at an unrealistically low number did not put an end to general merchandise vending, nor is it even clear that it significantly reduced the numbers of vendors doing business in the city. Rather, it merely served to make most general vendors illegal. In many ways, this approach conforms to a post-disciplinary logic of "managing problems in place" (Rose 1999). Many general vendors were pushed to the city's margins, settling in poorer, minority neighborhoods where enforcement and oversight was lighter. Those that remained in Midtown played a cat and mouse game with police, who generally dealt with vendors in cycles of crackdowns and permissiveness. This approach was flexible and cost-efficient, avoiding any large scale commitment to rehabilitation or reform in favor of managing issues as they arose.

¹⁹ Transcript of Mayoral Hearing on proposed Local Law 77 (Intro No. 1021-A), October 28th, 1977.

²⁰ Testimony of Mayor's Office before the City Council Committee on Consumer Affairs hearing on Intro No. 1021, October 6th, 1976. (emphasis added)

²¹ Testimony of Elinor C. Guggenheimer, Commissioner of Department of Consumer Affairs before City Council Committee on Consumer Affairs hearing on Intro No. 1021, October 6th, 1976.

By the late 1980s, however, the contradictions of this regulatory approach were becoming more and more evident. While relatively scarce in central areas of Manhattan, unlicensed street vendors were congregating in large numbers along major commercial thoroughfares in poorer, non-white neighborhoods across the city. Streets such as Fordham Road in the Bronx, Fulton Street in Brooklyn, 125th Street in Harlem and Canal Street in Chinatown were beginning to resemble the large, open-air markets that existed in the city around the turn of the twentieth century. Mayor David Dinkins commissioned a study of the unlicensed vending problem in the early-90s which concluded that the city needed to issue more licenses in order to formalize vendors, giving unlicensed vendors a stake in the system and an incentive to follow regulations, but this modest suggestion was never implemented nor is it clear if it was ever seriously considered.²²

It would be Mayor Rudolph Giuliani who would institute broad changes in the way the city dealt with the growing issue of unlicensed vending. Interestingly, on the surface, Giuliani's approach seemed quite similar to that of Fiorello LaGuardia fifty years earlier. The Giuliani Administration proposed to move unlicensed vendors off the sidewalks and into designated market areas—most often vacant lots own by the city or community institutions such as a church or mosque. The language of reform even reemerged under Giuliani, as administration officials claimed that the market plan would,

“ . . . provide a real alternative to street vending, enhance the quality of life on City streets, and provide opportunity for economic growth and entrepreneurship . . . [Vendor markets] are intended to serve as a launching pad for entrepreneurs who can then be moved into vacant storefronts.”²³

But promises of reform would ring hollow, functioning more as platitudes to soften the blow of increased enforcement of anti-vending laws than any sort of long term commitment to dealing with the issue of vending. Looking beyond superficial similarities between the LaGuardia and Giuliani approaches, we see significant differences that reflect shifting regimes of governance from the social to managerial state. The most basic difference between the two plans had to do with the level of commitment, both in terms of policy approach and funding. The markets constructed by LaGuardia in the 1930s and early-40s were brick and mortar structures, built and operated by the city using WPA funds. Many of the structures still stand today, with some of them still being used as markets.²⁴ By contrast, Giuliani's markets were most often erected as temporary structures (when there was even a structure) on vacant lots. Many of these lots were ultimately developed during the late 1990s and early 2000s as property values rose in neighborhoods across the city. A number of markets, however, did not even last long enough to be displaced. Managed through public-private partnerships with community development corporations or local real estate developers, the markets were often poorly run and under-funded, further reinforcing the sense that they were temporary solutions to

²² *New York in Transition: Itinerant Peddlers and Vendors Everywhere*. A Report to David N. Dinkins, Mayor, Barry F. Sullivan, Deputy Mayor for Finance and Economic Development and Wallace L. Ford II, Commissioner, NYC Department of Business Services by the Small Business Advisory Board, Department of Business Services, 1992.

²³ Testimony of Earl Andrews Jr., Commissioner of Dept. of Business Services before the City Council of the City of New York, Subcommittee on Markets and Retail Business, June 23, 1997.

²⁴ For instance, two markets mentioned earlier, Park Avenue Market and Essex Street Market still exist, though they are now privately managed.

manage the problem of street vending, rather than a commitment to large-scale reform of socio-spatial practice.

In addition to producing high levels of informal vending, the harsh restrictions on general merchandise vending put in place by the city led to legal challenges brought by street vendors, two of which were successful in limiting the city's ability to restrict vending and dramatically altered the landscape of street vending in the city. Military veterans and vendors selling artwork, in separate challenges, utilized the court system and formal rights claims to open spaces for themselves to do business despite harsh city regulations. But, as we will see, these victories were limited, revealing the uncertain and unpredictable nature of formal rights.

III. Challenging Exclusion, Claiming Rights: Military Veterans and Art Vendors

Throughout the 1980s, wave after wave of street closures placed more and more of Manhattan off limits to general merchandise vendors. By the late 80s, nearly every busy commercial street in Manhattan was closed to general vending. These exclusionary policies in many ways fit the narrative of late twentieth century New York common to critical urban studies literature: a “revanchist” city, reclaiming urban space for the elite, and using harsh laws to structure space in exclusionary ways (Smith 1996). But the case of street vendors complicates this narrative, for vendors were not simply passive victims; they actively challenged spatial exclusion through appeals to the state and the law.

For both groups, the state and the law served as shelters from, rather than devices of, spatial exclusion. In the early 1990s, military veterans utilized a obscure New York State law passed shortly after the Civil War to gain exempted status from license caps and street restrictions imposed by the city on general merchandise vending. A few years later, vendors selling artwork successfully challenged general merchandise vending restrictions as a violation of their First Amendment right to freedom of expression. It should be noted that, especially in the case of military veterans, some of the gains made by vendors were moderated by retaliations on the part of politicians sympathetic to demands of real estate interests. Nevertheless, in a city where general merchandise vendors were banned from all central areas in 1977 and general vending licenses were capped permanently at 853 in 1979, both of these challenges radically altered the landscape of street vending, as thousands of vendors otherwise unable to obtain a vending license or work in restricted areas were able to take up the practice. In an environment of vastly unequal power relations, where the interests of street vendors were pitted against those of wealthy and politically connected private property interests, vendors used one of the few tools available to them claim space in the city—appeals *to* the state and the law for legal shelter.

The value of using formal rights claims as a progressive social tactic is a topic of debate amongst leftist scholars.²⁵ For those scholars who believe “rights talk” to be problematic, one of the main drawback of rights lies in the their instability and indeterminacy; that is, rights are as secure and as progressively oriented as the

²⁵ This presentation of leftist debates on the efficacy of rights draws heavily from excellent and concise syntheses of these debates in Mitchell 2003 and Blomley 1994.

governmental power which ensures them (Tushnet 1984). A change in political orientation of the state, or a dissolution of state power, has the potential to strip people of rights previously thought to be secure. This leads to a second negative aspect of rights brought up by scholars skeptical of their utility—that rights become reified and tend to depoliticize. Rights, skeptics argue, are a “diversion from *true* political language” (Gabel and Kennedy 1984) and are a meager substitute for the formation of radical political consciousness and active progressive struggle (Tushnet 1984).

On the other hand, some progressive scholars have warned of the danger in abandoning the concept of rights to conservatives. They argue that scholars who relegate the concept of rights to the dustbin of progressive history are ignoring the possibilities of “rights talk” to produce tangible, progressive social change. Don Mitchell argues that “the (liberal) state has proved itself—precisely through the institutionalization of rights—to be a key protector *of the weak*” (Mitchell 2003, 25). Moreover, some scholars have argued that the critique of rights discourse is a privilege academics (particularly white male academics) take for granted. According to Blomley:

Arguing against rights discourse . . . denies the specificity of the Black experience, as well as that of other oppressed people. Not only does it negate the violence attached to systematic denial of rights, it also ignores the historic centrality of rights-discourse to political struggles such as the civil rights movement, or feminism (Blomley 1994, 411).

Similarly, Mitchell argues that rights and “rights talk” are important, concrete ways in which social struggle can be organized and progressive social policies can be institutionalized (Mitchell 2003). Mitchell, however, is cognizant of the inherent tendency of rights to become reified, and casts rights talk as always an ongoing struggle, requiring constant contestation and political engagement.

As Mitchell notes, struggle over the meaning of rights often revolves around conflicts between positive and negative rights, or to put it another way, the “freedom to” versus the “freedom from”. This dichotomy of rights talk often takes spatial form and nearly always underlies struggles over urban space. Competing discourses revolve around individual “freedom from” spatial disorder, congestion or menacing environments versus the “freedom to” exist, live and make a living in urban spaces. As we will see, this discursive strain informed rights-based battles over public space occurring between street vendors and anti-vending interests presented in this section.

David Harvey takes up the issue of conflicting notions of rights and argues that the conflict must be placed in political-economic context. Harvey does not find rights to be a hopelessly regressive concept, but warns that under neoliberalism, “the inalienable rights of individuals to private property and the profit rate trump any other conception of inalienable rights you can think of”, making positive rights, such as freedom of speech and expression, little more than “derivative rights” (Harvey 2005, 181). But Harvey argues for the possibility of “making derivative rights primary and the primary rights of private property and the profit rate derivative” (ibid 182), and points not to the abandonment of rights talk but rather the importance of political struggle over proper conceptions of rights. He warns, however, that any real shift of which type of rights are held primary must occur within a simultaneous shift of social systems, for rights do not simply exist in the ether, but are embedded within and supported by political-economic arrangements.

Nicholas Blomley attempts to reconcile the rights debate by arguing that the divide on the Left between rights optimists and pessimists is in fact an illusion, and that scholars are arguing two sides of the same coin. The debate is less about fundamentally different interpretations on the nature of rights than differing opinions of the consequences of one aspect of rights which both groups agree on—that the concept of rights is explosive, volatile and open to a number of possible meanings. Rights have the potential to produce tremendous change in social conditions, but the lasting effects of particular rights can be hard to control. Therefore, according to Blomley, optimists see rights as “acquir[ing] meaning and progressive potency when deployed in *community* settings as mobilizers and political yardsticks.” (1994, 413). For pessimists, when rights talk becomes institutionalized and circulates in the “juridical domain”, their meaning often becomes counter-progressive. Rights are most useful when deployed in an active sense, for “mobilization and critique”, but when they are legalized and judicially defined, they tend to lose their political potency (*ibid*). This framing helps us understand why and how, in the case of street vending, rights talk was initially an effective offensive weapon to open restricted space to vending, yet over the years, rights earned by certain groups of vendors have become more of an impediment to broader social change than a progressive force.

The other issue this section attempts to address is the need for a more complex notion of the state and law. In much of the Neo-Marxist literature concerning the assault on public space in the city of the late twentieth century, notions of the state and law are conflated, and the two are often presented as one repressive entity. In some of the most vivid narratives of spatial exclusion, such as Mike Davis’ account of Los Angeles or Neil Smith’s New York, the state is implicitly conceived of as a rational, cohesive body with a unified agenda to restructure space and exclude certain actors for the purposes of capital accumulation. As any middle school civics student knows though, “the state” is not a monolithic entity. In the U.S. it exists at multiple geographical scales (municipal, state, federal) and is divided among multiple branches (legislative, executive, judiciary). Critical urban theorists are, of course, aware of this, but consider these divisions to be of little relevance, for them, focusing on skirmishes between units of governments is little more than a distraction, for the state as a whole has the ultimate goal of facilitating capital accumulation and social reproduction.

The quarrel here is not necessarily with this last point, and the purpose of this section is certainly not to put forth a naive pluralist argument based on the division of powers. Nevertheless, the multidimensional state does create the potential for conflicting legal mandates, policy agendas, and political interests that occur across geographic scales and power divisions. Fragmented, autonomous agencies and political actors, “implement policies that often lead to unintended as well as intended consequences” (Fernandez Kelly and Garcia 1989, 250). To think of the larger category of the state as fragmented means paying attention to the fissures, political rivalries, and legal inconsistencies which make the multi-dimensional state less a solid edifice of exclusionary force and more of an entity of political contingencies, internal contradictions and conflicting legal mandates. As Cross argues, one must look not to unified state interests or actor, but view state agencies and politicians “as actors within the state itself, often competing for political importance, policy mandates, and the resources that each allows” (Cross 1998, 42). And,

as we will see, less powerful groups can sometimes exploit these internal state conflicts in order to claim and defend particular rights.

In New York, political considerations of individual politicians and conflicting jurisdictional mandates of various agencies and branches of government led to a situation in which a select group of street vendors were able to claim formal, long term rights to space despite harsh restrictions on general merchandise vending. In the case of military veteran vendors appealed to the legislative branch of New York State which had enshrined their right to space in state law, overriding municipal law. Similarly, art vendors fought exclusion by city government by appealing to the federal judiciary, claiming their exclusion from space violated their Constitutional right to free speech. The state, or more accurately, particular branches of government, served in both cases as hedges against spatial exclusion.

A. Taking Fifth: Military Veterans and the Battle for Fifth Avenue

Sometime in 1988, Joseph Kaswan, a disabled World War II veteran, decided to set up a table and sell general merchandise on a sidewalk in Midtown Manhattan. Midtown, of course, had been off limits to general merchandise vending for over ten years, since the passage of Local Law 77 established the “Midtown Box”. Kaswan was aware of this law, but the disabled veteran activist was also familiar with another law—an obscure clause added in the late nineteenth century to the New York State General Business Law which exempted disabled military veterans from any local ordinance prohibiting street vending. Kaswan’s table was placed on the sidewalk to initiate a test case, intended to confirm the right of disabled veterans to sell their wares in New York City in spite of restrictions placed on general merchandise vending by the municipal government.

After nearly two years of court battles, the Supreme Court of New York upheld Mr. Kaswan’s challenge. The archaic provision in the State General Business Law clearly stated that disabled veterans were exempt from all local laws restricting street vending. The unearthing of this law, and its subsequent validation by state courts, represented the most significant change to the regulatory landscape of street vending since the initial legislative reforms of the late 1970s. But it would not go unchallenged by business and property interests. As Harvey and others warn, rights are only as secure as the ability or willingness of the state to uphold them. They are not reflective of universal truths, but rather of political power and constant struggle. In the case of veteran vendors, rights were uncertain sanctuaries, as business interests and their allies within local and state government were able to lobby state representatives to amend the rights of veterans to do business in Midtown, placing significant new restrictions on the practice and dividing the vendors by granting specialized rights to a handful of veterans, while excluding the majority of them from operating in Midtown. These moves were justified through a very different sort of rights talk, as business interests excluded vendors in order to defend the right of tourists and residents to shop on prestigious Fifth Avenue, unencumbered by unsightly street vendors.

Article 4, Section 35 of the New York State General Business Law has its roots in postbellum New York society. As Civil War veterans returned home, the State of New York passed legislation granting all military veterans to right to receive a special, State-

issued vending license valid for use in any municipality. As originally written the law required veterans using these State licenses to comply with all vending laws in the city or town where they did business. In 1921 however, probably to ease the return of injured World War I veterans, the state law was amended and language was added to exempt disabled military veterans from complying with all municipal laws regulating street vending:

“..no [local] by-law, ordinance or regulation shall prevent or in any manner interfere with the hawking or peddling, without the use of any but a hand driven vehicle, in any street, avenue, alley, lane or park of a municipal corporation, by any honorably discharged member of the armed forces of the United States who is physically disabled as a result of injuries received while in the service of said armed forces.”²⁶

For much of the twentieth century, the advantages of this law for vendors in New York City were minimal. For much of the twentieth century it was relatively easy to obtain a vending license in New York City and street restrictions were relatively light. The law was probably intended to help veterans in small towns where vending was more likely to be banned. It is perhaps for this reason that the law was more or less forgotten in New York until the late twentieth century.

In April 1990, the State Supreme Court made its final ruling on the veteran vendor issue. The court dismissed the City of New York’s final appeal, claiming that the law clearly and unequivocally exempted veterans from local restrictions, and upheld the right of disabled veteran vendors to sell wares in otherwise restricted areas. The effect of this ruling was quite dramatic. Despite the fact that there were only about 300 disabled veterans with vending licenses, they predictably flocked to Midtown, particularly to Fifth Avenue, New York’s premier shopping street. This high value area was made all the more lucrative by fact that veterans now had an exclusive right to Midtown because all other general merchandise vendors were still banned from the area.

Fifth Avenue business and property interests were, unsurprisingly, upset at this new development and erupted in vociferous protest. For business leaders, the value of Fifth Avenue’s spaces was linked directly to the production and maintenance of an upscale, exclusive image, an image which the influx of veteran vendors—most of them selling low cost goods—interfered with. “When people think of Fifth Avenue they should think of Bergdorf-Goodman, Tiffany’s, Saks. These days, they think of T-shirts, belts, and ties,” complained the head of the Fifth Avenue Association.²⁷ Ira Neimark, the head of Bergdorf-Goodman, lamented that Fifth Avenue was “beginning to look like Istanbul on a Sunday.”²⁸ Falling back on a familiar line of argument, business interests argued that the spaces of Fifth Avenue were imbued with city-wide importance. The maintenance of Fifth Avenue’s image of exclusivity was, ironically, in the interest of all New Yorkers. The chairman of Bergdorf-Goodman claimed that, “New York needs the image of a healthy, glamorous Fifth Avenue [not a] sleazy main drag,”²⁹ and that, “[i]f

²⁶ New York State General Business Law Article 4, § 35

²⁷ Gearty R, 1990 “A Right to Take Fifth: Vet Peddlers make Stand on Poshest of Aves” *The New York Daily News*, 14 Oct.

²⁸ *The New York Post*. 1990 “Peddlers are Pillaging 5th Ave’s Image, State Pols are Told” 20 Dec.

²⁹ Lee, F.R., 1990 “5th Avenue Merchants Want Ban on Vendors” *The New York Times*. 20 Dec.

Fifth Avenue deteriorates into a peddler's paradise, its value to New York and the country will be seriously diminished."³⁰

Fifth Avenue business interests would take their grievances to Albany, lobbying the legislature to amend or repeal the law granting veterans the right to sell in Midtown. But they had a number of factors working against them. For instance, the timing could not have been worse. By late autumn in 1990, when the first public hearings on amending the law were held, the Gulf War in Iraq was well underway and many politicians were reticent to support a change that would strip military veterans of rights. Disabled veterans were able to capitalize on this, drawing on notions of patriotism, service and sacrifice to make their own counter-claims to Fifth Avenue's sidewalks. Vendors argued that the least politicians could do for those injured on the battlefield in service to their country was to allow them the opportunity to make a meager living selling scarves and hats on the city's sidewalks. But for Fifth Avenue business interests the right to space was not something owed, it was something earned through wealth and purchasing power. For instance, somewhat audaciously, the president of Tiffany's argued that while he had no problem with disabled veteran vendors per se, their military service and physical sacrifice did not give them the right to, in his words, "infringe upon the *rights* of shoppers and tourists."³¹ Another business leader claimed that the rights of veterans should be respected, but not to the point that they were "a detriment of other classes of citizens."³²

Politicians took a more measured stance. Most spoke of striking a balance. Some, such as New York City Mayor David Dinkins (who had no direct influence over matters of State law), openly defended veteran vendors, arguing that any new law restricting where vendors could operate should include a provision providing them with monetary compensation if they were forced to leave Fifth Avenue.³³ New York Governor Mario Cuomo warned he would only sign a bill adding new restrictions on veteran vendors if efforts were made by the city *and* Fifth Avenue property interests to assist veterans monetarily or help them find new jobs.³⁴ Ultimately the state legislature reached what they claimed to be a compromise, one which promised to "guarantee the integrity and appeal of one of the city's major shopping districts, while at the same time protecting the opportunities of disabled veterans to make a living in the profession they have chosen."³⁵ (Note, the legislature's use of the word "opportunity" rather than "right").

Two days before the Fourth of July, 1991, Governor Cuomo signed into law the amendment to Section 35 of the General Business Law. The new section, 35a, applied only to cities with over 1 million residents (there is only one such city in the state). The amendment required veteran vendors to comply with nearly all laws applicable to other

³⁰ Lee, F.R., 1990 "5th Avenue Merchants Want Ban on Vendors" *The New York Times*. 20 Dec.

³¹ *The New York Post*. 1990 "Peddlers are Pillaging 5th Ave's Image, State Pols are Told" 20 Dec.

³² *ibid*

³³ Ross, D 1991 "Dave Peddles Vet Fund to Fifth Avenue." *The New York Daily News*. 16 Jul.

³⁴ Provisions to monetarily assist veterans were never written into law. Merchants of Fifth Avenue Association however, made a public promise to hire any former veteran vendor for "twice the minimum wage". They also agreed contribute \$400,000 to a fund for job training and educational programs. When it became clear that jobs available were positions such as janitor or security guard, nearly all vendors balked at the offer. Additionally, the Association did not fully follow through with their funding promise. Only after a threat by Governor Cuomo in 1992 to repeal the law if Fifth Avenue Association could not demonstrate a good faith effort to fund a job training program did the group formally donate \$100,000.

³⁵ Kurtz J 1991 "Peddlers to be Offered Jobs on Fifth Avenue" *The New York Times*. 20 Jul.

vendors, including the law placing Midtown off limits. The compromise—in the minds of State politicians at least—was a provision granting 60 disabled veterans “blue licenses” which permitted them to vend in the otherwise restricted Midtown area.³⁶ These vendors would still not be permitted on major avenues, but were allowed set up on the side streets of Midtown. All other disabled veterans were given “yellow licenses”, which were not valid for Midtown, but granted them the right to vend on other major streets outside of Midtown which were off limits to non-veterans, such as 14th Street, Wall Street, southern reaches of Broadway and other commercial streets with high foot traffic.

The creation of this new vending hierarchy was a savvy political move on the part of Fifth Avenue business interests and their allies in the State legislature. It was also critical in mobilizing political will to amend the rights of veterans. By promising a small handful of veterans the right to sell on high-revenue corners in Midtown, sponsors of the amendment were able to produce a critical mass of veterans who would benefit from amendment and publicly support the legislative change. They could also claim that this was a reasonable reorganization, rather than an outright exclusion of veterans from Midtown—a particularly important point in a country at war. The true victors of the compromise, along with the sixty disabled veterans granted blue licenses, were Fifth Avenue business interests who gained what they wanted from the new bill: an elegant avenue entirely off limits to street vendors—military veterans or otherwise. That there would be a handful of blue license vendors on the side streets was a small price to pay for reestablishing Fifth Avenue as a vendor-free zone and the restoration of the avenue’s prestigious image.

The struggle over Fifth Avenue forces us to consider some of the limits of rights-based contestation, while at the same time demonstrating its potency. On the one hand, veteran vendors used formal rights claims as a means of spatial inclusion. On the other, rights enshrined by the state can be easily taken away or qualified. This case illustrates the warning put forth by many rights skeptics: that rights are only as secure as the willingness of the state to protect them. Rights are not stable entities, but subject to political conditions; as these change, so, too, can the scope of rights. In this case, the State legislature decided that the “rights” of upscale retailers and wealthy shoppers to go about their activity unencumbered by street vendors were more important than the right of military veterans to sell goods on the prestigious avenue.

This example demonstrates another drawback of rights-based struggle: that once rights are won, they have the potential to de-politicize, and can even be a regressive force. Both yellow and (especially) blue licensed vendors, with their acquisition of special rights, gained a stake in the current regulatory arrangement. For blue licensed vendors, granted exclusive right to sell general merchandise in Midtown, this stake was particularly lucrative. Therefore, it should come as little surprise that since the early 1990s, veteran vendors have been some of the least likely to participate in struggles for spatial inclusion of street vendors. Politically organized only around the defense of their own specialized rights, they have often been a hindrance rather than an asset to the broader struggle of street vendors in New York. This fact should not be an indictment of all rights-based struggles. To be sure, much of the regressive effects of the rights won by veterans had to do with the lucrative and highly exclusive nature of these rights.

³⁶ Vendors were ostensibly granted these coveted Blue Licenses based on seniority, though there was and remains a tremendous amount of controversy surrounding the initial process.

Nevertheless, the rights-based struggle of veteran vendors demonstrates the complicated and often uncertain nature rights-based struggles over public space.

B. Art Vending, Public Space and the First Amendment

The reign of Rudolph Giuliani as mayor of New York has been characterized as an era of an unprecedented assault on the rights and liberties of New York's citizens (Smith 1998). This characterization certainly held true for a number of social groups, including the homeless, minority youth and many types of street vendors. For one particular group of vendors, however, "Giuliani Time" was a era when significant new rights were carved out. In fact, it was thanks in large part to Giuliani's aggressive tactics of spatial reorganization that a successful First Amendment lawsuit by a group of artists established one of the most far reaching legal shelters for vendors in New York.

The struggle over the right to sell artwork began early in Mayor Giuliani's tenure as mayor and was centered in the SoHo neighborhood of Lower Manhattan. SoHo is a neighborhood of 19th century lofts which once housed small factories. As manufacturing declined across the city these loft spaces were largely abandoned, but their open floor plans and large windows made them popular with artists looking for affordable work and living space. These newcomers transformed the neighborhood during the 1960s and 1970s from an abandoned industrial landscape to an avant-garde artists enclave. Beginning in the 1980s, high-end galleries and art dealers set up shop in the neighborhood, followed by chic retail stores and restaurants. Eventually most working artists found themselves priced out of the neighborhood.³⁷ By the early 1990s, the transformation of the neighborhood was complete, as most working artists were settling in more affordable neighborhoods such as the East Village and Brooklyn's Williamsburg. Nevertheless, SoHo maintained a reputation as one of the city's premier arts district with that reputation now based on the conspicuous consumption of artwork, rather than its production.

SoHo's continued centrality in the New York art world drew many artists from other parts of the city to the neighborhood's sidewalks to sell and exhibit their work. They were joined by vendors selling jewelry and other fashion accessories, popular with shoppers and tourists who visited high-end clothing stores which were becoming more common in the neighborhood. In the early 1990s, retail establishments, galleries, residents and property interests pressured the new mayor, Rudolph Giuliani to do something about the increasing number of vendors on neighborhood sidewalks. Giuliani ordered a crackdown on vendors in SoHo, with police arresting artists and confiscating their work. Giuliani's harsh tactics led two art vendors, Robert Bery and Robert Lederman, to form a vendor association called Artists Response To Illegal State Tactics (ARTIST). This newly founded group sued the city, claiming their arrests and the confiscation of their artwork violated their First Amendment right to free speech.

Before preceding with an analysis of this particular struggle it will be useful to provide some legal context. The sale and distribution of material deemed to constitute "free speech" has long enjoyed exceptional treatment under New York's vending laws, with the definition of protected speech expanding through legal challenges over the years.

³⁷ The exception were those artists who illegally squatted in loft buildings and eventually, through political organizing, were able to legalize their status and gain ownership of their buildings (see Zukin 1989)

For example, during the early 20th century only the peddlers of newspapers and periodicals were exempt from most city laws regulating street vending, but successful legal challenges gradually broadened the universe of what was considered First Amendment-protected material. In 1938, *People v. Banks* found that a law requiring newspaper vendors to obtain and pay a license fee was unconstitutional. A year later, a judge ruled that a 69-page pamphlet entitled *John L. Lewis, Exposed!* was not “merchandise” but rather should be afforded the same First Amendment protection as periodicals, thereby adding pamphlets to a list of items constituting free speech.³⁸ A 1955 court ruling determined that a man selling a hard cover-book entitled *Autobiography of a Catholic Anotist* [sic] on the street without a vending license was not vending illegally, but rather exercising his right to freedom of expression, thereby extending First Amendment protection to the sale *any and all* written material on the sidewalk, political or not.³⁹ By the 1990s street vendors were able to sell various forms of written material from tables on the sidewalks—from explicitly political literature to comic books to old issues of *Playboy*. Thanks to their status of their goods as First Amendment protected material, these vendors were not required to obtain a vending license and were exempt from most street restrictions.⁴⁰

In their lawsuit against the city, Lederman and Bery argued that artwork should be afforded the same First Amendment protection as written material, for they both constituted a means of communication. The city countered that visual art was primarily decorative in nature and therefore should be afforded less rigorous First Amendment protection than written material. According to lawyers for the City, this meant that the burden was on the artists to demonstrate evidence of direct, individual censorship. Without this evidence, the city argued that their policy of treating art vendors like any other general merchandise vendor was valid.⁴¹

As was the case in the struggle over military veteran vending, the arguments of anti-vending interests were couched in terms of negative rights (the right from) trumping positive rights (the right to). Those in favor of limiting vending attempted to discursively minimize the First Amendment rights of street vendors by arguing that these rights were secondary to the right of people to move about and shop in SoHo unhindered by sidewalk congestion. Echoing his broader campaign to produce ordered and “civil” public spaces through quality of life initiatives, Giuliani himself argued that if art vendors wanted their rights to be respected, they needed to show some “reciprocity” and respect the rights of other citizens to move about freely in such a crowded city.⁴² If everyone’s rights were treated as equally valid, Giuliani warned, “you would have chaos.”⁴³ Catherine Ross of the SoHo Alliance—a neighborhood advocacy group—stated that, “. . . everybody enjoys art and would like to make it available to everyone. But what about when people

³⁸ *People v. Finkelstein* 1939.

³⁹ *People v. Hennacy*, 308 N.Y. 1039

⁴⁰ See Duneier 1999 for a in-depth sociological analysis of book vending in New York City.

⁴¹ *Robert Bery et. al. v. City of New York et. al.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Nos. 1620, 1621, 1782 August Term 1995 (Argued: April 26, 1996 Decided: October 10, 1996) Docket Nos. 95-9089 (L), 95-9131, 96-7137.

⁴² Hicks, D. 1996 “Street Art: Free Speech or Just Stuff?” *The New York Times*. 21 Jan.

⁴³ Audio recording of Town Hall Meeting held by the Giuliani Administration on vending, 1994. Recording obtained from website of Robert Lederman, president of ARTIST. Available at: http://www.youtube.com/watch?v=X889rXDOPdE&feature=channel_page

who do this *take away from the rights* of individuals who live there, using their buildings as props for their work.”⁴⁴ Citing congestion, councilwoman Kathryn Freed, whose district included SoHo added, “[Robert Lederman] believes he has an absolute right to do what he wants to do. In a place like SoHo, we have so much foot traffic there’s no room. *There are higher concerns than Mr. Lederman’s right to sell his art.*”⁴⁵

The U.S. Court of Appeals disagreed. The court forcefully struck down both the City’s argument that art constituted a lesser form of protected speech and that the need to establish spatial order trumped the right of art vendors to sell their work on the city’s sidewalks. First, in terms of whether or not artwork’s decorative nature lessened its position as protected speech, the court argued that “such a myopic vision not only overlooks case law central to First Amendment jurisprudence but fundamentally misperceives the essence of visual communication and artistic expression.”⁴⁶ The opinion continued to make a compelling, even impassioned argument for visual art’s merits as protected speech. The opinion is worth quoting at length:

Visual art is as wide ranging in its depiction of ideas, concepts and emotions as any book, treatise, pamphlet or other writing, and is similarly entitled to full First Amendment protection. Indeed, written language is far more constricting because of its many variants—English, Japanese, Arabic, Hebrew, Wolof, Guarani, etc.—among and within each group and because some within each language group are illiterate and cannot comprehend their own written language. The ideas and concepts embodied in visual art have the power to transcend these language limitations and reach beyond a particular language group to both the educated and the illiterate.⁴⁷

Once it established that artwork enjoyed First Amendment protection, the court moved on to consider the city’s claim that the law restricting general vending, was “content-neutral”, did not constitute censorship, and that the right to sell artwork in was secondary to the maintenance of safety and order. Ironically, the court found that while laws restricting the sale of merchandise were written in content-neutral language, they nonetheless served as de-facto censorship due to the city’s permanent cap on vending licenses. The cap was set at 853, with a waiting list for licenses thousands of names long. This made it virtually impossible for artists to obtain a license and sell their work on the street legally. Given this situation, the courts stated that in order to avoid charges of censorship, the city either needed to lift the license cap on merchandise vending licenses or exempt art vendors from the licensing requirement. Because the City insisted on maintaining a ridged cap on the number of general merchandise licenses available, it lost the ability to regulate the number of art vendors doing business on the sidewalks.

One of the most interesting components of the court decision, and pertinent for the purposes of this study, is the ways in which First Amendment rights were articulated in explicitly spatial terms by the court. The Giuliani administration attempted to diminish the connection between public space and free speech by arguing that other venues for the

⁴⁴ Hicks, D. 1996. “Street Art: Free Speech or Just Stuff?” *The New York Times*. 21 Jan.

⁴⁵ *ibid* (emphasis added)

⁴⁶ *Robert Bery et. al. v. City of New York et. al.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Nos. 1620, 1621, 1782 August Term 1995 (Argued: April 26, 1996 Decided: October 10, 1996) Docket Nos. 95-9089 (L), 95-9131, 96-7137.

⁴⁷ *ibid*.

sale and display of artwork were open to artists besides the street; artists, were free to display and sell their work in private spaces such as their homes, in restaurants, coffee shops, galleries and museums. But the court directly challenged this point of view, upholding the critical role public space plays in matters of expression and First Amendment rights. Once again, the decision is worth quoting at length:

Displaying art on the street has a different expressive purpose than gallery or museum shows; it reaches people who might not choose to go into a gallery or museum or who might feel excluded or alienated from these forums. The public display and sale of artwork is a form of communication between the artist and the public not possible in the enclosed, separated spaces of galleries and museums. Furthermore, to tell appellants that they are free to sell their work in galleries is no remedy for them. They might not be at a point in their careers in which they are interested in reaching the public that attends exhibits at art galleries--if, indeed, they could get their works accepted for showing . . . *The sidewalks of the City must be available for appellants to reach their public audience.*⁴⁸

While not mentioning SoHo explicitly, the court implicitly referred to the spatial, commercial and ideological conflict occurring in SoHo. Artists sold their art on the sidewalks in direct defiance of the gallery and art dealing industry which wielded power over what type of work was worthy of display and took commissions from the sale of artwork. Ironically, galleries filed amicus briefs in support of the city, even though the gallery industry itself benefited from liberal interpretations of the First Amendment.⁴⁹ Through their actions, the galleries seemed to imply that First Amendment protection should not extend outside the network of the art dealers. But, according to the courts, Constitutional rights and (public) space were inextricably bound together. The ability of artists to sell artwork on streets lined with galleries was precisely the sort of oppositional and subversive activity that the First Amendment was written to protect.

The ruling was a bitter defeat for the Giuliani Administration and commercial interests in SoHo. For Giuliani, especially, the battle with art vendors turned vicious and personal leading to growing criticism concerning his nearly maniacal quest for spatial order.⁵⁰ To make matters worse for anti-vending interests, the definition of protected visual expression was interpreted broadly by the courts. Basically, *any* object that had the primary function of conveying a message visually, regardless of its originality, quality or political content, was afforded First Amendment protection. Perhaps more importantly, the vendor of said object did not have to be the original artist in order to enjoy protection. This provided a significant opportunity for street vendors to sell tourist-oriented souvenirs of questionable artistic merit but high popularity, such as mass-produced photos of city landmarks, portraits of celebrities, reproductions of masterpieces on exhibit at local museums, etc. Stock photos of the Brooklyn Bridge and portraits of New York-

⁴⁸ *Robert Bery et. al. v. City of New York et. al.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Nos. 1620, 1621, 1782 August Term 1995 (Argued: April 26, 1996 Decided: October 10, 1996) Docket Nos. 95-9089 (L), 95-9131, 96-7137.

⁴⁹ Interview with Robert Lederman (Jan 2008).

⁵⁰ Robert Lederman's acts of civil disobedience included displaying portraits near City Hall of a ghoulish-looking Giuliani, some with Hitler-style mustaches or captions such as "Mussolini of the Hudson". It was an act which, according to some members of the Giuliani Administration interviewed for this research project, infuriated Giuliani on a visceral, personal level.

based rappers were most likely not what the court had in mind when it upheld the critical importance of protecting the sale of art in public space, but the city would be treading on thin legal ice if they began arbitrating what type of visual expression was “worthy” of First Amendment protection.

This broad interpretation of artwork infuriated both anti-vending interests and some of the practicing artists who won First Amendment protection for artwork. Some artists felt that vendors selling photographs of the Empire State Building to tourists “cheapened” the artists victory. For his part however, Robert Lederman, leader of ARTIST, supported the right of non-artists to sell artwork:

When we won the case, the city lawyers all tried to get me to sign a dissent decree against the art vendors [Lederman’s term for non-artists selling art] and I refused. The reason why I took that position was, well, we’d won a First Amendment case why should we put limits on it? Why would we take less protection?⁵¹

The right to sell artwork on the city’s streets was won by a handful of struggling artists attempting to claim space on the sidewalks of SoHo, an upscale and exclusive arts district. But due to a broad interpretation of First Amendment rights, the effects of the ruling radiated out of SoHo to encompass the entire city. For the first time in almost twenty years, sidewalks in Midtown and other areas placed off limits to vending were once again open to vendors, as long as they sold art-related items.⁵² Many vendors, most of them new immigrants unable to obtain a general merchandise license due to the cap, turned to selling tourist-oriented photos or paintings on the city’s sidewalks—with the Giuliani Administration and business groups almost completely powerless to limit their numbers or locations. In this sense, the spatial consequences of vendors’ claims to formal rights were dramatically—one might even say radically—inclusionary.

The example of art vending illuminates the double nature of the law and its relationship to space. It is an important reminder that the law does not always structure space in exclusionary ways but—through claims to formal state-ensured rights—can operate as an important shelter for less powerful groups against exclusionary aims of commercial interests and their allies within local government. In this particular case, “rights talk” employed by vendors was effective in winning and securing a place on the city’s sidewalks. The art vendors’ victory over the exclusionary regime of the Giuliani administration was one of the most impressive challenges to the dominant spatial order. This is not to suggest, however, that the victory was unproblematic. Even though the category of “art vendor” was inclusive, in the sense that any individual could become an art vendor simply by placing a photograph on a table and putting a price on it, the First Amendment challenge nonetheless opened yet another legal category of vendors, with

⁵¹ Interview w/Robert Lederman (Jan 2008).

⁵² The only way the city could prevent art vendors from setting up on a particular block was if that block had such narrow sidewalks or crowding issues that *all* vending was banned (food, general merchandise and veterans). While all of Midtown was officially off limits to general vending, there were numerous blocks open to food vendors and veterans. If city laws permitted one type of vendor to do business on a particular block, the courts interpreted this to mean that there was no critical safety issue. Absent this—that is—if the sidewalk was wide enough and crowd levels low enough to allow a veteran to do business, prevention of a First Amendment vendor to set up on the same block would be considered an arbitrary action by the city, and therefore in violation of First Amendment.

special rights that would be jealously guarded. Therefore, in addition to opening new opportunities for vendors, the First Amendment ruling further divided the vendor community. Importantly, the First Amendment exception today plays an extremely complex role in structuring political possibilities for vending reform and legislative change.

IV. Conclusion: Shifting Regimes of Spatial Management

This chapter argues that the increase in regulation of street vending which occurred at the end of the twentieth century must be viewed in historical context. Laws put in place at the end of the twentieth century were more of a recalibration of longstanding logic of governing public space rather than something substantially new. Regimes of governance were themselves embedded within and influenced by a larger political-economic shift from the social state of embedded liberalism to managerial state of neoliberalism. Importantly though, this chapter also seeks to point out that structural explanations alone do not explain changes in vending regulation. Within parameters set by political-economic constraints, various actors battled over the proper meaning, use and form of the city's public spaces, influencing and shaping the ways in which laws were produced, enacted and enforced.

During the late twentieth century, in the case of general merchandise vending, city officials successfully problematized the practice as an illegitimate form of entrepreneurship, a fiscal liability in a time of fiscal crisis. Two specific groups of merchandise vendors—military veterans and art vendors—were able to put forth legal challenges to these policies and carve out their own specialized rights to space, but for the most parts, general merchandise vendors were not powerful or organized enough to counter narratives of illegitimacy and criminality put forth by anti-vending interests and unable to influence any sort of positive change at the legislative level to protect or claim rights to space. Legal challenges, which upheld relatively narrow rights to space were their only option.

That it came to appeals for First Amendment rights or obscure state laws in order for vendors to establish some level of legitimacy in the eyes of the state is telling. Vendors had gone from subjects in need of reform during the early twentieth century, to little more than pests in need of eradication at its close. During the 1930s, in the context of the social state of embedded liberalism, problematic subjects were nevertheless viewed as part of the greater social whole, and there was a sense—however paternalistic and condescending—that the state had a duty to reform these subjects and bring them into the fold. Moreover, there were resources available to undertake large-scale reform project of moving vendors indoors into public market buildings. The status of pushcart merchants as part of a broader social fabric was never necessarily in question, the imperative for the state was to incorporate them, reform them, and make them better urban subjects, conducive to modern urban life.

After New York's fiscal collapse, and the subsequent dismantling of its welfare apparatus, status as legitimate member of the broader social fabric was no longer a given. Inclusion into society now hinged on one's status as a fiscally productive citizen contributing to the city's tax base. Ironically general merchandise vendors—despite being the quintessential bootstrapping entrepreneur, were defined as outside the sphere of

productive citizenship, deemed illegitimate because they were purportedly a drain on the city's bottom line through tax evasion and lack of fine payment, in addition to interfering with revenue generating activities of the real estate sector.

Outcast due to their redefinition as unproductive subjects and drains on the economy, general merchandise vendors were left with nearly no recourse, save appeals to rights and obscure legal loopholes. By contrast, food vendors in the city, who also came under regulatory assault during the 1980s and 1990s, were able to formulate counter-narratives challenging business and real estate interests through discourses of free market populism and immigrant entrepreneurship. Unlike general vendors, for a variety of reasons which will be described in Chapter Two, food vendors were able to inscribe their practice, for better or for worse, into the narrative of neoliberal New York City. It is to the contentious politics of food vending that we now turn.

Chapter Two

“The Vietnam of Municipal Issues”: Regulating Food Vending in Late 20th Century New York

Few figures are as emblematic of New York City street life as the ubiquitous hot dog man. For many visitors and residents alike, the vendor selling “dirty water dogs” from a weathered steel cart topped by a brightly colored umbrella is a quintessential New York scene, embodying many of the elements and myths associated with the city: the hardworking immigrant entrepreneur, a vibrant public sphere, a sense of self-assured grittiness. The figure of the food vendor is so embedded in New York City’s cultural landscape that his or her presence on the street at times seems almost like a natural formation, rooted in the sidewalk through years of spatial practice. But few people purchasing lunch from a street cart realize that food vendors’ place on city’s sidewalks has always been a hotly contested issue, or that they owe their presence to decades of fierce struggle and pitched political battles against city officials and property interests intent on eliminating them from the city.

As is the case today, property interests and their allies in City Hall during the 1980s and 90s viewed food vendors as eyesores interfering with their efforts to portray Midtown as an orderly and prestigious space. Additionally, vendors were seen as representing “unfair” competition to retail tenants. Food vendors, therefore, by their very presence threatened to lower property values and decrease the financial potential of New York real estate. Especially in the city’s central areas, the slightly chaotic nature and somewhat ramshackle appearance of food vending had long been a thorn in the side of redevelopment efforts focused on place-making and the creation of ordered, choreographed public spaces. The rise of Business Improvement Districts (BIDs), with their mandates to, among other things, create and maintain carefully manicured spatial images that operated as brands for a neighborhood, increased pressure to rid sidewalks of street vendors. Additionally, as BIDs serve as umbrella organizations for various property owners in a designated area, their emergence on the scene in the 1990s helped to centralize efforts by the real estate industry to influence vending regulations.

This chapter will provide a detailed history of the increasing legal restrictions on food vending during the late twentieth century, as well as an in-depth analysis of politics and discourses surrounding this struggle over urban space. Following Jane M. Jacobs, this chapter argues that spatial regulation in the contemporary city does not exist as an “uncontested imposition” (Jacobs, 1996, 21), but, rather, is a process fraught with



political conflict and legislative uncertainty. In short, local politics matter as struggles over spatial representations structure the form and manner of laws regulating space. Laws do not simply act upon space in a top down, unidirectional fashion, but are themselves shaped by competing discourses and conceptions of the very spaces subject to regulation. As critical legal geography teaches us, law and space exist in a “complex and profoundly subtle” (Blomley 1994) relationship, and they cannot be viewed as separate analytical categories, but rather, as co-constituting. As geographer Nikolas Blomley argues, the “law itself is not simply imposed upon a local setting, but is instead interpreted in and through that setting” (ibid, 41).

By recounting the history of food vending regulation during the late twentieth century, this chapter will demonstrate how competing discourses of urban space structured food vending laws in New York City. It will focus on three questions related to this broader aim. First, how and why did food vendors come to be defined as a problematic actors in public space by commercial interests and city politicians? Second, what were limits of this problematization? And, finally, how did food vendors fight back?

During the late 1970s, when general vending came under harsh restrictions, property interests had similar aims for food vendors. But mobilizing the political will to restrict food vending would prove much more difficult, for two main reasons. First, food vendors were better organized than general vendors. They were able to advocate for themselves as an industry, reaching out to local politicians and speaking to the press with a relatively unified voice. Additionally, food vendors enjoyed broad support of the public and received mostly positive coverage in the local press. Because food vending was seen by many as a beneficial, even iconic practice with a proud tradition in the city, it was much more difficult for commercial interests to define them as problems and for city officials to portray food vending laws as objective regulations carried out for the benefit of the public as a whole. The demands of real estate and business interests to rid the streets of vendors ran against the interests of the celebrated entrepreneurial immigrant but also—and perhaps more importantly—against the interests of a broad spectrum of New Yorkers who relied on food vendors in central areas of Manhattan for quick, inexpensive meals.¹

In effect, the battle over food vending in Midtown and later in the Financial District was a struggle over symbolic versus lived space. This struggle over spatial representation had a profound effect on the uneven scale and scope of laws regulating vending, as well as the unpredictable nature of the politics surrounding the issue. For property interests, maintaining the district’s symbolic prestige was critical to the extraction of value from urban space, but for the everyday denizen of Midtown, symbolism mattered less than the quality of lived experience, of which food vendors were an important component.

¹ Ironically, one could argue that real estate developers unintentionally contributed to increased demand for food vendors in Manhattan’s central business districts in two ways. First, during the 1970s and 80s, many older commercial buildings were replaced with Modernist office towers set back from barren plazas and with spacious lobbies occupying the entire ground floor, eliminating ground floor retail space for restaurants or delis. Second, in addition to replacing retail space with lobby space through new construction, new development led to rising rents in existing buildings, which priced many inexpensive diners, delis and pubs out of the office districts. In many parts of Manhattan’s commercial core, food vendors were one of the few low cost lunch options available.

Claims by vendors and their supporters for the primacy of lived experience over symbolic prestige were not necessarily reimaginings of space as radically inclusionary, but were articulated through the needs of middle class consumers and through liberal ideals of vendors as quintessential immigrant entrepreneurs meeting a demand for inexpensive, quick meals. Claims made by vendors and their advocates operated through a rhetoric of free market populism and vendors' position as determined immigrant entrepreneurs. Despite—or perhaps because of—the liberal orientation of these claims, they fundamentally undermined dominant arguments put forth by property interests that restrictions on the use of public space are carried out for the benefit, comfort and safety of the majority of consumers/citizens and are simply value-neutral responses of planners and developers to consumer demand for well-ordered public environments.² The example of food vendors demonstrates clearly the ways in which space—even in the most central, high value areas of global cities—is not inevitably exclusionary, but contested. However, by positioning themselves as “good” vendors, popular with the public and efficiently meeting a market demand, food vendors reinforced differentiation of vendor groups and closed the door to more radical and inclusionary reimaginings of space and spatial rights.

Nevertheless, the competing liberal discourses of proper spatial practice put forth by vendors and property interests made food vending an especially uncertain political issue. Politicians were saddled with the difficult task of responding to the narrow demands of the real estate sector, which quite plainly wanted food vendors out of Midtown, without seeming antagonistic to New York's ethos of respecting ambitious, entrepreneurial newcomers or coming off as elitist and unresponsive to the needs, gastronomical and otherwise, of the “average New Yorker”. As we will see, Mayor Giuliani, who folded the vending issue into his larger “quality of life” campaign for public order, showed more resilience against criticism during his battle with food vendors in the mid-1990s. But for Mayor Koch, elected in 1978 by combining populist rhetoric with pro-business, development-friendly policies (Mollenkopf 1994), the vending issue was a delicate tightrope. It should come as little surprise, then, that one city official described food vending in New York as the “Vietnam of municipal issues”.³

I. The Price of Populism: Ed Koch, Food Vendors and the Struggle over Midtown

After the legal reforms of the late 1970s, general merchandise vending opportunities were limited by a cap on licenses and heavy street restrictions, but food vending licenses were available in unlimited numbers and food vendors were not subject to any street restrictions. This created an obvious incentive for those vendors who could afford it to make the switch from general merchandise to food vending.⁴ In fact, in the

² See for instance Frieden and Sagalyn (1989) who justify exclusionary restrictions on the use of public space and the “mallings” of downtowns as simply the response by property interests and planners to middle class patterns of consumption and entertainment.

³ *The New York Times* 1983, “Fair and Foul on the Street”, 6 May.

⁴ It should be noted that starting a food vending operation requires much more initial capital investment than general vending, as food vendors need to buy or rent a cart, purchase supplies and rent space in a garage to store the cart, among other things. By contrast general vendors need only a card table and their

first year after the imposition of the general vendor license cap, the number of food vendors increased from 4,000 to 9,000.⁵ The increased number of food vendors only strengthened calls from the business and real estate community to place restrictions on the practice. With strong support from the property, restaurant and theater industry, in 1982 mayor Ed Koch and his administration introduced a bill to city council which would have banned food vendors outright from central areas of Manhattan.

The council, however, was hesitant to support the initiative. They acknowledged the need for regulation, but did not feel an outright ban would be politically prudent. After the bill was proposed, several council members went “on location” in Midtown to evaluate the situation and get some opinions on food vending from the general public. In a legislative report, the council members stated that the majority of people they spoke with, both patrons of vendors and those simply passing by, “felt that the vendors provided a valuable service to the working community and also added to the flavor of New York.”⁶ In addition, councilmembers related that most people interviewed felt banning food vendors from midtown would be “doing a disservice to the City.”⁷ While this initial bill did not even come to the floor for a vote, the council did state in clear terms that they were willing to work with the mayor on the food vending issue if a bill with less restrictive language was proposed.

That bill would come the following year and would ultimately pass the council, becoming Local Law 17 of 1983. This new bill brought the regulation of food vending closer in line with that of general merchandise vending. The number of food vendors, like that of general vendors, would now be capped. The cap was set at 3,000, much higher than that of general vendors (which stood at 853), but much lower than the roughly 9,000 food vendors doing business just three years earlier.⁸ It was the first time in the city’s history that the number of food vendors was subject to a permanent cap. In terms of street restrictions, Local Law 17 established restrictions on a handful of streets, including all north-south avenues and major cross streets in Midtown, such as 34th and 42nd Streets (*map 1*). In addition, many side streets in Times Square were included on the list of restricted streets in response to demands of the Broadway theaters and playhouses, which opposed food vending for, among other reasons, cutting into concessions revenue.

The political discourse surrounding the passage of this bill was measured compared to that surrounding general merchandise vendor restrictions a few years earlier. Far from portraying food vendors as undeserving parasites—which was the language merchandise vendors were subject to—politicians were careful to point out that food vending had a place on New York’s sidewalks. As he signed the bill into law, mayor

merchandise to start a business. Making the switch to food vending represented a significant financial jump for most general vendors.

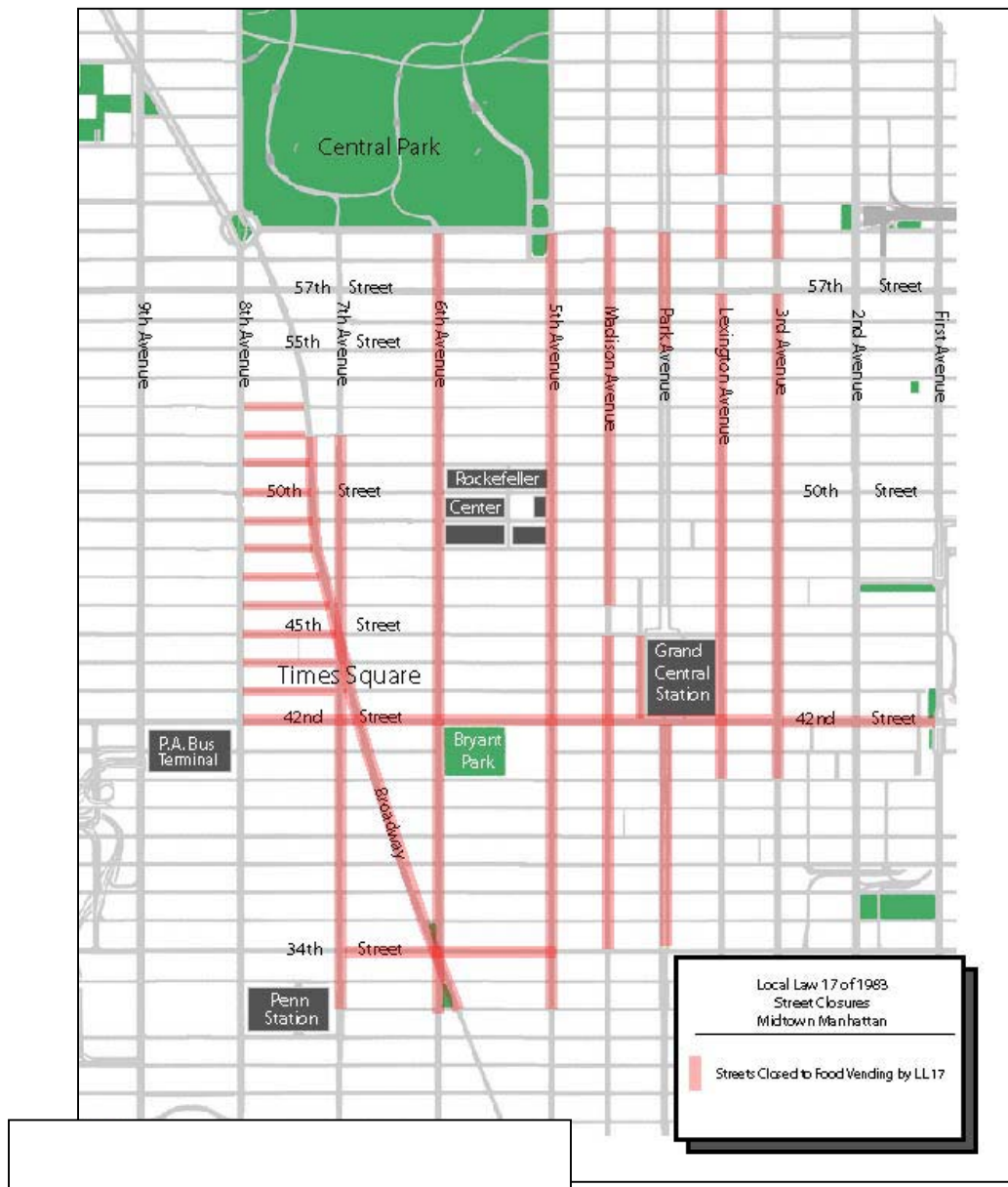
⁵ Smolowe J, 1980, “Merchants Propose a New Ban on Street Peddlers”, *The New York Times* 1 December.

⁶ *Proceedings of the City Council of New York City* 1983, Council Minutes-States Meeting, 14 April.

⁷ *ibid*

⁸ Like the cap on general merchandise vending, the cap on food vending was based on the number of vendors existing on a certain date, in this case July 30th, 1983. It should also be noted that the law caps cart permits, not licenses. Cart permits are affixed to a particular food cart and operating a food cart without a permit is tantamount to unlicensed vending. Therefore while food vending licenses are uncapped, the permit cap effectively limits the number of legal food vendors to 3,000.

Koch emphasized that he was not anti-vendor and called street vending a “noble profession”, even mentioning that his own grandfather had once been a street vendor.



The new restrictions were portrayed simply as value-neutral measures to ensure public safety, with the council finding that the presence of food vendors caused “serious congestion on the streets and sidewalks” which posed a “serious threat to the health, safety and well being” of city residents and that “reasonable regulations” were needed.⁹ No criteria were established nor evidence presented to support claims of unsafe levels of congestion.

With the passage of Local Law 17 in 1983, there was a subtle but important shift in spatial discourse taking hold among anti-vending interests. To be sure, definitions of

⁹ *Proceedings of the City Council of New York City 1983, Council Minutes-Stated Meeting, 27 April.*

Midtown as a space of symbolic prestige were still common, but more and more business interests and their allies within city government justified anti-vending regulations in more value-neutral terms, relying on discourses of congestion and the need to protect the public from the dangers of overcrowded sidewalks. The spaces of Midtown Manhattan were defined as too crowded, too busy, to allow valuable sidewalk space to be taken up by food vendors. Sidewalks and public spaces were represented as primarily, even exclusively, spaces of circulation rather than spaces in which people fulfilled day-to-day needs, such as operating a modest business or purchasing and eating meals. As an official in the mayor's Office of Operations argued to the press, "it is simply not appropriate to set up a restaurant on the sidewalk. That's the breaks."¹⁰ This veil of neutrality proved to be a thin one, however, as vendors and their advocates were often effective in redirecting the discursive conflict, framing the struggle as one of elitist notions of Midtown as showcase versus populist notions of Midtown as lived space.

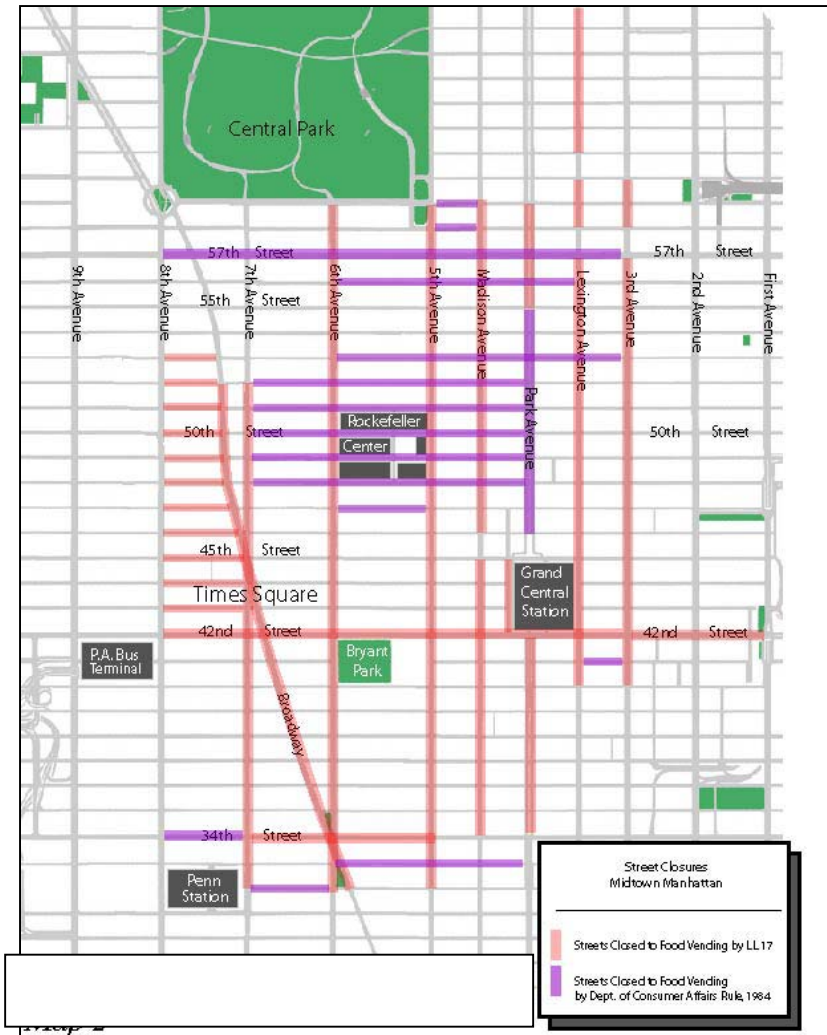
A. Closing Midtown to Food Vending, Attempt #1: Agency Regulations

Though Local Law 17 of 1983 closed a number of major streets to food vending, one could argue that the initial street closures were not overly restrictive. Though not based on any objective criteria for measuring congestion, they nonetheless established a system in which food vending was outlawed on the major avenues, but generally permitted on smaller cross-streets, allowing vendors to set up on the street-side block face of nearly every intersection in midtown.¹¹ In effect, this first set of street restrictions represented more of a spatial reorganization of vending off the major avenues and onto the side streets (where sidewalks, ironically, were narrower), rather than outright exclusion. This compromise would not last long though, as the Commissioner of Consumer Affairs soon began exercising power to close additional streets to food vending.

One of the most important clauses in Local Law 17 of 1983 received much less initial attention than the license cap or street closures. This clause assigned further street closure power solely to the Commissioner of the Department of Consumer Affairs. It granted broad authority, without setting out guidelines for how that authority should be exercised. Perhaps the most controversial element was that, while a street could only be closed based on a determination that it was "regularly too congested", the law did not establish any criteria for determining what constituted "too congested" nor did it require the commissioner establish specific criteria. All commissioners of city agencies are mayoral appointees and generally work to carry out the mayoral agenda. The Koch administration therefore was able to exert direct influence over spatial restrictions through the Department of Consumer Affairs, eliminating the need to build consensus in the city council. But this did not mean that further restrictions would be carried out free of conflict. In fact, the issue would become one of the most volatile ones the Koch

¹⁰ *The New York Times* 1984, "A Bad Year for the Pushcarts", 11 November.

¹¹ The midtown grid is made up of broad thoroughfares running north-south, all of them designated as "avenues". Narrower thoroughfares running east-west are designated as numbered "streets". In the context of midtown Manhattan, when one says "streets" they are referring to east-west running thoroughfares, and "avenues" to those running north-south.



administration faced during the 1980s, and would be a thorn in Koch's side for the remainder of his term.

The first attempt to extend street restrictions on food vendors came in June 1984. The Department of Consumer Affairs, closed dozens of new blocks in Midtown to food vending, including many cross-streets, ending the closed avenue/open street framework put in place by Local Law 17 (*Map 2*). The mayor maintained measured rhetoric of balancing the needs of consumers with public safety, but the uproar from

vendors and their advocates was immediate and fierce. Op-eds in local newspapers expressed outrage at the new laws. Food vendor groups, including two of the largest, Big Apple Food Vendors and Manhattan Food Vendors, filed a joint lawsuit against the city, claiming the new street closures had the effect of legislating them out of business. Even some members of the city council who voted to grant the administration power to close streets expressed concerns over the closures, claiming the new rules went too far, and that they would not have granted the administration unilateral power to close streets if they had been informed of the extent of the administration's street closure plans.¹²

The lawsuit filed by vendor groups would ultimately fail, but the uproar evidently had an effect on Mayor Koch. Six days after a judge upheld the city's right to proceed with street closures, Koch announced that the new restrictions would be, in his words, "relaxed".¹³ They would not be taken off the books, but the mayor publicly ordered the police not to enforce the new rules, allowing vendors to continue vending on restricted streets.

¹² Seifman D, 1984, "Hizzoner Serves Vendors a Fair Deal" *The New York Post*, 9 September.

¹³ *ibid.*

This first skirmish established food vendor organizations as an influential force in local debates over vending. The two largest, Big Apple Food Vendors and Manhattan Food Vendors were in a unique position to articulate a unified voice for food vendors. These organizations were not necessarily organic associations of food vendors, but rather, the political arms of multiple permit holders. Unlike today, where food vending permits are limited to one per vendor, during the 1980s, individuals were able to accumulate multiple permits. A few capitalized on this, applying for and receiving up to 500 food vending permits, which they affixed to carts and subsequently rented out to individual food vendors.¹⁴ Although it was illegal to rent out vending permits, this process was technically legal, because the multiple permit holders claimed they were simply renting vending carts that happened to have permits attached. This process may have been against the spirit of the law, but it was within the technical legal boundaries.¹⁵

The political ramifications of all of this was that it allowed for high levels of organization and a unified political message directed by the multiple permit holders, who were mostly Greek or Italian American, fluent in New York's political landscape, and familiar with democratic processes of the United States. They were able to direct the voice of public protests and ensure participation in marches and rallies. All of this obviously means that the broad-based vendor protests against Koch Administration policies during the 1980s must be taken with a grain of salt. They were not organic upwellings of dissent among the immigrant masses, but rather, orchestrated protests by politically savvy industry leaders. Nevertheless, it can be assumed that most of the vendors who participated in the protests agreed with what they were protesting, i.e. against their further exclusion from the sidewalks of Midtown. Plus, even more telling, after the multiple permit holders had their permits stripped of them by the Giuliani Administration, the former heads of these vendor association were still able to lead the now-independent vendors in large-scale rallies and marches and help unify the political voice of food vendors.

B. Closing Midtown to Food Vending, Attempt #2: Back to the Council

The decision to “relax” street closures would not be Koch's last policy reversal on street vending, nor would it be his most puzzling. In 1985, perhaps realizing the political risk inherent in enacting street restrictions unilaterally, the mayor's office decided bring the City Council back into the process. Koch introduced a bill to the city council that would ban vendors by law from the streets placed off limits by the Department of Consumer Affairs (DCA) in 1984.¹⁶ The new bill would further add a small number of

¹⁴ According to New York City law, the name on a vending permit is not required to match that of the operator of the cart to which the permit is attached.

¹⁵ It should be noted that the relationship between multiple permit holders and renters of permit was not an employer-employee one. Vendors did not work for the multiple permit holders, but rather, paid a fee to rent the cart, and kept the revenues from their sales. Though the Giuliani Administration, in their campaign to have multiple permits revoked, tried a number of times to portray multiple permit holders as exploiting individual vendors and claimed vendors were simply employees of big businesses, no evidence emerged to support these claims.

¹⁶ It may be useful here to clarify the distinction between “rules” and “laws” in New York City. Laws are enacted through the legislative process. They are bills passed by the city council and signed by the mayor. Once signed by the mayor, they become part of the Administrative Code of New York City. Generally,

new streets to the list of restricted streets. Because the majority of streets included in the bill were already closed by DCA rule, technically speaking, the new law would only *add* a handful of new street restrictions to the books—a point played up by politicians. Of course, this was a disingenuous framing, as the DCA restrictions were not being enforced. The bill, therefore, would have a much more dramatic effect on the legal landscape of vending than politicians attempted to convey.

The bill was again cast in the rhetoric of controlling congestion and protecting public safety, but its main backers were the same business, real estate and theater industry groups who had opposed vending for years on less objective grounds.¹⁷ After much political wrangling, the bill, known as Intro 933-A, was put to a vote, passing unanimously, 31-0. The vote occurred under circumstances the *New York Times* described as “unusual.”¹⁸ Council meetings traditionally take place on Tuesdays or Thursdays. The council, however, called an emergency meeting for Friday afternoon, June 21st, and hastily voted to approve the bill with no debate. Vendor groups, not expecting a vote until the following Tuesday, had no one present at City Hall and were caught completely off guard.¹⁹

The bill then headed for the mayor’s office, where it was expected to be signed into law one month later. This seemed like a mere formality, given the unanimous vote and, especially, because the bill was drafted by the mayor’s office and proposed to the council by Koch himself. But in the intervening month food vending organizations pressed their argument that they were being forced out of business by larger corporate interests and that they had a right to operate in Midtown. In addition, a number of articles in the popular press emphasized that the bill had heavy support from business and theater groups, framing the vendor issue as one that “pits some of the biggest most organized and most powerful business interests in the city against some of the smallest and least vocal.”²⁰ Ironically, a few days before Koch was scheduled to sign the bill, the *New York Times* ran a prominent article detailing efforts of other cities such as Chicago to *encourage* street vending in order to make sidewalks feel safer and more active.²¹

After a tumultuous month, the day of the bill-signing ceremony—July 22nd—arrived. A month prior, the passage of Intro 933-A into law the appeared inevitable. But when it reached his desk, Koch vetoed his own bill. Even for Ed Koch, a man known for his idiosyncratic nature, it was a stunning about-face. Council leaders, were, quite understandably, irate. The mayor explained himself by saying “I take full responsibility [for the change of heart]. I believed that the initial legislation we introduced was fair. But I concluded based on the hearings that we held recently that it wasn’t as fair as it could

they concern city-wide issues. Each city agency is granted rulemaking authority by the city charter. Agency rules are not subject to a vote, and are enacted internally by the agencies themselves. All rule changes must be published in the city’s official newspaper, The City Record, and public hearings must be held. Some examples of rules are the Health Code, Fire Code, traffic and parking regulations etc. If a city rule conflicts with an city law, the law takes precedence.

¹⁷ McFadden RD 1985, “Vendors of Food Face New Limit on Street Sales” *The New York Times*, 22 June.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ Sachar E, 1985, “A Fight for the City’s Sidewalks” *New York Newsday*, 22 July.

²¹ Freed JC, 1985, “Surge in Street Vendors Evokes Mixed Reviews” *The New York Times*, 20 July.

be.”²² Koch was quick to add, “I am not anti-peddler. Peddling is a noble profession. My grandfather was a peddler, and my father helped him.”²³

Explanations for the change of heart were varied. The press speculated that, with a mayoral election on the horizon (in 1986), Koch had placed his finger to the political wind and, feeling secure enough in his support from property and business groups, took this stance to avoid alienating his middle class base. Those closest to the situation however, seemed to believe that Koch was genuinely sympathetic to the vendors’ position. The head of Big Apple Food Vendors at the time, Jeff Ciccio, explained the mayor’s change of heart by arguing that Koch’s personal convictions were deeply informed by notions of New York City’s particular socio-spatial history:

It comes down to a man making a decision on what to believe and what not to believe. You gotta make a choice, you gotta make a judgment and determine what’s true and what’s not true. And his father was a vendor, a street vendor. So there was a little compassion there I’m sure. I’m sure he grew up on street vendors. Eating from their carts and thought it was a big part of the city. And when he found out that the real plan was that the business groups just wanted to get rid of vendors so that their tenants could be making more money, he said no. He’s an honorable man. And he said let them sell all the hot dogs they want. He knew what was going on.²⁴

In the opinion of a former councilmember, who served during this period and was generally in favor of restrictions on vending, Koch’s change of heart had more to personal considerations than anything connected to perceived notions of New York’s ethos:

They developed this whole program, the mayor submits a bill to the council, the council adopts it. The mayor has to have a bill signing. It’s usually in what’s called the Blue Room. And all these vendors start showing up, and started reminding Ed Koch his father was a vendor. So here was a bill, a program that he created—and well you know what, they touched something in Ed Koch, it hit him.²⁵

Koch himself, at least in retrospect, did not mince words about the change of heart. Interviewed by the *New York Times* in 1998, Koch said of his 1985 decision,

“[t]he realtors and the theater owners came in to me and said, ‘we don’t want these people,’ and I listened to them. But then I thought, what are we doing? These are decent people, and they give people the chance to buy an inexpensive lunch.”²⁶

C. Closing Midtown to Food Vending, Attempt #3: The Vending Lottery

Koch’s newfound respect for food vendors would not last long. In December 1987, the Koch administration would make what would be its final attempt at restricting food vending in Midtown. Like the bill Koch vetoed in 1985, Intro 953 of 1987 would have officially closed, through the legislative process, the streets placed off limits by

²² Sachar E, 1985, “Koch Vetoes Ban on Vendors” *New York Newsday*, 23 July.

²³ *ibid*

²⁴ Interview with Jeff Ciccio, former president of Big Apple Food Vendors (March 2008).

²⁵ Interview with former New York City Councilmember (May 2008)

²⁶ Allen M, 1998, “Sidewalk Vendors Rally to Protest Street Restrictions” *The New York Times*, 4 June.

Department of Consumer Affairs rule in 1984. On the remaining streets however, vending locations would be restricted to two per block face, with these spaces designated by lottery administered by the Department of Health. This plan was ostensibly proposed in order to allow a rational distribution of vendors and break up congestion. Not surprisingly, under existing rules vendors tended to congregate on desirable open streets. It was not uncommon to have 5-10 food vendors lined up next to one another on certain high-revenue blocks. Once again, the bill was framed as a balanced approach, aimed only at reducing congestion and protecting public safety. The bill specifically stated that “there is a special need for the convenient and low-cost meals provided by food vendors...therefore a total prohibition of vendors [from Midtown] would not be in the public interest.”²⁷ Yet the lottery system would have drastically reduced the number of food vendors in Midtown. Not surprisingly, the bill had the support of Midtown property and business groups, though some felt the plan did not go far enough. As the head of the Fifth Avenue Association told one reporter, “if we had our way, they would be totally eliminated.”²⁸

Perhaps recalling his difficult experience with food vendor groups only two years prior, Koch was determined to work with food vendor associations in order to gain their support. There would be no fly-by-night council vote this time around. But the two most powerful food vendor associations, Manhattan Food Vendors and Big Apple Food Vendors, vigorously opposed the bill. Specifically, they took exception to the provision for an annual lottery to assign vending spots. This would likely force vendors to change their location every year. Vendors, they claimed, organized themselves effectively through an informal seniority system and “built up” spots over the years. Like any business, they established a regular customer base which was vital to their livelihood. The lottery provision, to vendors, was just as ludicrous as a law requiring restaurants to switch locations every time their lease was up.

By July 1988 the bill was still mired in the city council, whose members were unwilling to approve the bill without the support of the two major food vendor organizations. Koch, no doubt growing tired of the entire issue, decided to play hardball. He announced that he would start strictly enforcing the 1984 Department of Consumer Affairs street closures (the enforcement of which Koch had “relaxed” for the last four years) until food vendors agreed to go along with the lottery. “We are going to give you the option,” Koch said, “either the existing law is fully enforced, or you support and give the high sign to your Council members that you don’t object to the lottery bill.”²⁹

This move only served to provoke further action by vendors and stoke the flames of public discontent over Koch’s heavy handed tactics. A few days after Koch announced strict enforcement of street restrictions, food vendors called a “strike”, and rolled empty carts to their usual corners. Customers expecting hot dogs and kabobs were instead handed leaflets detailing the injustices mayor Koch was inflicting on food vendors. These leaflets—and vendors’ arguments in general—challenged exclusionary policies by claiming a right to the sidewalks based on discourses of unregulated markets,

²⁷ City Council of the City of New York 1987, *A Proposed Local Law (Intro No. 958)*

²⁸ Michael Gross, President of Fifth Avenue association, quoted in Foskett K, 1988, “Vendors have Beef with Bill Limiting Them” *The New York Daily News*, 18 March.

²⁹ Marriot M, 1988, “Vendors, at Odds with the Mayor, Face Fears of Removal” *The New York Times*. 11 July.

entrepreneurialism, and self help. This strategy deftly turned the mayor's pro-business rhetoric against him. In New York City of the 1980s, where fiscal responsibility, economic growth and market-oriented solutions dominated, this line of argument had resonance. Councilwoman Ruth Messenger took up the vendors' rhetorical stance, stating that, "the fundamental issue now is the right of people to do business in the city. I think peddlers engaged in private business represent the quintessential first time entrepreneur".³⁰

The sentiment evidently extended to the average Midtown office worker. "The city must encourage these small entrepreneurs. They work hard. I come here because they provide reasonably priced food," claimed one customer.³¹ In fact, the local press, through interviews with Midtown workers, reinforced the notion that vendors were products of an efficiently functioning free market meeting a demand for cheap lunches. "The deli up the block sells a tuna sandwich for \$5.50. I can buy two hot dogs and a soda here [at a street vendor] for \$2.50," said one office worker.³² A construction foreman complained, "a lot of blue-collar workers around here don't make enough to eat in restaurants or those delis that charge ridiculous prices."³³ Food vendors stoked the flames, marching to city hall and handing out leaflets from carts with slogans such as, "Koch says: 'Let Them Eat Quiche!'" and, "Koch says NO! to your \$3.00 lunch!"³⁴ Using a discourse of free-market populism, vendors and their supporters were able to portray Koch as both an elitist out of touch with average New Yorkers *and* anti-free market. For a mayor who's electoral coalition was built on pro-business policy and middle class populism, this was a powerful critique.

After a few more weeks of wrangling back and forth, Koch and the food vendors finally agreed to a detente in early August 1988. Koch announced he would halt enforcement of the Department of Consumer Affairs street restrictions and open discussions with vendor groups to find a more palatable solution that did not involve a lottery. These "discussions", though, ultimately proved to be more of a face-saving strategy for both parties involved, as they were not pursued with much rigor nor produced any new policies. Vendors went back to selling at their normal spots and, under the auspices of ongoing talks, the vending issue faded quietly off the political radar.

The battle with food vendors over the proposed lottery during the summer of 1988 would be Koch's final attempt at extending street restrictions on food vending. Ed Koch sealed his peace with food vendors in August by visiting what he claimed was his favorite hot dog cart. In front of reporters and cameras, Koch purchased a hot dog, took a generous bite, and proclaimed, "this is no B.S.—these hot dogs are delicious!"³⁵ Koch then moved on to an ice cream cart, borrowed the vendor's apron, and went to work scooping Italian ices. Thus, Ed Koch's drawn-out and often unpredictable battle with food vendors ended in appropriately surreal fashion: with the mayor of New York behind a food cart, serving up frozen treats to reporters on a hot summer afternoon.

³⁰ Marriot M, 1988 "Koch Clears Pushcarts out of the way of Crowds" *The New York Times*, 17 July.

³¹ Reyes S, 1988, "Vendors' Clients Praise a la Cart" *The New York Post*, 8 July.

³² *ibid.*

³³ Montero D and Sisk R, 1988, "Ed wins a Round on City Corners" *The New York Daily News*, 12 July.

³⁴ Hemphill C, 1988, "Vendors Strike, March on City Hall." *New York Newsday*, 13 July; Privitere A, 1988, "Pushed out Pushcart Vendors Dishing out Leaflets." *The New York Post*, 22 July.

³⁵ Koleniak M and Matlick M, 1988, "Food Vendors Relish Deal as Mayor puts end to Street Beef." *The New York Post*, 6 August.

II. Giuliani Time: Food Vendors as Broken Windows

For nearly ten years, food vendors frustrated the efforts of powerful, well-connected Midtown property interests to extend street restrictions put in place by Local Law 17 of 1983. The situation would change significantly under Mayor Rudolph Giuliani, elected in 1994. The desires of property interests for a reduction of food vending dovetailed nicely with the new mayor's broader "quality of life" initiatives. Much to the delight of property and business interests, Giuliani was determined to succeed where previous administrations had failed, and almost as soon as he took office initiated a regulatory assault on food vendors in Midtown and the Financial District in Lower Manhattan.

In some ways, Giuliani's battles with food vendors echoed those of former mayor Ed Koch. As was the case in the 1980s, the project of spatial regulation was not simply imposed in a top-down, uncontested fashion, but, rather, provoked fierce battles over public space and occurred in a halting, uneven way. Once again the city claimed it was simply attempting to control congestion, while food vendors sought to draw back this veil of objectivity, using a rhetoric of market-based populism to portray the issue as one of elite commercial interests bullying small entrepreneurs. The combatants and battles cries were the same, the issue was just as intensely contested, but the outcome was decidedly different. Giuliani, unlike his predecessors, was finally able to enact new spatial restrictions on food vending (though not to the extent initially proposed), significantly altering the regulatory landscape of vending in Midtown and the Financial District.

Giuliani's success relative to previous regimes owes much to the political and economic context of the time. Of particular importance was the rise of Business Improvement Districts (BIDs) as powerful, well connected advocates for the property sector. Through BIDs, property interests were able to communicate their needs to the city with a unified voice and work closely with city agencies on setting a regulatory agenda for public space in general, and street vendors in particular. In addition to being the products of BID influence, new regulations must be seen as resulting from intra-state conflict. The combative environment which existed between the Republican mayor and a city council dominated by Democrats actually played a role in producing more effective regulations, as it led the Giuliani Administration to move vending regulation away from the politically charged uncertainties of council oversight and into the hands of a group of mayoral appointees known as the Street Vendor Review Panel (SVRP). The Panel, referred to by one former councilmember as "one of the most mysterious agencies in the city"³⁶, operated away from council influence and relatively insulated from public oversight and accountability. It was not until vendors challenged the actions of the panel in the courts and opened the decision-making process to public scrutiny, that the panel moderated its regulatory proposals. Interestingly, soon after legal challenges by vendors reduced the panel's ability to undertake vending regulation from "a bureaucratic Siberia",³⁷ the panel ceased operation.

³⁶ Interview with a former councilmember performed by author (May 2008).

³⁷ Perry Ochucher, lawyer representing food vendors. Transcript of New York City Council Committee on Consumer Affairs. *Hearing on Proposed Local Laws (Intro. 496 & Intro. 497)*. January 6th, 1995.

A. The Rise of Business Improvement Districts and a Renewed Focus on Vending

Business Improvement Districts (BIDs) represent a form of neighborhood-level, public-private urban management. The concept gained traction across the United States during the 1980s, when financially strapped cities were searching for cost-effective solutions to service provision, especially in high-value, downtown areas.³⁸ The way BIDs function is relatively straightforward. Within the bounds of a formally designated district, property owners are assessed a special tax above the property tax paid to the city. The revenue from this tax funds a non-profit organization which uses the money to carry out a variety of planning, sanitation, public safety and promotional initiatives within the designated area. The first BID formed in Midtown—Manhattan’s central office district—was the Grand Central Partnership, created in 1988 and encompassing the area around Grand Central Station. In the following years, numerous other sub-districts within Midtown organized into BIDs. The Times Square Alliance and the 34th Street Partnership were both formed in 1992, followed by the Fashion Center BID in 1993. Meanwhile, in Lower Manhattan, property owners in the Financial District centered along Wall Street organized as the Downtown Alliance in 1994.³⁹

By the middle of the 1990s much of Midtown and nearly all of the Financial District were under the jurisdiction of BIDs. This is an important point when discussing vending regulation, for the rise of Business Improvement Districts marked a subtle yet important shift in the way urban space was conceptualized and managed. Property interests had long sought to exert influence over the public spaces surrounding their buildings, but BIDs allowed them to make direct investments into the physical and symbolic restructuring of space.

Business Improvement Districts do not privatize space in a formal sense, but through investments such as sanitation services, the addition of street furniture, security patrols, etc., BIDs develop a sense of proprietorship over public space within their districts. This goes beyond simply picking up trash and polishing benches. BIDs see themselves as “brand managers” of urban space. The district becomes a “marketing instrument to serve the overall objective of ‘selling’ commercial areas to consumers and investors.”⁴⁰ According to BID promotional literature, successful BIDs should, “attempt to establish a brand for themselves and the district where they are located . . . [the] aim of branding is to tie city place to an idea and to encourage people to consume the idea” (Mitchell 2008, 74). Moreover, successful BIDs, “coordinate the branding of the district

³⁸ The BID concept was born during the 1960s in Toronto when members of a neighborhood business association requested the city of Toronto authorize a funding system based on taxes collected from business in the immediate area. The city drafted a law authorizing the this taxation system. New Orleans was the first U.S. city to adopt this process in 1974.

³⁹ New York City’s first BID, founded in 1984, was not located in one of the city’s two central business districts, but rather in a secondary commercial area—Union Square. Today there are 60 Business Improvement Districts in the city, many of them centered around smaller neighborhood commercial strips in the outer boroughs.

⁴⁰ Houstoun, Lawrence O. Jr. *BIDs: Business Improvement Districts*. Washington, DC: ULI-Urban Land Institute in Cooperation with the Downtown Association, 2003. pg. 83.

by the use of consistent, coordinated, and identifiable designs that unify the streetscape elements: litter receptacles, planters, bike racks, benches, and so forth.”⁴¹

Quite obviously, the ubiquitous food carts dotting the landscape of Midtown and the Financial District interfered with this quest for consistency and order. For the “brand managers” within Business Improvement Districts, food vendors were a frustratingly uncontrollable element in the urban streetscape. They could set up anywhere along the sidewalk (as long as the street was open to vending) and BIDs had no control over the condition or design of carts, a fact bemoaned by BID leaders. For instance, Daniel Biederman, co-founder of multiple Midtown BIDs, complained during a City Council hearing on food vending that, “[o]ne of the problems with [vendors] is the low capital investment they make in their carts . . . We think that New York now has *the worst looking collection of vending carts of any city in the world.*”⁴² The solution, according to the Biederman, was to “see better carts in better locations, fewer locations for preparing food attractively and serving it attractively.”⁴³

As Business Improvement Districts became a more common aspect of New York life, the nature of spatial regulation began to change as well. In the name of brand management, most larger BIDs hired private security and/or hospitality forces to serve as extra eyes and ears on the street. The roll-out of this extra layer of enforcement (BID personnel did not have power to arrest, but were in close communication with the NYPD) changed Midtown from a place where laws were generally applied in an equal manner, to a landscape where variegated enforcement became institutionalized.

Within the confines of BIDs, enforcement is often strict and vendors learn to stay away from the areas of heightened patrols and surveillance. An example from my fieldwork demonstrates the atmosphere within the most effective BIDs. Standing outside Grand Central Station along 42nd Street at the height of rush-hour one winter evening, I notice a hot dog vendor wheeling his cart down the sidewalk. At first glance, he seemed to be done for the day, wheeling his cart back to one of the pushcart garages on the West Side. But upon reaching the front of the station he slowed down, glanced around, and cautiously began to set up shop. This stretch of 42nd Street is off limits to food vending, so this vendor, though licensed, would be violating the law if he sold something. After a few quick transactions of hot dogs and sodas, I noticed a non-uniformed man watching the vendor and speaking on a walkie-talkie. Eventually the vendor noticed him as well, leading him to quickly pack up his cart and leave. A few minutes later, two uniformed BID security personnel arrived, spoke to the man with the walkie-talkie and left, the situation having resolved itself without confrontation. In contrast to this environment of tight oversight, just a few blocks away in a part of Midtown not under BID control, general merchandise vendors comfortably violate the Midtown Box rule prohibiting them from doing business in Midtown, as they sit by large tables selling handbags, scarves and watches. This variegated landscape of enforcement *within* Midtown, was something new, and resulted from a privatization of oversight brought about by BID formation.

⁴¹ Houstoun, Lawrence O. Jr. *BIDs: Business Improvement Districts*. Washington, DC: ULI-Urban Land Institute in Cooperation with the Downtown Association, 2003 pg. 87.

⁴² New York City Council Committee on Consumer Affairs. *Hearing on Proposed Local Laws (Intro. 496 & Intro. 497)*. January 6th, 1995. [emphasis added]

⁴³ *ibid.*

In addition to increasing the ability of real estate interests influence the nature and level of legal enforcement, the rise of Business Improvement Districts also altered the political environment under which laws were produced. BIDs allowed the real estate sector to exert heavy pressure on the city regarding the vending issue by providing property owners with a strong, unified voice. It also allowed real estate and business interests within a particular district to approach the city with a clear agenda. BIDs enjoy a close relationship with city agencies, and, especially during the Giuliani years of the 1990s, met regularly with city officials to discuss approaches to food vending regulation.⁴⁴ Their calls for ordering and rationalizing public space through the regulation of food vending fell on sympathetic ears in City Hall. Only a few months into his tenure as mayor, in June 1994, Rudolph Giuliani made his first move against food vendors, unleashing a bitter political battle over the right to, and proper use and of, urban space in New York.

B. Political Conflict and Creation of the Street Vendor Review Panel

Summer months are the best of times for food vendors. As the weather begins to warm in late Spring, it brings office workers outside looking for a quick al-fresco lunch and countless hungry and thirsty tourists wandering the streets of Midtown. Doing good business in the warmer months is critical for a food vendor's survival, as New York's harsh winters cut into the profits of these outdoor merchants. As the summer of 1994 approached, vendors were no doubt looking forward to yet another relatively lucrative season. But the first summer of food vending under Mayor Rudolph Giuliani would be anything but halcyon. In April, with the strong support of local Business Improvement Districts, Giuliani unilaterally closed 55 blocks to food vending (*Map 2*). This drastic move required no consultation of vendors or other elected officials in New York City government, for Giuliani was able to carry out the street closures by simply enforcing rules which had been on the books for ten years, but officially ignored by the previous two administrations. As detailed earlier in this chapter, in 1984 the Koch Administration closed these 55 Midtown blocks to food vendors but shortly thereafter, bowing to pressure from vendors and their supporters, officially "relaxed" enforcement of the rule. David Dinkins continued the policy of non-enforcement during his term at mayor. By 1994, most vendors likely did not even know the rule existed, or that their place in Midtown was based on mayoral lenience.

By enforcing the old rule (known popularly as Regulation 11), Giuliani was able to accomplish two political goals at once. He was able to gain favor with the BIDs by showing he was serious about controlling food vending in Midtown, while at the same time demonstrating a strong commitment to law and order—a lynchpin of his "quality of life" agenda. Through the enforcement of Regulation 11, Giuliani positioned himself as a reformer unwilling to casually look the other way when it came to petty lawbreaking. As the head of the Grand Central Partnership argued, "the Mayor is trying to reverse decades

⁴⁴ A meeting held on July 3rd, 1997 between the Department of Business Services (an agency charged with regulating food vending) and numerous BID presidents to discuss food vending issues illustrative of this level of close interaction. (Sign-in Sheet for meeting at Department of Business Services w/BID Managers, RE: Food Vendor Issues, 7/3/97 *New York City Municipal Archives*.)

of ignoring regulations that should have been enforced.”⁴⁵ The casual approach to petty lawbreaking of previous regimes was precisely the sort of thing that led to more serious problems, according to the “broken windows theory” of public order that deeply informed Giuliani’s quality of life agenda.⁴⁶ While for BIDs food vendors were eyesores infringing on the branded space of Midtown, for the Giuliani Administration they were the embodiment of “broken windows”—their very presence on formally off-limits streets a sign to more hardened criminals that the city was not watching over its public spaces. The first summer under Giuliani began, then, with the mayor’s law and order agenda dovetailing with the neighborhood branding agenda of BIDs to push food vendors out of much of Midtown.

By the end of April, vendors realized the summer of 1994 would be one of protest rather than profits—and they were ready for the fight. While individual vendors may have changed since the 1980s, many of the leaders and organizations that were instrumental in beating back three separate Koch Administration proposals (including Regulation 11) to ban them from Midtown remained. The strategy to counter Giuliani’s move was almost a mirror image of protests against Koch, with vendors appealing to free-market populism and attempting to portray mayor Giuliani as an elitist protecting the interests of wealthy property and business owners at the expense of entrepreneurial immigrant vendors and the average New Yorkers who relied on vendors for quick, inexpensive lunches. Just as in the 1980s, on April 20th, 1994 vendors took to the streets, with 500 of them marching down Fifth Avenue pushing empty food carts and shouting populist slogans such as “Save cheap lunch!” and “We sell food, not drugs!”—a less than subtle challenge to Giuliani’s tactic of lumping them in with petty criminals.⁴⁷ The New York Times noted the connection between vendors and their clientele, something vendors were able to use to garner broad support:

[The march] differed from most demonstrations in the city, in that the effect was stark and immediate: it was impossible to find a quick snack on Fifth Avenue. “A lot of guys in my office missed their morning coffee,” said Richard Thornton, an accountant.⁴⁸

As was the case during the 1980s, the local press was generally supportive of food vendors. Editorials echoed vendors’ own claims to legitimacy, which centered around their ability to efficiently provide a popular product as well as a liberal mythology of New York as quintessential city of opportunity:

⁴⁵ Martin, Douglas. 1994 “City Begins Enforcement of Food Cart Restrictions.” *The New York Times*. 21 April.

⁴⁶ The broken windows “theory” was first posited by conservative political scientists George Kelling and James Q. Wilson in the March 1982 edition of the Atlantic Magazine (Kelling, George L. and James Q. Wilson. 1982, “Broken Windows” *The Atlantic*. March). It was later expanded into a full prescription for exerting order and control over public space (Kelling and Cole, 1996)

⁴⁷ Martin, Douglas. 1994 “City Begins Enforcement of Food Cart Restrictions.” *The New York Times*. 21 April.

⁴⁸ *ibid.*

Most food vendors . . . provide a true amenity to many people in a city where the economy has closed down many inexpensive restaurants. Cracking down on the vendors now, without knowing more about the validity and impact of restrictions, could be unnecessarily punitive to people who—like the grandfathers of some who now object to street peddlers—are just trying to make a buck in a tough town.⁴⁹

Perhaps the most significant factor distinguishing vending conflict under Giuliani from earlier battles was the level of support local politicians gave to vendors during the 1990s. During the 1980s, the City Council was generally in line with Mayor Koch on the vending issue, supporting his efforts regulate vending. In 1994, however, some members of the mostly Democratic City Council used the vending issue to draw a sharp line of distinction between themselves and the Republican mayor, attempting to portray Giuliani as a repressive, anti-democratic pawn of developers and property owners, unfairly excluding hard-working immigrant vendors from Midtown. In addition, many in the council were upset at Giuliani's tendency to move on major regulatory initiatives unilaterally, and annoyed at his disregard for their input.

Led primarily by then councilmember Anthony Weiner,⁵⁰ the council challenged the mayor and attempted to gain some semblance of control over the food vending issue. In June they proposed a bill (Intro 383) which would have suspended restrictions on all Regulation 11 streets for 120 days while congestion levels on the streets were reviewed.⁵¹ The burden would then be on the Giuliani administration to demonstrate that the Regulation 11 streets were in fact too congested and warranted restriction. This bill passed a full council vote relatively easily, 40-11. Giuliani was intent on maintaining his power over vending regulation and, claiming he was simply enforcing existing rules, vetoed the bill when it reached his desk. In remarks at the veto press conference, the mayor referenced what he considered to be compelling arguments of major Midtown property organizations and BIDs that the proposed law would reduce gains made in controlling congestion and producing ordered environments in Midtown. Additionally, and no doubt in an attempt reframe the issue away from the “big business vs. little vendor” framework, Giuliani claimed his veto was strongly influenced by the “the passionate argument [of] the owner of a small delicatessen in Midtown” who claimed food vendors were threatening his business and livelihood.⁵²

As Giuliani signed his veto, he promised to propose his own comprehensive vending legislation to the Council in order to resolve the quarrel over Regulation 11 streets and institute “real reform in the food vending system.”⁵³ In the meantime, vendors would spend the rest of the summer months banned from the most profitable streets in Midtown. Finally, in December 1994, Giuliani introduced his program for food vendor reform to the Council, in the form of Intro 496. The bill proposed to rationalize street closures and make the process more democratic and inclusive. At least on paper, the

⁴⁹ *The New York Times*. (1994) “Fair Food Vending in Midtown” Editorial. 22 April.

⁵⁰ Weiner currently represents southern Brooklyn and central Queens in the U.S. House of Representatives.

⁵¹ Intro 383 was a more detailed version of an earlier, vaguely written bill, Intro 324 which was hastily introduced in April but did not make it out of committee.

⁵² Remarks by Mayor Rudolph W. Giuliani at Veto of Intro. 383. July 21, 1994, 2:00pm. Blue Room—City Hall. *LaGuardia and Wagner Archives, The Council of the City of New York Collection*.

⁵³ Letter from Mayor Rudolph Giuliani to the Honorable Carlos Cuevas, City Clerk and Clerk of the Council, RE: Intro 383 Veto. July 21, 1994. *LaGuardia and Wagner Archives, The Council of the City of New York Collection*

proposal seemed to have the potential to accomplish these aims. Responsibility for street closures would be moved out of the Department of Consumer Affairs to the newly created Street Vendor Review Panel (SVRP), a four member panel consisting of the commissioner of the Department of Business Services, Director of City Planning, the commissioner of the Department of Transportation and one member of the City Council appointed by the mayor. The Panel would not be responsible for proposing street closures. It was intended to be more of a deliberative body, receiving requests from the public to close or open certain streets to vending, after which the four members would convene to determine the city's action. If changes to vending legislation were approved by the Panel, a public hearing would be held on the proposed changes—though the final decision was the Panel's alone. It should be noted that the Panel, while nominally spreading responsibility across agencies, was not necessarily as democratic or free from unilateral influence as it might have seemed. Agency commissioners are part of the mayoral administration; they are appointed to head their agencies by the mayor and answer directly to the mayor. Therefore, three of the four members of the Panel essentially worked for the mayor, while the one “independent” member—the City Council representative—served at the pleasure of the mayor as a mayoral appointee.

Members of the City Council, no doubt aware of this fact, nevertheless went along with the new legislation in part because of the mayor's promise that one of the first orders of business of the Panel would be to reconsider and likely reopen the Regulation 11 streets. In fact, much of the discussion during the council hearing on the legislation creating the SVRP was not centered around the merits of the Panel. For instance, councilmembers did not inquire about the level mayoral influence, operating procedures of the Panel, transparency of decisions, or anything of that matter. Rather, much of the questioning focused on how quickly the Panel would move to open Regulation 11 streets. In fact, relying solely on transcripts of the council hearing leads one to conclude that the primary responsibility of the Street Vendor Review Panel was to open Regulation 11 streets, rather than serve as the sole governing body on street closures for the Giuliani Administration. For instance, in her opening remarks Karen Koslowitz, chair of the Council Committee on Consumer Affairs framed the bill thusly:

I am enormously concerned about ensuring that the less congested streets in Midtown Manhattan be *reopened* as quickly as possible. It is my opinion that prompt passage of the bills before us today offers the best likelihood of reopening appropriate streets⁵⁴

The chair was even more explicit about the perceived benign nature of the legislation as she welcomed an elementary school field trip to the hearing:

Before we continue, I'd like to say hello to children from P.S. 227 in Brooklyn. And today we are having a hearing on street vendors and those are the people that you see in the street who sell the hot dogs. And you actually haven't seen them on the street if you've been down to Midtown Manhattan. And what we are trying to do now is work along and get them to come back on the street so people can be able to have their lunches and people can go back to work. That is what this meeting is about today.⁵⁵

⁵⁴ New York City Council Committee on Consumer Affairs. *Hearing on Proposed Local Laws (Intro. 496 & Intro. 497)*. January 6th, 1995. (Emphasis added).

⁵⁵ *ibid*

It seemed that councilmember Anthony Weiner was the only member present at the hearing skeptical of the plan, noting the high level of subjectivity afforded the SVRP in determining which streets were to be closed, claiming that determinations to close streets may come down to “who’s got the best paid lobbyists.”⁵⁶ When Alfred Cerullo, the mayor’s Commissioner of Consumer Affairs and one of the main architects of the SVRP objected that Weiner was “questioning our integrity in this process,” Weiner shot back:

We have a record of the Mayor acting without consulting this Council on enforcement of regulations that had laid dormant for about ten years. So, I wouldn’t take this personally. If I characterized the Administration as being hostile to the [food vending] industry, I stand by those words and I think the record does as well.”⁵⁷

Despite Weiner’s protests and last minute attempt to amend the bill, he was the lone dissenting vote as the Committee on Consumer Affairs approved the proposal, sending it to the full Council where it passed, 40-7.

Thus, in February 1995, the mayor’s Street Vendor Review Panel became a reality and officially began accepting proposals for changes to street restrictions. There may have been some in the city who took the Giuliani administration at its word and believed that the formation of the Panel signaled the beginning of a rational and fair minded approach to street closures and would ensure a placid and prosperous summer of 1995 for food vendors. But Councilmember Weiner’s skepticism of the mayor’s intentions proved prescient. The second summer under Giuliani would be even more contentious than the first, as the Street Vendor Review Panel showed itself to be little more than an efficient mechanism for closing streets, operating with minimal transparency and virtually granting BIDs and other property interests direct control over the street closure agenda.

C. The Brief, Contentious History of the Street Vendor Review Panel

In nearly every instance, the restrictions on the use of public space are justified through appeals to the broader public interest. Regulators, at least in theory, do not favor special interests but rather make rational, objective decisions about the proper use and form of public spaces in order to achieve the greatest benefit of the public at large. In New York regulatory neutrality when dealing with street vending was institutionalized by case law, as past legal decisions established that the city must demonstrate a valid public purpose, i.e., controlling sidewalk congestion, in order to ban vendors from particular streets. This was the only legally valid criteria for vending restrictions—competition with retail tenants or subjective notions of disorder and unsightliness were not sufficient grounds to restrict the operation of licensed vendors, as this would mean the city was arbitrarily passing laws to favor the interests of one industry (retail stores) over another (licensed vendors).

⁵⁶ New York City Council Committee on Consumer Affairs. *Hearing on Proposed Local Laws (Intro. 496 & Intro. 497)*. January 6th, 1995.

⁵⁷ *ibid.*

This legal precedent created an imperative for city officials to cloak anti-vending legislation passed at the direct urging of private property interests as neutral actions carried out for the greater public interest. By relying on notions of objectivity, the Street Vendor Review Panel sought to de-politicized urban public space. Rather than being a site of conflict, run through with multiple competing notions of appropriate spatial practice, legitimate entrepreneurship and proper spatial form, public space was constructed by anti-vending interests simply as a finite resource subject to overcrowding and in need of rational regulation put in place by objective experts on the Panel. Precisely due to its claims to objectivity, however, the Panel opened itself up to immediate challenges from vendors and their supporters attempting expose it as a rubber stamp for the wishes of BIDs and property owners.

The Street Vendor Review Panel's first action was highly anticipated by all involved in the vending issue. Vendors and their political allies in the City Council had been promised that restrictions on Regulation 11 streets would be reconsidered and most likely removed. This, recall, was one of the main reasons the bill creating the SVRP received such strong council support. But when the determinations of the Panel's first ruling were made public in the spring of 1995, vendors and their supporters were sorely disappointed. The "reconsiderations" of Regulation 11 streets yielded little in the way of derestrictions, and in fact the Panel added nearly a dozen *more* blocks in Midtown to the list of restricted areas. Moreover, just as vendors had feared, the decisions of the Panel were less than transparent, with the Panel giving the public no clue as to how they arrived at their final ruling, other than to state they had listened to complaints of stakeholders and come to conclusions that the streets in question were congested enough to warrant closure to vending. As would become evident later, the Panel undertook very little independent investigation of street conditions whatsoever, for the most part taking BIDs and other property interests at their word that particular streets were in need of closure.

Food vendors, led by the Big Apple Food Vendors Association, attempted to draw the decisions of the Panel into the light by suing the city, arguing that the first round of decisions by the Panel were invalid because they could not be shown to be based on any *specific* objective criteria. The courts initially sided with the vendors, placing an injunction on the enforcement of new restrictions and ordering the Panel to formulate "objective quantitative criteria" for determining if a street was too congested for vending.⁵⁸ The Giuliani Administration appealed the ruling, leaving the fate of the Panel in limbo for two years as the case made its way through the appellate courts. Finally, in the summer of 1997, the highest appeals court in New York State ruled in favor of the Street Vendor Review Panel. The final ruling was not necessarily a validation of the Panel's procedures—in fact, it had little to say about the fairness of street closure criteria. Rather, it was based solely on legal phrasing. Because the law creating the Panel failed to specifically require the Panel to measure congestion quantitatively, it implicitly entrusted the Panel to use whatever criteria for determining congestion it deemed appropriate to decide which streets should be closed. As the court stated, "The [City] Council could have directed the Panel to adopt regulatory standards . . . but it did not."⁵⁹

⁵⁸ *Big Apple Food Vendors' Association, et. al. vs. The Street Vendor Review Panel*, 90 N.Y.2d 402, 683 N.E. 2d, 660 N.Y.S. 2d 846 (1997).

⁵⁹ *ibid.*

The decision was met with relief and excitement from the real estate and business community. “Your tremendous win at the Court of Appeals has given new life to the vendor issue,” a member of the BID Managers Association enthusiastically wrote in a letter to Deputy Mayor Rudy Washington following the ruling.⁶⁰ For BIDs and property owners, the court ruling in favor of the Street Vendor Review Panel was a green light to move forward with an even broader street closure agenda. New street closure requests came pouring in to the Panel. The Grand Central Partnership and 34th Street Partnership both put forth requests for significant expansion of vending restrictions in Midtown, while the Downtown Alliance requested the closure of nearly every street in the Financial District to food vending. Many BIDs provided little or no evidence to support their requests. For the most part, the Panel simply accepted the requests of BIDs and property owners to close streets without performing any independent analysis, while at the same time denying every request made by vendor groups to open restricted streets to vending.

When the list of the second round of street closures under consideration was released in December 1997, it created an uproar. Two raucous public hearings were held in January 1998 in which vendors continued to argue for the use of some sort of objective criteria for determining congestion, but to no avail. In May 1998, just before the beginning of another summer season, the Panel announced the closure every single street requested closed by property interests, 144 blocks in all. The new regulation added a number of additional streets in Midtown to the list of street closures and, more dramatically, closed nearly all of the Financial District to food vending.

To this point, the Street Vendor Review Panel had proven to be one of the most effective mechanisms for carrying out the volatile activity of food vendor restrictions in the city’s history. The successful street closures resulted largely from the Panel’s broad discretion to close streets with little public accountability, but also owed much to Giuliani’s willingness to take heavy criticism from vendors. After the second round of closures in 1998, vendors once again marched down city streets, claiming the mayor was favoring wealthy property owners at the expense of immigrant vendors and their customers. Giuliani initially took the criticism in stride, falling back on well-worn arguments about quality of life and public order and claimed the Panel’s actions were, “a rule of reason”. He continued, “that’s part of living in a civilized city, as opposed to a place that’s chaotic.”⁶¹ He brushed off suggestions that he was on the wrong side of popular opinion, predicting vindication. Comparing vending battles with earlier crackdowns on squeegee men, he argued that vendors’ supporters were, “the same critics [who complained about squeegee men crackdowns]. Afterwards, people applaud us for the improvement in the quality of life, so I’ve gotten used to it. It’s like an opera that plays itself over and over again.”⁶² But as the *New York Times* noted, the public had a very different opinion of street vendors than they did of homeless men wiping down car windows, stating that, “unlike many of Mr. Giuliani’s other targets, vendors seem to be popular with the public. In interviews, many people who had supported Mr. Giuliani in the past said they were becoming alarmed by what they see as his efforts to sanitize and

⁶⁰ Letter from Jill Kelley (Chair, Vendor Committee of NYC BID Managers Association) to Rudy Washington (Deputy Mayor of Business Services, Head of Street Vendor Review Panel) RE: Vendor Reform. July 4, 1997.

⁶¹ Edozien, Frankie. 1998 “City Plans Ban on Food Carts.” *The New York Post*. 24 May.

⁶² Allen, Mike 1998 “Sidewalk Vendors Face New Set of Critics” *The New York Times*. 31 May.

suburbanize the city.”⁶³ Many New Yorkers, according to another article, felt “vendors did no harm in their current locations and said they liked the low prices, tasty if nutritionally questionable fare, and New York ambiance that the food carts represent.”⁶⁴ It was this last point that distinguished public support for vendors during the 1990s from the public backlash to vending regulation under Ed Koch in the 1980s.

Public opposition to Giuliani’s tactics was based on more than the simple desire for affordable lunches; it was informed by a broader rejection of attempts by the Giuliani Administration and BIDs to impose their vision of ordered and branded space on the frenetic urban environment that so many valued about New York. In his first few years in office, Giuliani had gone after jaywalkers, chased squeegee men and panhandlers from city corners, helped to turn the gritty Times Square into a family-friendly destination. To be sure, there was a tremendous amount of popular support for Giuliani’s efforts to take back control of the city’s sidewalks, but in addition to the praise there was an underlying sense that the mayor’s quality of life initiatives were destroying the soul New York. Many New Yorkers carried with them a faint nostalgia for the grittiness and authenticity of the “bad old days”. During earlier quality of life battles against more menacing figures in public space those mourning the loss of New York’s hard edge represented mere sentimental footnotes in the ledger of public opinion, but Giuliani’s attack on street vendors brought arguments about the destruction of New York’s authenticity through quality of life initiatives to the forefront.⁶⁵

No doubt sensing the public’s mood, in early June a handful of City Council members led by Anthony Weiner came to the vendors’ defense by introducing a law that would move vendor oversight to the Department of Transportation (DOT). The new law would only close streets to vending if a mathematical formula used to calculate sidewalk crowding showed the street to be too congested. The formula would be the same one used by the DOT to grant permits for sidewalk cafes and newsstands. The legislation would eventually die in committee, but it nevertheless proved to be an effective weapon against the Administration. Its introduction turned the pressure up on the Giuliani administration by keeping the vending issue near the top of local press coverage. On June 3rd, yet another massive march was planned to coincide with the bill’s introduction and press coverage made clear that vendors enjoyed broad public support:

As secretaries and stockbrokers alike came to their defense, hundreds of sidewalk food vendors shut down their carts yesterday and paraded through lower Manhattan . . . lawyers in pinstripes and brokers in cuff links applauded as 800 peddlers of hot dogs, falafel and other cart cuisine marched through the financial district.⁶⁶

The march ended at the steps of City Hall, where Councilmembers Weiner and Stephen DiBrienza did not mince words. Weiner called the Street Vendor Review Panel a “kangaroo court”⁶⁷ and claimed that vending regulations were “anti-working class and anti-New York.”⁶⁸ DiBrienza told the crowd, “don’t be fooled into thinking this issue is

⁶³ Allen, Mike 1998 “Giuliani to Bar Food Vendors on 144 Blocks” *The New York Times*. 24 May.

⁶⁴ Barry, Dan 1998 “From Vending Snacks to Venting Anger” *The New York Times*. 3 June.

⁶⁵ see for instance—Giuliani article in Times about him going to far...

⁶⁶ Allen, Mike 1998 “Sidewalk Vendors Rally to Protest Street Restrictions” *The New York Times*. 4 June.

⁶⁷ *ibid*

⁶⁸ *ibid*

about your health, it's about big business. The rich can still go to their indoor restaurants and the people on a budget should be able to go to their vendors.”⁶⁹

The bill provided an opportunity to resurrect the issue of questionable process utilized by the Panel to determine whether a street was “regularly too congested” for street vending. At the public hearing on the proposed law to move oversight to DOT, Councilmember Weiner continued to press administration officials to justify their reluctance to regulate vending according to the same mathematical formulas for determining sidewalk crowding used by the Department of Transportation. The disparity between the Giuliani Administration’s public and private justification for refusing to regulate vending based on objective sidewalk load calculation is worth quoting at length. In the public hearing, the Administration claimed:

There are a variety of conditions on the City’s streets that contribute to their congestion and urban character including: the width of the sidewalks, the location of sidewalk furniture and fixtures, the location and number of entrances to adjacent buildings, subway entrances, and pedestrian traffic patterns that fluctuate throughout the day. Because of the factors that affect the streets and sidewalks, we question whether they can all be successfully reduced to “specific objective and quantitative criteria”, as required by Intro 334 [Weiner’s bill]. While such criteria are important factors in regulating vendors, any rule should be flexible enough to allow the exercise of expert judgment and evaluation to respond to unique and changing conditions.⁷⁰

By contrast, in private correspondence, Administration official’s revealed quite different concerns:

DOT [the Department of Transportation] seeks to avoid fixing objective standards because *pedestrian counts may tell us what we don’t want to know*. Studies might well yield a higher level of permissible vendor activity that is either allowed now, or open up spaces that were previously unusable. Clearly this is a problem that would bring an unwelcome surprise to parts of the city.⁷¹

With the veil of objective regulation in the public interest growing thinner and pressure mounting on the administration to reconsider the street closures, Giuliani held fast. But by late June, Giuliani found himself more and more politically isolated. Even BIDs were growing unhappy with the situation. Business Improvement Districts prefer to present themselves as the people who organize free lunchtime concerts, plant flowers and polish benches, but the vendor conflict was exposing a less flattering side of their operation, and they felt the Giuliani’s abrasive and combative approach was doing little to soften the blow of street closures. Additionally, the vendor conflict was creating rifts within the administration, particularly between Joseph Rose, Commissioner of City

⁶⁹ Notes taken at 6/4/1998 protest by Department of Business Services employee, forwarded to Earl Andrews, Chair of Street Vendor Review Panel, Department of Business Services. *The Giuliani Records*. Municipal Archives of New York City.

⁷⁰ Testimony of Joseph B. Rose, City Planning Commissioner. *Hearing on Intro 334 before the City Council Committee on Transportation*. June 25th, 1998.

⁷¹ Memorandum: Alexander Stephens (Department of Transportation) to John Mascialino, (Department of Business Services) RE: Vendor Legislation. 6/18/1998. *Giuliani Papers*. Municipal Archives of New York City [emphasis added]

Planning, and Deputy Mayor Rudy Washington. Rose, responding in part to BID complaints, claimed that the Panel had been managed in an unnecessarily divisive manner and called for a new direction of vending regulation, advocating for more comprehensive reform. But, according to one observer, “when [the Giuliani Administration] needed diplomacy, [Washington] kept throwing bombs.”⁷² Washington remained stubbornly resolute, proclaiming that, “the city will never walk away from its authority to regulate the streets.”⁷³

More critical than internal disagreements was the growing concern being voiced by lawyers for the Giuliani administration about the fact that many of the 1998 street closures had little substance to back up the decisions. The 1997 court decision supporting the Panel ruled it was not bound by objective criteria when coming to decisions, but it did not grant the Panel free reign to close streets to vending without any justification. As one lawyer for the Giuliani administration wrote in an internal memo, “I am concerned with how the Panel reaches its decisions and what factors it bases them on.” The lawyer went on to note that it seemed that definitions of street crowding were largely a matter of opinion, subject to differing interpretation, and therefore the Panel should be ready to present substantial documentation on how decisions were arrived at in the event of another lawsuit. This recommendation raised a problem, for in many cases documented justification for closing streets simply did not exist. Especially during the 1998 street closures, BIDs simply submitted requests for restrictions with little or no evidence to back up claims of congestion and the Panel voted to close the streets without performing any independent analysis of their own.

It is quite obvious that BIDs and their allies on the Street Vendor Review Panel took the 1997 court ruling as a blank check to proceed with a dramatic street closure agenda, and ironically, it was precisely this brash and unrestrained attitude toward vending regulation that would ultimately bring down the Panel. With a growing realization that many of the closures would not hold up in court, on June 17th, 1998 Mayor Giuliani did something completely uncharacteristic: he backed down. The administration announced that the Street Vendor Review Panel would review evidence and reconsider decisions. But even in defeat, the administration remained defiant. Deputy Mayor Washington framed the reconsiderations not as an admission of mistakes on the administration’s part, but simply as the shoring up of evidence. “We know that as soon as we close one block, we’re off to court,” Washington claimed. “It doesn’t hurt anything to take a second, back up and take in more evidence. We’ll have a more bulletproof case.” The mayor likewise maintained his stance that vending regulation was needed, stating that vendors, “undermined civility by causing congestion and sanitation problems” and warned that, “vendors are not going to be happy with end result [of reconsiderations].”

But analysis of the Street Vendor Review Panel records in the New York Municipal Archives reveals a much less self-assured attitude within the Department of Business Services (the departmental home of the Panel), as agency staff scrambled to retroactively investigate crowding conditions on streets closed in May 1998. Agency staff were ordered to review evidence submitted by property owners back in May, as well as visit streets in question to determine conditions. Staff reports from the reevaluation

⁷² Lentz, Phillip 1998 “Power Struggle Divides Rudy Aides on Vendor Plan: Rose, Washington are at Odds.” *Crain’s New York Business*. 6 July.

⁷³ Allen, Mike 1998. “City Pursuing Negotiations with Street Food Vendors” 15 June.

period reveal the extent to which the Street Vendor Review Panel was little more than a rubber stamp for BID desires to rid the sidewalks of food vendors. The report on the reevaluation of a section of Church Street in the Financial District, closed by the Panel at the request of the Downtown Alliance, is illustrative. The section of the reevaluation report detailing evidence provided by the Downtown Alliance justifying the initial street closure read “none submitted.” As for staff evaluation of existing conditions and congestion on the street, they found it to have “wide sidewalks and light pedestrian traffic.” This led them to recommend the Panel overturn their May decision and deny request for closure. Many staff reevaluations read similarly to this example.

After nearly half a year of reevaluation, in January 1999 the Street Vendor Review Panel finally convened to reconsider the May 1998 decisions. Following the recommendations of Department of Business Services staff, the Panel overturned nearly half of its original decisions to close streets, drastically reducing the scope of restrictions. The Giuliani Administration and BIDs framed the action as a “compromise”. Vendors were less enthusiastic, but ultimately the significance of the Panel’s reconsideration would prove much greater than a simple reduction of blocks closed to vending. The row over the May 1998 street closures showed Giuliani administration officials that they would no longer be able to enact street restrictions from politically insulated “bureaucratic Siberia”. Vendors and their advocates, while not able to completely overturn regulations, nevertheless were successful in shining a light on the process of street closures, making the Panel a far less effective instrument for spatial regulation.

The Panel would undertake only one more round of street closures, and in a much more moderate fashion. In February 1999, the Panel announced a third round of closures and, as before, hundreds of requests rolled in to restrict vending, many of them the same streets in the Financial District overturned by reconsiderations just a month earlier. In the end, however, the Panel voted in January 2000 to close less than 25% of the requested streets, and even on many streets where restrictions were granted, the Panel reduced the number of restricted blocks initially requested by BIDs. One might argue that this is exactly how the Panel should have been operating all along, as a deliberative body rather than rubber stamp for the desires of BIDs and property owners. But a fair minded Panel was obviously of little use to anti-vending interests in the Giuliani administration and private sector. The January 2000 ruling would be its last. While still technically in existence, as of 2009 the Panel is dormant, and has not convened in nearly ten years.

III. Conclusion: Revising our Understanding of the Regulatory Project in the Neoliberal City.

During the closing decades of the twentieth century the practice of street vending came under regulatory attack from city officials responding to demands of business and real estate interests for a more orderly public sphere. On the surface, the rollout of vending regulations between 1977 and 2000 fit nicely within the broader analytical framework of New York as revanchist city—an urban environment increasingly hostile to the poor, minorities, and immigrant underclass, where rights to urban space were under assault by a developmentalist-oriented local state. A closer look, however, reveals a much more complex picture. This and the previous chapter have shown that, in the case of street vending, the project of legal formation was not absolute or straightforward. Laws

were not imposed upon the landscape in a unilateral way, but rather, were the result of a contentious political process in which various vendor groups, with differing degrees of power and using diverse political strategies fought back against their exclusion, with various degrees of success.

The result was regulatory architecture that was not a solid edifice of exclusion, but rather, one cobbled together from a variety of sources. The complexity of vending laws is a direct result of the politically volatile process of vending regulation. This is the reason the first two chapters of this dissertation are dedicated to understanding how vending laws were formulated, before moving on to an analysis of how they actually operate on the ground. Particularly in the case of food vending, agency rules mix with, overlap and contradict council legislation—the result of city officials and politicians playing political hot potato with the responsibility to enact and extend regulations, in order to spread political risk and fallout. Challenges by vendor groups led some laws to be officially unenforced. Legal challenges created exceptions, loopholes and mitigating circumstances influencing the ways in which city laws and rules functioned.

In closing this chapter, and section one, I return to a quote from Jane M. Jacobs, used earlier in the Introduction, where she takes hard-line neo-Marxist urban analysis to task for “tend[ing] to deactivate space by seeing the city as the uncontested imposition of imperial territorial arrangements” (1996, 21). As the first two chapters show, vending laws were clearly not an uncontested imposition. This more nuanced, politicized understanding of spatial regulations extends from an analysis of their formation to that of their operation. As I will demonstrate in the following two chapters, thanks in large part to the tumultuous process of legal formation, the ways in which vending laws operate is not akin something solid and immutable in its exclusion. Rather, because of their complex nature, the actual ways in which vending regulations unfold are more contingent, dispersed, shifting and uncertain. But legal uncertainty does not equal some sort of freedom from regulation for vendors. Rather, as will be demonstrated in the following chapter, uncertainty, unpredictability and informality can sometimes be just as effective tools to manage the spatiality of vending as practices of absolute exclusi

Chapter Three

“Colossal Public Policy Failure” or New Regime of Spatial Control? Informality and the Management of Street Vending in New York

The Metropolitan Museum of Art sits on the eastern edge of Central Park, amid a landscape of 19th century elegance. The Upper East Side here is an upscale, park-side residential neighborhood. The stately apartment buildings lining Fifth Avenue across from the museum are exclusively residential; no retail stores or other commercial enterprises intrude upon the tranquility of upper class domestic life. This creates a simple but vexing problem for the thousands of tourists and visitors who exit the museum and make their way down the cascading marble stairs to the wide plaza below: after a long day at the Met, there is nowhere to eat. For many years, the only options were pricy museum cafes, upscale East Side bistros a block away on Madison Avenue, and park concession stands.

Street vendors were assumed to be banned from the area, given that most considered the sidewalk in front of the museum part of Central Park, and therefore off-limits to food vendors.¹ In 2007, a Vietnam veteran named Dan Rossi decided to challenge the status quo. Citing New York State law, which allowed military veteran vendors to sell in some otherwise restricted areas, Rossi set up a hot dog cart directly in front of the museum. His presence raised a number of legal questions regarding the complex and sometimes contradictory vending laws of New York. First, it was unclear whether or not the veteran exemption from street restrictions applied to food vending. There were also questions as to what, exactly, the expanse of pavement in front of the museum was. If it was a plaza or public sidewalk, then Rossi most likely had a right to be there, but if it was part of Central Park, then it came under the jurisdiction of the Parks Department and all vending would be outlawed (except for First Amendment vendors, but this is a different set of legal issues). Given all the questions and uncertainty surrounding his presence, and because Rossi had long been a vocal advocate of veteran’s rights, always ready to take on the city, officials did the easiest thing—they left Rossi alone.

The city’s decision to ignore the situation would prove costly, however, as more vendors began appearing on the wide plaza in front of the museum. By the summer of 2009, much to the dismay of city and museum officials, there were no less than eight food carts stationed at the foot of the museum’s staircase selling a variety of cuisines. The carts were all technically run by veterans, who shared Rossi’s exempted status, but in what is a familiar situation across the city, non-veterans—mostly new immigrants blocked from vending by license caps—paid veterans a nominal fee to serve as a front for an otherwise non-veteran operated business. Again, the legality here is unclear, for nowhere is it stated that the holder of a food vending permit must be the one actually operating the cart and serving the food.

¹ While there are food vending operations in Central Park, these business are run by larger corporate interests, which bid for the right to control concessions in various locations in the park. Independent food vendors holding city-issued licenses are not permitted to do business in the park.

Whatever the case, in August 2009, pressured by the mayor and the Metropolitan Museum, city officials began to crack down on vendors, but lacking clear legal direction as to whether the vendors were supposed to be on the plaza, police and health department officials attempted to drive vendors off by issuing a multitude of tickets, some with fines up to \$1,000, for minor violations such as being more than 18 inches away from the curb. Many of these tickets, however, were of questionable validity, hinging on yet another unresolved issue of whether the space in front of the museum was a plaza or sidewalk. The strict enforcement efforts was less about ensuring legal compliance, and more a tactic to intimidate and harass vendors away from a space which they were (most likely) legally entitled to be in. In all of this, all actors involved proceeded with only glancing reference to actual vending law, which is so complex and unclear that it failed to serve as a guiding force in the conflict. The law was not absent, but it remained in the background as a vaguely understood reference point informing ground level negotiation and contestation. Ultimately, formal law had little to do with the ways in which the spatiality of vending was actually structured. In this, and countless other cases across the city, the actual spatial management of street vending is carried out informally, through a variety of spatial tactics employed by vendors and those intent on limiting their presence on the city's sidewalks.

This chapter will provide an in-depth analysis of this process of informal management. I intentionally avoid using the word "regulation" when discussing the ways in which vending is controlled in New York, for rather than being regulated in a conventional sense, the practice of street vending is managed on a neighborhood-by-neighborhood, block-by-block and case-by-case basis. In the absence of clear, coherent regulatory guidance, the various actors in the vending conflict improvise, negotiate, evade and enforce a decentralized, contingent and informal regime of spatial control which sometimes bears only passing resemblance to the formal regulatory structure.

Data for this chapter comes from in-depth interviews with a variety of stakeholders, including politicians, BID officials, business leaders, and street vendors, as well as data recorded through street-level participant observation with vendors. It will argue three interrelated points, presented in three sections. The first section analyzes how and why the complexity of vending law, constructed in haphazard fashion over the past twenty years through a contentious political process, actually inhibits further changes or rationalization. I argue that law today exists as a tightly wound knot where pulling at any one thread carries with it the risk of lawsuits, political fallout or the loss of tenuously held rights. Following this, the second section argues that given the stalemate at which actors find themselves, street vending is carried out by vendors and managed by state and non-state actors in an informal, quasi-legal fashion. This section will use interviews and ethnographic data to provide a fine-grained picture of how the condition of informality functions as a regime of spatial management and control. Finally, the third section will make the argument that this situation, though not ideal for any one group, is ultimately acceptable to powerful Manhattan property interests and city officials, as property interests are able to manage vending within their districts through the use of private security forces, tactics of surveillance, and close ties to local police precincts, and the city is granted a wide range of flexibility in dealing with vending issues as they occur. In this way, the current situation can be characterized as a flexible regime of spatial management, operating in a decentralized, privatized and informalized fashion.

I. The Intractable Issue of Street Vending in New York: The Anatomy of a Policy Stalemate

“Putting your hands into the [vending] issue is like putting them in mud, they just go deeper, the mud is murkier, and the hand is getting darker and darker. And when you take your hands out, you’re afraid to look under your nails.”

-former NYC council member Phillip Reed²

Part One of this dissertation outlined in detail the contentious process of constructing current vending regulations. It demonstrated the ways in which laws regulating vending were not imposed upon space in a unidirectional fashion and according to some unified logic of exclusion, but rather are the reflection of fierce struggle and competing claims and representations of urban space in New York City. The result of over twenty years of political struggle and legal contestation is a set of regulations that are a mix of local laws, agency rules, State law, as well as State and federal judicial rulings which limit and qualify legislative action. The various layers of laws sometimes contradict or invalidate one another and ultimately all combine to form a tightly wound regulatory knot which inhibits comprehensive approaches to reforming or changing vending regulations.

Any proposed change to vending laws inevitably whips up a political and legal maelstrom. Hearings are held, passionate arguments are made from all sides, vendors threaten to sue, city lawyers warn lawmakers of unpredictable side effects of changing legislation, politicians eventually lose the political will to follow through, and the laws remain unchanged. A lawyer for a major Midtown Business Improvement District sums up the situation well:

I guess this happens every ten years. A mayor will come and say, or somebody will tell the mayor and say, “you know what?”—he gets the mayor’s ear—and he’ll say, “let’s do something about vending, it’s really confusing and everything else.” And the funny thing is, and I’d say it happens every ten years because it takes about ten years to weed out the institutional knowledge, so you get new people in place who really don’t know what happened ten years before, and they’re gung ho, and by the time they’re ready to walk out of city government, they’ve had it with the issue and they may have even created a more confusing mess of it than when they started with it.³

A key source of legal tension holding the regulatory knot together is the First Amendment protection enjoyed by art and book vendors. Any change in vending laws would also change the ways in which laws interact with the First Amendment. This interaction is unpredictable because the spatial regulation of First Amendment vendors is out of the control of local politicians, as it is the result of federal case law. A change in local law which places more restrictions on the practice of First Amendment vending would inevitably invite federal lawsuits by a group of vocal and legally savvy art vendors. Therefore, most lawmakers familiar with the vending situation know that if a hypothetical law were passed that drastically altered the way vending was regulated in New York, the resulting reorganization of street vending legislation would not be complete until the inevitable First Amendment lawsuit made its way through the courts.

² Phone interview (April 2008)

³ Interview with the counsel of a Midtown Business Improvement District (Feb. 2008).

This uncertainty leads many powerful interests in the city and business community to be hesitant when it comes to changing vending laws.

The current First Amendment vending situation—the result of largely unforeseen interactions between First Amendment rights won in 1997 by art vendors and existing regulations—reveals why policy makers and business interests are reticent to change things again. The problem (from the perspective of anti-vending interests) is that the act of selling art or books on the sidewalk is treated by the courts not as a business subject to regulation, but as a fundamental right—the right to free speech—the limitation of which carries with it a heavy burden of justification on the part of the city. Case law dictates that the city can only prevent First Amendment vendors from selling goods on streets where *all* forms of vending are banned—that is, food, general merchandise and veterans.⁴ The legal logic for this is as follows: the government is able to restrict the time, place and manner of speech (whether it be art vending or public protests), but only in a non-discriminatory fashion. For example, the state cannot deny a group of 100 anti-abortion demonstrators a permit for a protest march and then allow a pro-choice group to have a 100 person march along the same route. The justification for limiting speech must be content-neutral, and in the case of First Amendment vendors, the content-neutral criteria used to restrict their locations is sidewalk crowding. Therefore, in order to ban First Amendment vending on a particular block, all types of vending must be banned on that block. For instance, if the city allows food vending on a block, it is implicitly admitting that congestion levels on that stretch of sidewalk are not so high as to warrant an outright ban on vending, therefore First Amendment vendors must be allowed on the block as well. Allowing one form of vending, while banning those selling First Amendment protected material, amounts to an arbitrary limitation of First Amendment rights and, consequentially, de-facto censorship.⁵

In fact, this issue played a large role in much of the push to restrict food vending in certain neighborhoods during the late 1990s and early 2000s through the Street Vendor Review Panel. For instance, there were some neighborhoods which did not consider food vending to be a major problem, but deemed First Amendment vending to be out of control. Therefore, anti-vending interests petitioned the city to ban food vending in their neighborhoods primarily to be able to eliminate First Amendment vending. As one neighborhood leader related:

⁴ *Berry et. al. v. City of New York et. al.*

⁵ It is for this same reason that cities often have trouble regulating the number of newspaper vending boxes found at busy intersections. Newspapers are protected speech, regardless of prestige or content. Therefore, if a city allows the *New York Times* to place a vending box on a corner, it cannot prevent other press outlets from setting their boxes alongside it. To say the *New York Times* is allowed to sell papers on the public sidewalk, but not, say, the *Village Voice* or *New York Post*, obviously raises serious First Amendment issues.

I don't really mind food peddlers, because its not like 20 in row. . . but we wanted to get art vending restricted, but to do that, first you need to get food restricted. [An employee at a city agency] says the only way you eliminate art vendors is to eliminate food peddlers. We got 800 letters from residents and business, one person gathered these. These were not just petitions, they were actual letters. [A high-level city official] even said, "I never saw so many letters on limiting food vending."⁶

Even with food and general merchandise vending restricted from certain blocks, there remains the issue of the interaction between laws regulating military veterans and the First Amendment exception. Recall that it is New York State which sets street restrictions for military veterans, not the city. The State allows yellow licensed military veterans to set up on *any* street outside of Midtown, regardless of city restrictions on general and food vending. Within Midtown, the Avenues are off limits to all veteran vendors, but there are 100 blue license veterans who are permitted to set up on any side street in Midtown, regardless of city restrictions on vending. What this means is that even on streets where the city has banned all vending, if a veteran, pursuant to State law, sets up on the corner, the veteran effectively opens the entire block to First Amendment vending. Case law dictates that if any regulatory entity—city or State—defines the sidewalks on a certain block as suitable for one type of vending, First Amendment vendors cannot be prevented from also selling their wares on said sidewalk.

A concrete example will help to clarify how this process works in practice. Let us take, for example, the block of West 44th Street between Seventh and Eight Avenue in Times Square. This block is within the "Midtown Box" and is therefore off limits to general vending. In 1983 the city also banned food vending on this and many other Midtown blocks. Therefore, according to *municipal* regulations, there should be no vendors on this block. But, pursuant to State law, one blue licensed veteran is allowed to set up on this block of West 44th Street, as is the case on nearly every side street in Midtown. The moment a blue license veteran places his table on the corner, First Amendment vendors—in Times Square mostly consisting of recent Chinese immigrants selling portraits of celebrities, photographs of New York landmarks, and other art items geared to tourists—line up their tables in a row down the block (*figure 1*), alongside the veteran. As long as the veteran remains on the corner, this block is open to an unlimited amount of First Amendment vendors. As soon as the veteran decides to pack up and leave, however, First Amendment vendors must do the same.

This process occurs across the city, as First Amendment vendors line up on restricted blocks alongside veterans (who are themselves restricted to either one or two per block face, depending on the area). In the Times Square area, then, a neighborhood where non-food vending is outlawed completely by city law, State law and federal case law interact to fill most side streets with vendors. The situation is even more extreme in neighborhoods like SoHo, where most major streets such as Prince Street and Broadway are off limits according city law, but are filled end-to-end with vendors selling artwork, jewelry, crafts, and other art-related goods. The situation in SoHo is complicated by the fact that most police officers are unsure where the line between "art" and "merchandise" is legally drawn. Is hand-made jewelry "art"? What about T-shirts sold by young fashion

⁶ Manhattan neighborhood leader, (Phone interview, Jan. 2008). Because it would have been improper for a city employee to advise a neighborhood group in this way, the name and departmental affiliation of the employee have been omitted.

designers carrying original prints? The answer, according to court rulings is no, most of these items are not afforded First Amendment protection and therefore subject to city laws restricting the sale of merchandise.⁷ In practice, however, police are often unwilling or unable to police the fine lines separating art from merchandise defined by Federal courts. Therefore, in SoHo, everything even slightly within the bounds of artistic expression is sold on the sidewalks, frustrating local politicians and business groups, and even other vendors, including some practicing artists who won the original First Amendment ruling. In this way, the First Amendment exception produces a double tension: its unpredictable interaction with any potential new laws prevents any sort of broad-based regulatory change, while at the same time, the sheer number of First Amendment vendors in some neighborhoods and the legal difficulty of policing the line between “merchandise” and “art” reinforces the image of vending as being out of control.

The First Amendment exception is probably the most straightforward and clear example of uncertainty and, by extension, informal practice being produced by the law itself. The complex interaction between the Federal judicial decision regarding First Amendment rights, and city laws written in ways that tend to impede on those rights, produce confusion, legal uncertainty, and encourage irregular enforcement practices. In this way the First Amendment exception works to produce informality both in a direct and indirect manner. That informality is produced by legal ambiguity and unresolved legal questions resulting from conflicting scales of government (in the case federal courts versus local legislature), while perhaps not unique, is a hallmark of informality as it occurs in the U.S.—something deeply intertwined with formal law, and existing in the spaces between them, rather than completely outside the law.

In the United States, very rarely is there a complete breakdown or willful suspension of actual formal laws, where actors simply ignore legal codes, and operate on a separate plane of reference. The important part about informality as it applies to street vending in New York is that the informal exists in close relationship to formal law, and is less about the complete breakdown of the ability of legal codes to structure spatial form and social action, and more about the ways in which the informal exists and grows in spaces within and between various formal laws, and between formal laws and practices of enforcement.

In recent years, some lawmakers have perceived a political opportunity in taking on the vending issue. There have been a number of proposals to change vending laws through complete overhauls billed as more rational, comprehensive regulatory systems. However, the legal uncertainty brought on by unpredictable nature of the interaction of the First Amendment exception with any new system has frustrated attempts to address the issue. Proposals on both sides of the spectrum, both pro-vendor and anti-vendor have had equal difficulty gaining any sort of political traction in the city council chambers. For instance, Intro 621 of 2005 would have eliminated the cap on general vending licenses, allowing the number of licenses available to gradually be increased. More dramatically, it would have lifted all street restrictions, instead limiting vendors to three per block across the city—thereby opening up many new spots to vendors. In fact, many legislative attempts to change vending law during the last decade or so followed this approach—allow vending on more streets but restricting the number of vendors per block in an attempt to spread vending out and reduce crowding. But all of these proposals ran

⁷ *Mastrovincenzo v. City of New York et. al.*

ashore of legal anxiety related to the First Amendment exception. A director of a Manhattan Business Improvement District describes:

So instead of dealing with what are the rational time, place and manner restrictions you can place on a First Amendment vendor—which actually, if you could just have a substantive, reasonable discussion about that, you could get somewhere—the argument is no vending anywhere, because the minute you crack the door open to vending, the First Amendment vendors come out, and in any number. So even the idea which has been floated many times which is site-specific locations never gets off the ground . . . because you know, you could maybe make an argument that there are blocks in the city that could accommodate a vendor, but it can't accommodate 11 vendors, and that's what's gonna happen. And so all those proposals don't address the real issue, which makes those proposals scary to us [Business Improvement Districts]. Because you open up one spot, you can't control the rest of the block. And when you try to put First Amendment in there, it creates the whole First Amendment battle. So what happens? Nothing happens. So it's a catch 22.⁸

In addition to anxiety produced by legal issues, political uncertainty also hinders changes to vending law. Changing vending laws in any direction—either to benefit vendors or to further restrict them—carries a tremendous amount of political risk. Politicians would almost certainly draw the ire of powerful real estate and business interests if they loosen restrictions, while they also risk being cast as anti-immigrant, elitist, or out of touch with New York's ethos if they further restrict street vending. A lobbyist for the retail industry, who had been through his share of vending battles, sketched out the political landscape:

At the same time that there is a lot of opposition [among politicians to vending] there is almost a paranoid level of concern among politicians of being cast as anti-immigrant. . . Most elected officials don't want to deal with this. No one wants to touch the vending issue. They are afraid of fallout, the anti-immigrant, anti-small entrepreneur stuff. All progressives you know, so they don't see political capital in doing this.⁹

The Bloomberg Administration, in particular, has been reluctant to get embroiled in a vending battle. For instance, in 2005 former councilmember Phillip Reed, proposed a bill (Intro 621) which was not only supported by many vendors but also received support from some moderate voices within the real estate industry. While there were certainly a number of property owners and vendor groups (especially veterans and First Amendments vendors) who disliked the bill, many saw Intro 621 as the most fair minded and comprehensive attempt at rationalizing and reforming vending laws in recent history. However, the Bloomberg administration, though initially supportive, grew anxious and withdrew support, letting the bill die in the city council without coming to a vote. Reed related his frustrations about lack of mayoral support for the bill:

The [Bloomberg] administration, they were the ones encouraging me to come up with a solution, at least initially. You can come up with the best thing, but if you can't get it through politically it's dead. The administration pushed it off and off. I was really disappointed with that. And then you have to remember that this was also an election year. Bloomberg was gearing up for election. Also, other major players went from saying "lets close the door and have a conversation about this," to saying, "this is never going to work".¹⁰

⁸ Interview with Midtown BID manager (March 2008).

⁹ Phone interview with retail industry lobbyist (April 2008).

According to Reed, the Bloomberg administration was specifically worried about political fallout from veteran vendors. The Reed Bill (as Intro 621 came to be known), would have placed some limits on the rights of veteran vendors in order to expand opportunities for general merchandise and food vending. According to Reed and others, the Bloomberg administration decided that angering military veterans was not worth the political risk in an election year:

You know, when that sort of thing happens, all you have to do is look at the calendar. This was an election year, and they didn't want to deal with this. Bloomberg was worried. You know, you have these guys, the veterans . . . they can fill a room, and Bloomberg was intimidated. He didn't want the whole Navy and V.A. associations walking around saying, "don't vote for Bloomberg, he's against veterans."¹¹

With the Bloomberg Administration turning its back on the bill, Intro 621, like most other proposals for vending reform during the first decade of the 21st century, would die quietly in the city council, never even reaching the mayor's desk. While there have been countless hearings and proposed reforms in the last ten years, not one major vending bill has come up for a vote under the Bloomberg Administration, with the exception of the Green Carts legislation, which was primarily a public health initiative, not an attempt at vending reform. And so street vending regulation remains stuck in a political quagmire. Vendors, property owners, politicians, and business leaders all call for the rationalization of the regulatory system and for the implementation of clear, enforceable laws. Year after year passes, however, and nothing changes. In the absence of comprehensive legal reform vendors and anti-vending interests are left to negotiate the complex regulatory apparatus on their own, often in extra-legal ways. The following section will describe in more detail how the management of street vending and urban space in New York actually unfolds.

II. The Informal Management of Street Vending and Urban Space

Vending laws are confusing, convoluted, fraught with internal contradictions, and difficult to enforce consistently. On the street, formal law exists as a point of departure rather than a guiding compass. The formal regulatory structure in New York as it currently exists produces in actuality a variegated, shifting landscape of informality/formality that, as I will attempt to demonstrate in what follows, exists in a complex dialogue with formal law. In fact, the law weighs heavily on street-level negotiations, but because of its confusing and convoluted nature, it hangs over the street like a specter, something feared by vendors and invoked by agents of enforcement but not always fully understood by either party. Laws—or general ideas about laws—are referenced and negotiated in various different ways and in various situations. The law in this case is seldom a clear line dividing legal from illegal, formal from informal, but rather, is a point of departure from which spatial negotiations begin or from which justification for spatial exclusion is constructed. The condition of informality here is

¹⁰ Phone interview with Phil Reed, former New York City councilmember (April 2008).

¹¹ *ibid*

conceptualized then as a process of “extralegal discipline,” containing “continuities with formal systems of regulation” (Roy 2003, 141). Formal law is not simply ignored or completely absent, rather, informality exists in dialogue with the official legal system.

In the case of street vending, laws say one thing, what occurs on the ground is often something else. What I am interested in exploring in this section, is what goes on in the conceptual space between formal law and actual social practice. How does the law and social practice come to be mediated by relationships of power, what does this process look like, and what is the resultant landscape of vending? I argue that in New York, an informal system of vending management, shaped largely by powerful business and real estate interests, arises to mediate and reconcile formal law with social reality. The system of informal spatial management influences both the geography and nature of spatial control in ways that reflect power relations. What this process means is that the state ceases to be the sole or even primary arbiter of acceptable social action and spatial form. Lines of control over both the nature of and action in urban space are reoriented, reflecting not public ideals, but private interests.

It is important to point out that the term informality is being used here to describe a *process* of spatial management, not the *production* of urban space, as it is commonly understood in the context of the global South. In New York, vendors rarely create spatially coherent, relatively stable urban forms such as the informal vendor markets which are common in many cities of the Global South. The landscape of informality in New York is variegated and dispersed. The term informality is used in this context not to describe a particular urban form, but to capture the uncertain and unpredictable nature of nearly all street vending in New York, licensed and unlicensed. In short, informality refers more to spatial practice, rather than spatial form.

The project of spatial management occurs in a piecemeal, place-specific, contingent fashion. It often varies block by block, district by district. However, despite its seemingly irrational and convoluted nature, there exists as the product of countless day-to-day negotiations a loosely defined, yet clearly evident logic to the spatial management of vending. It is a logic that is consequential, rather than centrally defined and executed. It is for this reason that when discussing this process, I avoid the word regulation and specifically replace it with management. Regulation implies something straightforward, something which references a broader master plan, i.e. a set of known, relatively stable rules which all actors are aware of and attempt to either follow or evade. It is, when guided by formal laws, the ideal-typical way urban governance operates, where laws structure spatial form and practice in straightforward, predictable ways. This is not what occurs in the case of street vending. I believe the term management better captures the social processes under discussion, for it is a term that references a less stable form of control, one where the end-goals are not clearly defined, and the goal is simply to keep a dynamic system going. The informal regime of spatial management of street vendors in New York is not a static system, rather it is shifting, contingent, and uncertain. What was acceptable on a street corner one day, may suddenly change the next. Rules—or threats using non-existent rules—are applied selectively and differently depending on the individual cases. The sum-total of these individual interactions between vendors and anti-vending interests ultimately produce a broader, loosely defined system of spatial management largely reflecting the desires or business and real estate interests, but does not necessarily congeal into coherent or consistent process of regulation.

I will begin this section by using a handful of examples drawn from ethnographic research to outline the contingent, unpredictable nature of regulation at the individual, micro scale. I will then attempt to zoom out in order to demonstrate how these individual negotiations coalesce into a broader, city-wide logic of spatial management.

A. Street Level Intimidation and Negotiation

Often, the spatial arrangement of vending on certain blocks has less to do with what formal law designates than street level interaction, the willingness of individual store owners and Business Improvement Districts to intimidate, threaten, and/or take regulation into their own hands, and the resolve of individual vendors to resist tactics of spatial control employed by anti-vending interests. Therefore, on many New York blocks vending is a spatial manifestation of negotiation, intimidation, and evasion, rather than formal law. The description of the spatiality of vending on one Manhattan block (where most vending is legally permitted) by a local business leader is illustrative:

Now, there is one guy, Manny, he's a tough guy from Jersey, he keeps peddlers off the street in front of his store. This guy would chase vendors away and would be able to keep the vendors off his sidewalks. You gotta be tough to get the vendors off the street. That's the only way. [Down the block from Manny's store] there's no people to chase the vendors away. The pussies at Banana Republic would never chase them. The people at the post office couldn't give a shit, they wouldn't chase them. So [on that particular stretch of sidewalk], the vendors got a foothold.¹²

Store owners, building managers, and BID personnel employ a number of tactics to manage the spatiality of street vending, many utilizing the opacity of vending regulations to legally intimidate vendors into moving, even if the vendor's spot is technically legal. Vendors have varying degrees of familiarity with the law. Most know the most basic laws, such as which streets are open or closed, but few are familiar enough with the every legal detail to confidently contest tactics of legal intimidation employed by various anti-vending interests and the police. I will use a few specific examples to demonstrate how this legal intimidation works in practice.

The first example is of a fruit vendor in the Murray Hill section of Manhattan, a busy, mixed-use area southeast of Midtown. Farha¹³ is a recent immigrant from Afghanistan, who supports her two children through her fruit vending business. She is a licensed food vendor and her cart has all the requisite permits. The corner on which she sells her fruit, according to New York City regulations, is open to vending during normal business hours. The summer I met Farha, she had been vending at her corner for nearly a year, and was a relatively popular presence in the neighborhood, selling fruit to office workers and residents of nearby apartment buildings, as well as cab drivers who would pull up to her stand to buy an apple or package of strawberries for the road.

Farha was decidedly unpopular, however, with the manager of the McDonald's fast food restaurant in front of which she sold fruit. The manager had been claiming that she was stealing his business and that she had no right to be on the corner. After the

¹² Interview with Manhattan neighborhood leader (Jan. 2008).

¹³ This and all the following examples are taken from roughly 24 non-contiguous months of fieldwork in New York. The names of vendors have been changed, and actual corners/blocks of operation are not presented. Other than these two points, all details are accurate.

manager's initial tactics of harassment proved ineffective, he made a concrete legal claim—that Farha's vending location violated the law because even if that particular street was open to vending, it was against the law to sell food in front of a restaurant (there is no such law). He warned that if she continued to refuse to move, he would be forced to call the police. Farha was strong willed, and had stood her ground against verbal abuse and vague threats from the McDonald's manager for some time, but this latest claim worried her. She had never heard of the law the manager claimed she was in violation of, but she knew that there were many laws in the hundreds of pages of vending regulations that she was unfamiliar with. Moreover, given her limited English language skills and because vending laws are only available in English, much of her knowledge of the law came through discussions with other vendors and through an expensive trial and error process of getting tickets for various minor violations.

Nevertheless, Farha continued to stand her ground. A few hours after the manager threatened to call the police, a man in a uniform showed up. He looked like a policeman to Farha but she was unsure. He had a uniform, but his shirt was white, not the standard dark blue of a beat officer.¹⁴ In all likelihood, the man who threatened to arrest Farha was not a New York City police officer, but rather a private security guard from one of the surrounding buildings. Despite being intimidated, Farha tried to reason with the man, arguing she was a licensed vendor, in a legal spot, standing the requisite 20 feet away from the entrance to the McDonald's storefront. Why should she have to move? Continuing to insist that as a food vendor, she was not allowed to be in front of or near a restaurant, the man claiming to be a police officer threatened Farha with arrest unless she agreed to move down the block, away from the McDonald's. This would place Farha within 20 feet of the doorway of pharmacy, but she had a friendly relationship with the manager of the pharmacy and decided follow the uniformed man's orders to move down the block, even though a move from her corner location down to the center of the block would likely mean less revenue, as corner locations are almost always more profitable for vendors than mid-block ones. Ironically, Farha's new spot in front of the pharmacy, though it promised less conflict with store owners, was illegal according to city rules. She was now within 20 feet of the pharmacy's two doorways, in violation of a rule stipulating that vendors must stand 20 or more feet away from any building entrance.

This example describes an instance where a vendor's locational legitimacy and business security has little to do with formal laws. A legal vending location in front of an antagonistic store owner was untenable, thanks to uncertainty born of difficult to understand vending laws. On the other hand, Farha's new location, which was technically illegal, ended up being more secure—at least in the short term—thanks to her friendly relationship with the pharmacy manager. On this block, like thousands of others across the city, the spatial arrangement of vending is not necessarily structured directly by formal law, but rather is negotiated and managed by various actors with varying levels of power and knowledge of regulations.

As Farha's story demonstrates, the major mechanism driving this process of informal management of space is the law, but not in the way one would conventionally expect. Street vendors are subject to a long list of minor rules regulating the placement,

¹⁴ Lieutenants and Captains in the NYPD wear white shirts, but it would have been extremely unlikely for a high ranking member of the police department to personally respond to a routine (and legally inaccurate) complaint about a street vendor from a McDonald's manager.

size, and appearance of vending carts. These rules are complex, lengthy, and published only in English. Most vendors do not fully understand them and are rarely familiar with every single regulation. Compounding this, even a minor violation of the rules carries with it the possibility of harsh penalties—fines up to \$1,000—a sum which can place a vendor's very livelihood in danger. This makes vendors vulnerable to legal intimidation by police, building owners, and private security forces. As Farha's case demonstrated, these legal threats are not always backed by actual laws, yet the complexity of vending law makes vendors vulnerable to false legal claims, leading vendors to change locations rather than risk a livelihood-threatening fine.

Laws regulating the placement of vending carts or tables are very specific, down to the inch. For instance, a table must be no more than 18 inches from the curb, at least 20 feet from a building doorway, 10 feet from a street corner, at least 5 feet from a bus shelter, fire hydrant, or public telephone, at least 10 feet from any subway entrance, and the list goes on. Anyone familiar with New York's streetscape, which include buildings with innumerable ground floor entrances and relatively narrow sidewalks crowded with street furniture and other infrastructure would understand immediately when reading the vending code that it is difficult for vendors to be in full compliance of the rules. Added to these locational regulations is an entire set of rules delimiting the size and appearance of vending carts.

Due to the harsh fines which result from violations, selective enforcement of minor regulations or intimidation through false legal claims are both effective tools for moving vendors off of streets where they are legally permitted to exist. Over the course of my fieldwork I heard many stories from vendors about being forced off of corners because of a barrage of tickets for minor violations. Many vendors had examples of vending without problems in legal spots for months or years, only to see ownership of nearby buildings or storefronts change, and suddenly find themselves harassed by police responding to calls from new building owners or retail tenants to get them off the block. If fines or threats of fines become too high or too frequent, vendors will often search for a less troublesome location, rather than risk fines of up to \$1,000.

In this way, minor rules regulating placement, size and appearance of vendor carts and tables enmesh vendors within a sort of panoptic disciplinary logic which is manifested spatially. Vendors are often aware of locations, blocks, even individual storefronts where they may be subject aggressive enforcement and harassment, even if those blocks are legally open to vending. Vendors in some way police themselves, finding locations where threats of enforcement will be less common. This geography of vending, therefore, rather than being a spatial expression of law, is a spatial expression of threats, negotiations and selective enforcement, made possible by the complexity of vending laws.

B. The Aesthetics of Exclusion: Planters as Vendor Repellant

In addition to legal intimidation and harassment, the placement of large planters on the sidewalk is a common tactic used by individual building owners and Business Improvement Districts to manage the spatiality of street vending. Planters take many forms, from elegantly designed structures holding attractive floral arrangements or small trees, to drab concrete vessels containing little more than soil and weeds. Planters are

often justified by those who place them on the sidewalks as benign urban design initiatives—an attempt by building owners or Business Improvement District streetscape managers to add a bit of greenery to hardscrabble New York sidewalks. Especially since 9/11, heavy planters, which together often create a low wall around building perimeters, have also been justified as security measures.

To be sure, many planters are put in place to serve these two stated purposes. But many property owners place planters on the sidewalk fully conscious of a fortuitous side effect of street beautification: they prevent street vendors from setting up in front of their buildings. In fact, sometimes planters are placed *primarily* as vendor deterrents—though, of course, property interests publicly maintain their nondiscriminatory, aesthetic or public safety purposes.¹⁵ In a twist of irony, planters placed on the sidewalk to discourage vending are often illegally occupying public space. Building owners and BIDs must get approval of the Department of Transportation to place planters along sidewalks, and planters must conform to a variety of requirements to ensure they do not produce congestion or cause a public safety hazard. Nevertheless, property interests routinely ignore DOT rules, producing their own landscapes of informality for the purposes of managing public space.

In order to demonstrate how this process works, I present a specific instance of informal planters used as public space management tool. Usman, a hot dog vendor originally from Bangladesh, had been selling his classic New York street fare on a prominent corner near Manhattan's Greenwich Village for many years. For most of his tenure on the corner, there was nothing more than a large, vacant lot opposite his vending cart. In some ways, his spot in front of the vacant lot was a perfect vending location: on a corner at the intersection of two major thoroughfares in a busy neighborhood, but with no building managers or store owners to harass him. But things changed. A multi-story office building had recently been built on the lot and only a few days after the gleaming new glass and steel building was completed, Usman started being harassed by building security guards. They made a number of spurious claims challenging the legality of Usman's spot, but the verbal harassment did not go any further than that. A few days later, Usman and other vendors doing business on the block arrived to their spots as usual, but on this morning they found an unpleasant surprise waiting for them. Lining the entire corner in front of the building were more than two dozen cylindrical concrete planters placed only about a foot apart. The planters formed a veritable wall around the building, preventing Usman and a few other vendors from setting up in their normal spots.

Undaunted, Usman and the other vendors helped one another to move the heavy concrete planters filled with soil just enough so that they could wedge their vending carts between them. It was an imperfect solution, however, as the planters were so close to one another there was simply no space to move them to. The vendors ended up setting up in front of barely rearranged planters. The combination of vendors in front of planters cut the width of the busy sidewalk in half, and soon started causing congestion on the corner. Not long after, an inspector from the Department of Health, which along with the police

¹⁵ See Lambert, Bruce. 1995 "On 53rd Street: Planters 1, Vendors 0" *The New York Times*. 6 Aug; Lee, Denny 2003 "A Modest Touch of Green makes Vendors see Red" *The New York Times*. 21 Sept. Additionally, during interviews with business leaders I was told numerous times—in an off-hand manner—that planters were put in place to keep vendors off certain sidewalks.

department enforces food vending regulations, arrived and cited Usman for a number of violations induced by the presence of planters. For instance, city rules mandate that vendors must be no more than 18 inches from the sidewalk curb. Because of the planters, Usman was nearly two feet in from the curb, well into the major channels of foot traffic on the sidewalk. Additionally, the planters forced him to operate with twenty feet of one set of the new building's doorways. It was not his fault that he was in violation of these rules, but Usman's argument meant little to the DOH inspector. Planters were under the jurisdiction of the Department of Transportation, the health inspector claimed, and were none of his concern. Thanks to illegally placed planters, a licensed food vendor in a legal spot was himself pushed into legal non-conformance and found himself newly burdened by hundreds of dollars in fines, and the loss of a lucrative, longtime legal vending location.¹⁶ Planters are perhaps the most visible example of the ways in which property interests, in the absence of clearly defined or easily enforceable laws, take the spatial management of street vending into their own hands, ironically through the production of their own analogous landscape of informality. Usman's story is just one example of a larger, systematic low-level spatial struggle between street vendors and property interests carried out under the auspices of urban design and streetscape improvements.

C. Managing Conflict, Mediating Informality

The first two examples demonstrated the ways in which property interests use a variety of tactics to force otherwise legal vendors into extra-legal spatial situations. A completely legal vending location can be difficult to find, and being forced to move only a few feet down the block can place licensed vendors in legal jeopardy. Therefore, even licensed vendors are forced to navigate an uncertain regulatory landscape of false legal claims, vague threats, and interminable vending rules. Along the hashmarks of a policeman's tape measure lies the difference between a good day of sales and a \$1,000 fine.

The informal negotiation of public space, however, is not always a process in which licensed vendors are intimidated away from street corners or subject to harsh bouts of strict enforcement. Unlicensed or improperly licensed vendors will often utilize legal complexity to eke out spaces to operate their businesses, with tacit or sometimes even explicit consent of enforcement agencies. As we will see, these spaces are often tenuous, contingent, and are in no ways secure. They are interstitial, both in a legal and spatial sense. Informal vendors do not simply exist outside the formal regulatory framework, but rather exploit spaces opened by the very complexity of vending law. The first example is relatively specific, but nonetheless representative story of a flower vendor in Chinatown, which will be presented in this section. In the following section I will present the more systematic process of informal spatial negotiation and organization which occurs among

¹⁶ Usman was a member of the largest vendor organization in the city, which provided legal aid to its members. With the help of the organization, Usman and other vendors threatened to sue the building owners and put pressure on the Department of Transportation to enforce laws regulating planters. The building owners relented, removing the planters and allowing the vendors to return to their spots. Most vendors, unfortunately, do not have the backing of a politically vocal and legally savvy organization, and find themselves much less equipped to defend themselves when displaced by planters.

licensed West African vendors who defy street restrictions in order to sell their goods in Midtown Manhattan

A flower vendor originally from Hong Kong, Wendy, as she calls herself in English, had been vending in Chinatown at a variety of locations for nearly fifteen years. According to Wendy, when she first started vending in order to supplement her husband's income, she obtained a food vending license because she planned to sell a mixture of flowers and fruit for Chinatown residents to bring as offerings to local temples. Though she failed to mention it in our discussions, she most likely also obtained a food vending license because they were readily available and general merchandise licenses were capped at 853. Despite the fact she was in possession of a license, from the beginning, she was technically an unlicensed vendor for a few reasons. First, even with a food vending license, she needed to be in possession of a food vending permit for her cart or table. Without a cart permit, her operation would have been considered unlicensed vending. Also, by selling a mixture of flowers and fruit, she was violating laws regulating type of merchandise sold. General merchandise vendors cannot sell food products and food vendors cannot sell any non-food items.

As we have seen, however, compliance with formal laws does not necessarily produce de-facto spatial legitimacy when it comes to vending. Despite her license issues, Wendy sold for many years in relative peace. A few years prior to our interview, however, this began to change. Wendy had no idea where the impetus came from, but she started being harassed by store and business owners in her old spot, a busy location just off Canal Street, within Chinatown's historic core and near a concentration of older temples. Local business owners or building managers evidently complained to the police, because officers came and, in her retelling, asked her respectfully to move. Wendy pleaded with the police officers, saying she had nowhere else to go and needed to continue vending to support her family. The diminutive and soft spoken woman evidently presented a sympathetic figure. The officer decided to help her find a new space to vend—ignoring the illegal nature of her food/merchandise operation and her lack of a food vending permit for her cart. This only led to an odyssey of police-induced moves across Chinatown. Wendy describes the maddening process:

Sergeant [omitted]¹⁷ he say, so I must follow his order. I start in the Mott Street, but then I move to the uh, Lafayette [Street], and then move to the Centre [Street], and move to the Mott Street, and later I move in the Canal [Street], and Canal move me back to the Mott Street, and Mott Street now move me here. So long I move. It's the police move me. They say, "here no good", move me. But here no good, move me. Another, there no good, move me . . . Always I follow the police orders.

When I met Wendy she was at her eighth or ninth new spot, and receiving trouble once again from a nearby building manager. By now, however, her police sanctioned relocations had become so routine, she directed complaints from building owners directly to the police:

And the building people. They [tell me to move]... Yeah, they talk to me first. They say, "I don't like you here." I know, but I can't—because no, uh, the police they move me here. If you don't like me here, you talk to the police.

¹⁷ Wendy knew the Sergeant by name.

Wendy's experience is yet another of example of the ways in which street vending is managed informally. Here we see a (technically) unlicensed vendor being moved around Chinatown by the police, though ultimately being allowed to vend even without the proper license. Certainly, an older woman selling flowers and oranges to temple-goers is a more sympathetic figure than most unlicensed vendors, and this no doubt played a role in the relative leniency in the police's approach. Nevertheless, legal complexity—it is unclear whether the police moving her even realize her license is not valid for the sale of flowers—plays a role in opening spaces for Wendy to sell her merchandise, even if this space is fraught with uncertainty and unpredictability. Though it is certainly structured by place-specific and individual circumstances, Wendy's story of informal spatial management is not unique. We now move on to a more widespread example informal management which occurs in the neighborhood where vending is most heavily policed and rules are most strictly enforced—Midtown Manhattan.

D. Between the Avenues, Between Enforcement: Licensed Senegalese Vendors in Midtown

Midtown Manhattan is without a doubt the most regulated space in New York City as far as street vending is concerned. Multiple layers of laws overlie the area's sidewalks. General merchandise vendors, in particular, are banned from Midtown for no less than three separate legal reasons. The first, the Midtown Box, is the most explicit. This law bans all general vendors from doing business between 65th and 30th Streets, Second to Ninth Avenues. Passed at the same time as the Midtown Box was another law which bans vending from all districts zoned for high density commercial use, which, of course, includes all of Midtown. Finally, during the 1980s and 1990s, the city enacted rules through the Department of Consumer Affairs and the Street Vendor Review Panel placing individual streets within Midtown off limits to general merchandise vending. On these specifically restricted streets, police were given the authority to confiscate a vendor's merchandise, on other streets within Midtown, police could only give vendors a citation for vending in a restricted area.

In short, according to city laws, there should be absolutely no non-veteran general merchandise vending in Midtown. But the landscape of general merchandise vending in Midtown does not reflect formal legal dictates. Rather it operates on a different logic, one which has more to do with varying geographies of enforcement and oversight—both public and private—as well as informal negotiations and understandings among different vendor groups. The resultant landscape is one in which licensed general merchandise vendors, most of them immigrants from Senegal, set up tables full of handbags, scarves, t-shirts and other merchandise geared toward tourists and lunchtime shoppers along side streets between Sixth Avenue and Seventh Avenues.

Despite being in the heart of Midtown, these streets can be thought of as interstitial spaces for a number of reasons. First, these blocks lie between two of the city's largest, most powerful Business Improvement Districts—the Times Square Alliance and the Grand Central Partnership— but are themselves some of the few streets in central Midtown not under the jurisdiction of a BID. Because of this, they exist outside the watchful eyes of BID security personnel and local police, with whom Midtown BIDs

have a close working relationship. Second, despite being officially off limits thanks to the blanket restrictions of the Midtown Box and zoning-based vending laws, these streets are, on most days and times, not off limits according to Department of Consumer Affairs rules, meaning licensed vendors can only be given citations for vending here, rather than have their merchandise confiscated as occurs on other, doubly restricted blocks. Third, just as they are located between two major BIDs, the blocks lie between two major tourists destinations in Midtown: Fifth Avenue and Rockefeller Center to the east and Times Square to the west. The blocks between Sixth and Seventh Avenue consist mostly of office building lobbies and parking garage entrances, with little appeal to tourists and, subsequently, little appeal to military veteran vendors—the only vendors with legal right to be in Midtown.

Military veterans claim the busier, more desirable corners along Broadway, Seventh, and Fifth Avenues, leaving the less desirable blocks between Sixth and Seventh Avenues to the Senegalese vendors. Veterans are often just as likely to harass or call the police on general merchandise vendors selling in restricted areas as store owners—another factor leading Senegalese vendors to seek some semblance of refuge from regulation along these blocks. For instance, when I asked one vendor why he moved from a more lucrative location within the Grand Central Partnership’s boundaries to his current spot between 6th and 7th Avenues, he gave this reason:

Um, a few things. The police that were there were giving us hard time, and also vendors also uh, give us hard time, and I realized that, you know, the headache of the police, the headache of the other vendors was not worth it. So that’s why I decided to leave 59th and Lexington, which was a prime location, because I was in the shopping area, people would go for shopping, that’s where they shop for clothes, for shoes, I was able to put accessories there that would compliment whatever they pick from the stores. But then again I left there because, too much headache from the police and also the other vendors. The thing is, sometimes, people have friends. The store owners, all of them, sometimes they have friends, they just calling for the cops, coming just to harass us. Because I was selling across the street from him and he might think, if I do this, what I’m doing, you know, he might lose some of his customers. And then the police come there and harass us, so I decided, let me just come here to Sixth Avenue.

In another interview, I asked a different Senegalese vendor where his ideal spot would be. After a long, thoughtful pause, he have his answer:

Fifth Avenue, Times Square. Maybe I will stay here [between 6th and 7th Avenues]...uh, yes uh, Fifth Avenue it’s crowded, there’s traffic there. Times Square? Traffic there. But I don’t mind being here, I don’t mind. It’s quiet. I don’t have people bugging me all the time. [If he set up on Fifth Avenue] the police would come...but then again on the west side [between Sixth and Seventh Avenues] I have no problem, but on the east side [within the Grand Central Partnership BID] it should be a problem.

The relative marginality of the blocks between Sixth and Seventh Avenues informs the spatial logic of vendor locations, as well as their own claims to space. Many of the vendors I spoke with expressed frustration with city laws that prevented them from operating on these undesirable blocks in Midtown. In their view, if no one is vending on these blocks, if they were not crowded, why not allow them to make a meager living at the margins, selling their wares to tourists and office workers?

That's why, any time, the police they give you a hard time, they tell you, you not—you don't stay here, this space here, it's for blue license, [but] the blue license, they don't like this space! The blue license they like to go to Times Square or Fifth Avenue. If the police want to give you hard time, they tell you, "Ok, you don't—you not supposed to be here, you don't have blue license. But the blue license, they don't like this space! Because, no customers! Not too much customers. Fifth Avenue is much better than Sixth Avenue. Times Square is much better than Sixth Avenue. That's why the blue license, they don't like to work here. They like to work Fifth Avenue and Times Square. You understand?"

Despite existing in a space between the oversight of BIDs and the informal territorial claims of veteran vendors, for the Senegalese vendors in Midtown it is still a tenuous, uncertain existence. They are in Midtown, in clear violation of the Midtown Box, which explicitly bans all non-veteran merchandise vendors from the area and are therefore subject to periodic enforcement efforts by police. But the timing and severity of police enforcement is largely unpredictable. One vendor, Amadou, explains how he experiences enforcement in the area:

They [say] "let me see your license", when you give them your license sometimes they check the license, if the license is good. If its good, they give you back and tell you, ok, have a nice day or have a nice night. You understand? And sometimes, you give the license, they give you ticket and tell you, you have to move now.

It should be noted that, in Amadou's case, a policeman technically would never deem his license "good", as he is in possession of a city-issued general vending license, which means he is banned from Midtown at all times. Nevertheless, some police evidently either are not aware of this fact, or are simply going through the formality of checking licenses without actually enforcing the laws.¹⁸ The discussion continued with me asking Amadou if he could explain the inconsistency of police ticketing:

I don't know. Sometimes they give you summons. The summons—it is eighty, eighty percent of the police they leave you alone. Only twenty percent they give you summons. They just like to give you ticket. And after that they tell you, "you have to move, you're not supposed to be here."

Other vendors had their own ideas and opinions on the patterns of enforcement, which had to do with individual building managers, seasonal changes, or general shifting police priorities, among other things.

You know, when they have a new boss, when they have, uh, a new boss of the police or they don't know this area [this is when enforcement levels rise]. They say they have move somebody from Chinatown to here to come and catch the vending guys, so that guy himself he came here with his young officers and they give tickets. So he came here in this location and gives tickets. And also the building right here [large office skyscraper] they changed owners three times and they—every time the new owner comes, the manager of the building they call the police and say, "oh we don't want to have this guy here, because we want to maintain our customers and this is not what we want to have

¹⁸ It is not outside the realm of possibility that the average police officer walking the beat in Midtown might not be aware that general vendors are banned from the area, as rookie police officers are often assigned to Times Square and northern Midtown in order to provide supplementary support to Midtown precincts.

around here.” So, but, it’s just uh, I think it’s just for the picture [aesthetics], you know? You walk you see the buildings, the fountain, the [points to large building address in gold numbers above the lobby] whatever. They just think that, you know, they have to look nice, glamorous. And then this [points to his vending table] is maybe changing part of the decor.

There are certain time of the year, they have to give tickets. Like right now, when you come to November. Last time this year? Oooooo! Very difficult! Because they get ready for December. And if, I think, I think, I am not 100% [sure] but, I think if maybe they forecast that uh, people will not go shopping a lot. So what they do? They just, they give us a hard time. They give us three tickets [in one short timeframe] so at least we may move from this area, away from this area. So they give you ticket today, tomorrow, the next day and you say, “oh, I’m not going to go there and get another ticket, I’m going to find a new location.” So these business owners, so they think that if we come here that we might grab all the sales in this area, which is not true.

These descriptions of police enforcement, in addition to capturing the uncertain nature of actually existing regulation, capture another key element—that, ultimately, vendors are spatially sorted in New York based on a mix of formal law and informal strategies of enforcement and evasion. As other examples have shown, this is not only the case for those vendors, such as licensed Senegalese vendors selling in restricted areas, who are breaking formal laws. Licensed vendors in legal spots are also subject to this variegated landscape of spatial management. It is a landscape produced in large part through legal opacity and complexity, as well as through individual, place and case specific negotiations. Vendors—licensed, unlicensed, improperly licensed, and so on—flow to the spaces of least resistance which are still economically viable.

As we have seen with the final example, as one begins to zoom out from individual negotiations, a broader spatial logic emerges. In Midtown, for instance, because they are between Business Improvement Districts and prime vending locations, they have become something of a relative haven for informal vending. In fact, this is true even for licensed food vendors, who are allowed to sell in other lucrative areas, but tend to congregate in large numbers on the blocks between Sixth and Seventh Avenues, in part to avoid harassment from building managers, BID security personnel and the police in more high profile areas. It should be noted that this spatial logic is produced and policed by vendors, as well. For instance, in Midtown, prime spots are claimed by military veteran vendors, who are often just as likely to harass other vendors as building managers or BID personnel. In this way, the innumerable negotiations and tactics of enforcement and evasion produce a loosely defined spatial logic of vending, as some areas become known as zones of lighter enforcement while others, especially those within the jurisdiction of powerful Midtown BIDs, are considered to be off limits, or not worth the trouble.

This section has made the argument that the geography of street vending in New York is produce and managed informally through practices of intimidation, negotiation, avoidance and evasion. It is a landscape that is produced in a largely extra-legal way, but one which is certainly not chaotic or outside of any sort of mechanism of control. In New York space and spatial practice is managed through innumerable tactics, technologies and practices. The rules and spatial norms become internalized by vendors as they organize

themselves based on anticipated levels of harassment or legal intimidation. In the following section, I will connect these practices and norms to lines of power, and make the argument that this process of extralegal spatial management, while not ideal, is largely acceptable to certain powerful interests within the business community and the state. Zooming out from individual negotiations and spatial tactics, we see the ways in which informality operates at the city-wide scale as a flexible, cost-efficient method of governing and managing public space.

III. “An Area that Governs Itself”: New Regimes of Spatial Management in New York City

The current landscape of street vending in New York City, characterized as it is by confusing laws and high levels of informal practice, is not ideal for any group. For instance, most business and real estate interests in the city would prefer a sharp reduction in the amount of street vending in the city, and/or the ability to control how, where, and when street vending occurs.¹⁹ Vendors call for more streets to be opened, more licenses to be made available, and fairer enforcement practices. Nearly all stakeholders would prefer a set of laws which are easy to understand, follow, and enforce. Absent this possibility, however, I argue that the current situation is largely acceptable to the most powerful real estate interests in the city, namely property and business owners in Midtown and the Financial District organized into well-funded, politically connected Business Improvement Districts, because they have the resources and ability to manage vending within their districts and keep the situation under relative control. The current arrangement also serves state purposes, allowing city officials to manage urban space in a flexible manner. Due largely to the sheer complexity and breath of vending regulations, the limited understanding vendors have of the law and their rights, and the difficulty of being in full compliance of laws, crackdowns through strict enforcement and excessive ticket writing are an effective (if often only temporary) method of dispersing even licensed vendors from certain areas—whether it be a single block or entire neighborhood. The state is able to roll out its powers of enforcement when needed—and to recede when demands for action are less acute, leaving spatiality of vending to be negotiated by individual actors on the ground.

While street vending is often managed informally, the sum of these numerous individual negotiations produces an overarching spatial logic of vending in New York. The resultant geographies of vending reflect political influence, financial resources and organizational power of large-scale real estate interests in Manhattan’s central neighborhoods, especially Midtown and the Financial District. For instance, thanks to their political influence, property owners in central districts were able to encourage the state to enact harsh restrictions on the practice of vending in their districts between 1977 and 2001. As we have seen, these restrictions did not necessarily eliminate vending from

¹⁹ At the time of writing (summer of 2009), there is currently a proposed local law which would place the formal management of street vending in a neighborhood of Brooklyn, Sunset Park, in the hands of the small Sunset Park BID. While city officials portray this as a relatively minor legal change, affecting only a small Brooklyn neighborhood which has struggled to manage street vending, others see the proposal as a sort of pilot program or legal test to gauge both legal and political reactions to BID-controlled vending, before introducing it to more central areas of Manhattan.

central areas, and some vendors were able to push back against the exclusionary aims of property interests; nonetheless, the multiple layers of restriction in Manhattan's central districts provide anti-vending interests with a variety of legal weapons to intimidate vendors and organize public space, discouraging most street vending in these areas.

The rise of Business Improvement Districts during the 1990s also helped to ensure that the multiple layers of street restrictions in central areas would be enforced with more regularity than previously. Large, well-funded BIDs in central areas are able to supplement police enforcement with their own private security personnel, as well as centralize communication with local police precincts, which allows them to exert significant control over the spatial management of vending within their districts. In short, despite constant complaining about street vending, property owners organized through Business Improvement Districts in central areas of Manhattan have vending relatively under control. In an interview, the head of one of the largest Midtown BIDs described in great detail how this process works. I asked him how he would assess the vending situation in his district. His answer is worth quoting at length:

For us? In this area? I would say that it's ok. We don't have a very big vendor related problem in this part of Midtown. Some of—most of our avenues are areas that are prohibited to vending based on State law and side streets where vending is permissible, we really don't have too big of a vendor problem. We do pay attention to the vendors who are there, to make sure that they're legal, that they're in legal locations, that they have licenses. So, for us although I know in other parts of the city, they may not have the same answer, but from a legal vending point of view, we really don't have too much of a problem. . . You know, this really is in a lot of ways an area that governs itself in the sense of, when there is a problem you'll hear from the public, from business owners, from a property manager that there's a problem outside the building or on the corner. We have [security/hospitality] staff in the field that total close to 120 over the course of a day. We have eyes and ears in the neighborhood and we can identify that there's a situation where they might communicate and just check, you know, and see if there's a license there. They know the places where vending can take place and where it can't. . . And on top of that, the NYPD has a program called the paid detail program, so we actually bring in a police officer who goes out on patrol with our public safety officer, and on any given day, that paid detail officer and one of our uniformed public safety officers will actually eyeball every vendor. So our staff actually has a relationship with every licensed legitimate vendor who'd be operating there. I know that, for BIDs, you know, we meet monthly and we have a committee on vending that discusses the issues and for many of the BIDs this is their top issue of concern and, you know, and probably one of their biggest quality of life issues, if you wanna consider it a quality of life issue. For us that is not the case. And again, not to say that we don't have the problem over here, but we are in a very different situation than some of the other BIDs. . . I think like everything else certain behavior comes from—after a certain level of enforcement and accountability people might find another place to go because our enforcement is consistent. You know we don't have any authority legally to remove the vendor but they know that we also have a very big staff. You know we have—when you have 40-50 [security personnel] out in the street, people walking the neighborhood from 7:00 in the morning to 11:00 at night, it doesn't pay for [vendors] to come set up knowing, in 20 minutes we're gonna be walking down the street. So at some point the problem does go away. And I think that that's—yes—I think that our focus and effort in this area has had a very big impact on why this problem is not the same as it is in other areas.²⁰

²⁰ Interview with director of Midtown Business Improvement District (February 2008)

Business Improvement Districts function as privatized, decentralized apparatuses of spatial control and are part of the larger process of decentralization and privatization of urban management in the contemporary neoliberal city. This landscape of control is a fragmented one though, with spaces of relatively light enforcement even within Midtown, as we saw in the previous section through the example of Senegalese merchandise vendors operating in the interstices between major Midtown BIDs. But this uneven landscape of enforcement and control does not only follow the contours of BID managed areas and non-BID managed areas, as there is a high level of differentiation among different BIDs. Business Improvement Districts are only as well funded and influential as the property owners which make them up. For instance, the Grand Central Partnership in Midtown Manhattan, representing some of the most wealthy and politically connected property, financial and business firms in the nation, possesses many more resources, both financially and politically, than smaller BIDs in other parts of the city.²¹ As the excerpt from the interview with a powerful Midtown BID manager demonstrated, wealthy BIDs are able to fund large private security forces and often are able to forge close working relationships with local police precincts. Smaller BIDs and areas of the city not under BID control have much more difficulty consistently exerting high levels of oversight and enforcement. Spatial management in these areas occurs on a much more piecemeal, individualized, cases-by-case level, as district or neighborhood-wide control is difficult.

Business interests within non-BID areas and less well-financed BIDs are generally the most vociferous advocates of legal reform. But, short of being able to actually draft the legislation themselves, more powerful BIDs generally discourage dramatic changes to vending laws due to political and legal uncertainties outlined in the first section of this chapter. For instance, I asked the same Midtown BID manager quoted above about the prospects for reforming vending laws. His answer reflected both anxieties over the unpredictability of legal changes and the relative success his BID had managing street vending. For him, changing laws was not worth the risk:

For me, as someone who loves public service, any time you can move toward a rational regulatory scheme it's a good thing. There are some people whose districts have a big vending problem, they want it all changed, they want to blow it up and start over. And I understand that. If I were in their district I might feel the same way. But I know how it works and in [my BID], I have it under control. I don't know what a better or new solution would look like, and you have to be careful when changing laws, because you don't know how it will turn out. For me, the devil I know is better than the devil I don't.²²

This attitude has frustrated both reform minded politicians, leaders of less powerful Business Improvement Districts, and property owners in less central districts, for whom the current situation is less than ideal. Former councilmember Philip Reed, in his 2005 proposal to overhaul vending regulations, ran up against the reticence of major BIDs to actively support reform proposals. He related his irritation with large BIDs in an interview:

²¹ For instance, on the Grand Central Partnership Board of Directors are representatives from JP Morgan Chase, Booze Allen & Hamilton, Major League Baseball, Tishman Speyer Properties, MetLife, The Real Estate Board of New York, Pfizer Pharmaceuticals, to name just a few. All of these are entities which either have offices or own property in this section of Midtown.

²² Interview with director of Midtown Business Improvement District (February 2008).

And then you have these silk stocking BIDs who are not inclined to come up with a new system. Nobody likes the present system, the thing we put forward was very straight forward, not hard to understand. But BIDs opposed it, because it messed with what they had going.²³

The president of one Manhattan BID which struggles to keep vending under control and desires some sort of comprehensive change to laws also expressed frustration with the unwillingness of larger BIDs to support reform efforts. Using the same terminology as the manager of the Midtown BID quoted earlier he described the viewpoint of large BIDs on reform efforts:

People are just nervous about how things might play out in city council, even if you started out with a good bill, because of the nature of the political process, it might spin out of control. I think ultimately [major Midtown BID leaders] think, well, the devil we know is better than devil we don't know. But, for me, the devil we know is a colossal public policy failure and something needs to change. Other groups are a little more risk averse. You know, they may be right politically. Maybe you send a proposal through council and it comes out in an unacceptable form. But it is a risk worth taking, I think, because something has to change.²⁴

Across contexts, the condition of informality is often characterized as a “colossal public policy failure.” While certainly the situation in New York represents one in which formal laws are not fulfilling their stated purposes, I argue that the current street vending situation in New York cannot be characterized as a failure of spatial control; rather, it represents a decentralization, informalization, and privatization of the public space management. This condition remains in place despite its imperfections and outward irrationalities because it is a condition that is acceptable, even preferable, to the city’s most powerful property and business interests who are able keep street vending under control within their districts. In addition, I argue that this informal system of spatial management also serves state purposes, by allowing the state a wide range of flexibility in dealing with the vending issue.

The relationship between informality and the state is a complex one which varies across contexts. Traditionally conceived of as a separate, marginal sector existing outside of the state and mainstream economy, more and more informality is being studied as a process linked in complex ways to the state and formal economic activity, facilitating the functioning of the state, helping to smooth over contradictions of neoliberal regimes of accumulation and/or to serve agendas of political parties or individual state actors (Roy 2005, Yiftachel and Yakobi 2004, Cross 1998, Holston 1991). Rather than being a phenomenon outside of state control, the condition of informality must be conceived of as intertwined with state aims (Roy 2005). In short, informality does work. It functions to fulfill diverse aims of various actors, however imperfectly, in extra-legal ways.

In New York, the informal nature of street vending practice and enforcement norms allows the state a wide range of flexibility in managing the legally complex, politically divisive issue of street vending. As has been demonstrated, much of the day-to-day regulation and spatial management of vendors is carried out by private actors such building managers or BID security personal. In this way, the state does not need to

²³ Phone interview with Philip Reed, (April 2008).

²⁴ Phone interview with director of a Manhattan Business Improvement District (June 2008).

maintain constant vigilance and delegates responsibility for day-to-day spatial management to private actors. State laws function not as mechanisms for structuring spatial practice and form in an absolute sense, but rather, as a point of departure for informal negotiations and contestations between various actors. The illegible nature of the law leads vendors police themselves, as they learn which blocks or streets provide the least amount of resistance from store owners, property managers, BID personnel and even other, more established vendors and organize themselves accordingly. The state, mostly through the enforcement arm of the NYPD, needs to intervene only intermittently, when calls to crack down on vending on particular blocks become too vociferous to ignore. Local politicians, in order to show responsiveness to business and property interests within their districts, will encourage police precincts to carry out intermittent crackdowns in order to show that the state is not completely absent. But with few exceptions, these crackdowns are temporary measures, and vendors soon return. In between crackdowns, the state is able to recede from the responsibility to manage street vending. This leads to a landscape of vending shaped not necessarily by formal laws, but largely by power, influence and resolve of individual property owners and property organizations.

IV. Conclusion: Informality as Technique of Urban Governance

The current regime of vending management, characterized by decentralization, privatization and informalization of spatial control, cannot be viewed as an legal accident or “colossal public policy failure” but as an emergent, extra-legal technique of spatial management necessitated by broader political and economic shifts in New York City. Thanks to an increasing inability and/or unwillingness of the state under neoliberalism to effectively and comprehensively resolve contradictions resulting from neoliberal imperatives, informality emerges as a mechanism for managing social issues and controlling subjects. The informal—the bending of laws, the off-the-books negotiations and intimidations, the general failure of formal laws to structure urban space and street vending in straightforward ways is not a marginal, accidental phenomenon, but *inherent* to the current system of urban governance in New York.

As was demonstrated earlier in this chapter, political and legal uncertainties make wholesale reform an unattractive project for policy makers, constraining the ability of the state to rationalize regulation. Additionally, many of the proposals for large scale reform such as the creation of a new city agency to oversee vending, the addition to the city payroll of specialized vending enforcement personnel or the construction of off-site vendor markets, etc., carry with them significant new costs—an unattractive prospect in an era of budget austerity and streamlined urban management. Under neoliberal regimes, city agencies, from regulatory agencies such as the Department of Consumer Affairs to enforcement agencies such as the Police Department are encouraged to “do more with less”, and any wholesale rationalization of the vending issue would most likely require significant bureaucratic and financial commitments by the state.

The well-documented transition in New York from the social welfare state of embedded liberalism to neoliberal entrepreneurial state meant, among other things, a new emphasis on state fiscal efficiency, accountability and austerity, as well as a commitment to the growth of the local tax base through drawing back regulations on and incentivizing

private property development (Harvey 1989, Sites 2000). But among the desires of the property and business sector was the intervention of the state in order to police what had come to be seen as a threatening, out-of-control public sphere (Smith 1996, Vitale 2008). In fact this hardening, partitioning or fortressing of public space is seen by many urban scholars as a critical attribute of the neoliberal urban landscape (Davis 1990, Smith 1996, Marcuse and Van Kempen 2002).

But neoliberalism is an imperfect project fraught with contradictions rather than an “actualized policy regime.” It is a process that interacts with already existing regulatory and institutional forms (Brenner and Theodore 2002). This necessitates novel, provisional forms of governance in order to manage contradictions emerging from conflicting imperatives and institutional forms. In this way, the street vending issue reveals contradictions within the current neoliberal regime of urban governance and capital accumulation, as the contradictory imperatives of increased oversight of public space and decreased state spending leads to a situation in which space comes to be managed through informality, rather than regulated or partitioned an absolute sense.

The resulting regime of spatial management is characterized by extra-legal negotiation, flexibility, and decentralization which allows the state to manage contradictions of public space regulation without actually resolving them. As Rose argues, the shift from embedded liberalism to neoliberalism ushered in a new era of governance informed by a “post-disciplinary logic of control” (Rose 1999, 235). This can be understood as a move away from “discipline”, in a classic Foucauldian sense, in which problematic subjects are reformed and normalized through various centralized, institutional approaches. Post-disciplinary logic seeks to use various, disparate strategies to limit the effect of troublesome individuals on society and “manage them in place” (236) rather than transform them into productive, compliant citizens. Additionally, social regulation is reframed in fiscal and market-oriented terms. An effective regulatory regime is one which operates in a cost-efficient, streamlined, decentralized manner. The liberal infrastructure of reform, redefined by neoliberal theorists as bloated, wasteful and ineffective, was dismantled. New approaches to social control attempted to criminalize, delegitimize and exclude problematic actors rather than rehabilitate them. The condition of informality, then, emerges as a mechanism through which this management of problematic subjects—in this case vendors which interfere with aims of property interests for an ordered public sphere—is carried out.

Neoliberal New York, and the neoliberal city in general has been conceptualized as a city of stark divisions which manifest themselves spatially, and are institutionalized and enforced by state law. As this chapter has attempted to demonstrate, the neoliberal city is not necessarily one of stable legal partitions between haves and have-nots, but rather, a city of legal ambiguity, uncertainty and flexibility. But as the ethnographic evidence presented earlier suggests, legal uncertainties can be as effective in policing and organizing spatial practice as legal certainties. The complexity and opacity of vending law, and the uncertainty that surrounds the law, produces a regime of spatial management that is decentralized and variegated. The law exists as a loosely articulated concept, which can be mobilized in various ways in street-level conflicts. In its most effective form, such as in central areas of Midtown, this regime of control produces extra-legal notions of acceptable vending practice which become internalized by vendors as they

organize themselves spatially with reference not to formal law but rather to informally negotiated extra-legal norms that are driven by powerful Business Improvement Districts.

Understanding informality and the organization of vending practice in public space in this way allows us to move beyond often over-simplified notions of spatial exclusion in the neoliberal city by conceptualizing the regulatory project not as an absolute and coherent mechanism of partitioning and exclusion, but rather as dispersed, contingent, sometimes irrational and contradictory, yet deeply ingrained in the landscape and within subjects themselves. To view the regulation of urban space in this way does not trivialize the power of the state and capitalist interests to exert influence over public space and actors within it, but broadens our understanding of how this process occurs. It helps us understand the condition of informality that is the result of legal uncertainty and ambiguity not as a condition of freedom from control, but as a mechanism of control. Finally, as will be discussed further in the following chapter, understanding spatial control in this manner also informs the ways in which we understand the tactics vendors employ to contest this condition, tactics which revolve largely around cutting through uncertainties and uneven enforcement techniques, and holding the state accountable to its own laws.

Chapter Four

The Politics of Street Vendors in New York City

The politics of street vendors is inevitably intertwined with the politics of urban space. The idea that space is an important site of politics and class struggle emerged from neo-Marxist scholarship of the mid-twentieth century, particularly from the work of Henri Lefebvre. In his work, Lefebvre argued that urban space is a significant site of capitalist production, exchange and consumption (Lefebvre 2003). Therefore, it is also an important site of struggle over these processes. Lefebvre understood the city as a contested terrain where conflict unfolded between property interests, who were primarily concerned with the exchange value or profit potential of urban space, and those urban residents for whom the value of space derived from lived experience, what Lefebvre termed “use value.” Lefebvre viewed the city as something that is produced, an “*oeuvre*” or work. Ideally, the city should be produced by all of its residents, in an egalitarian, participatory fashion. The problem with the city under capitalism, as Lefebvre saw it, was that the means of producing the urban had been usurped from the majority of people and dominated by capitalist interests—the city was being produced *for* us, rather than *by* us. As Mitchell (2003) described it, Lefebvre transferred classic Marxists notions of the relations of production from the factory floor to urban space. The goal of struggles over and in urban space then, was to regain control over the means of producing the urban—or using Lefebvre’s term, to claim a “right to the city.”

This conceptualization of spatial conflict operates from a binary understanding of urban space. The notion of use value is, somewhat romantically, conceived of as existing in opposition to and outside of capitalist relations of spatial production. It is something pure, fundamentally apart from exchange value. Following this framework, many urban scholars influenced by Lefebvre have sought out examples of urban poor and/or dispossessed articulating—either explicitly or implicitly—radical, uncompromised claims to use value that directly challenge the idea of urban space as a site of capital accumulation and exchange value (see Smith 1996, Mele 2000, Blomely 2003, Mitchell 2003). These studies, in the European and North American context, have often focused on groups such as the homeless, illegal squatters, artists and other urban radicals whose claims to use value are relatively straightforward and in direct opposition to dominant notions of private property.

Street vendors as spatial protagonists sit uncomfortably within the binary framework of use versus exchange value. The political claims of street vendors are, more often than not, much less ideologically pure or purely oppositional. While the struggle of vendors to define the proper meaning and use of urban space generally occurs in opposition to more powerful real estate interests and disrupts top-down representations of space, vendors’ claims cannot be defined purely as claims to use value. For vendors, urban space is important as a site of exchange value as well, though on a much more modest scale than corporate real estate developers and other large-scale business interests. As this chapter will demonstrate, vendors often do not offer an explicit radical critique of the city under capitalism; rather, they express a desire to be included within the promise of liberalism, on their own terms. This claim, while operating through liberal discourses of self-reliance and entrepreneurialism, nevertheless exerts a powerful critique

of the spatial arrangement and power structure of cities. The claims of vendors draw out—sometimes explicitly, sometimes implicitly—contradictions in liberal discourse and the current regime of accumulation.

The study of the politics of street vendors lies on a ideological razor's edge, for it defies simple “left/right”, “progressive/conservative” binaries. Are vendors representatives of the dispossessed urban poor, whose actions and presence in urban space serve to undermine and challenge capitalist regimes of accumulation and spatial production? Or, as Hernando de Soto argued in *The Other Path* (1989) and *The Mystery of Capital* (2000), are vendors tributes to the values of entrepreneurialism and self-help—small scale businesspeople whose entrepreneurial energy is stifled by cumbersome regulations and state bureaucracy? Both approaches, of course, romanticize vendors and their struggle, ignoring the complexities of street vendor subjectivity by flattening them into either champions of the free market or vanguards of progressive urban change.

In fact, the struggle of street vendors is a more basic one: a struggle for respect, dignity, opportunity, and inclusion, but on their own terms. Despite these modest goals, the politics of vendors in New York nevertheless serve as a powerful critique of current regimes of regulation and capital accumulation. Vendors, through the articulation of liberal notions of individualism and entrepreneurialism, and by referencing the mythical history of New York as city of immigrant opportunity, inscribe themselves into the social and historical landscape of the city. The right that vendors seek is not necessarily one which calls for a radically inclusive public realm. Rather, vendors seek a right to opportunity, with the right to space not being viewed as an end unto itself, but rather as a means to carry out their entrepreneurial activities and participate in New York's grand narrative of advancement through hard work and self-determination. While not directly challenging liberal values, by holding liberalism accountable to its promises and calling into question the current regulatory regime, the political claims of vendors have the power to destabilize dominant regimes of spatial production, exposing ideological contradictions both in current spatial arrangements and within liberalism itself. At the same time, precisely because they fail to challenge broader ideological, political and economic structures, they threaten to reinforce and reproduce hegemonies and inequalities inherent within (neo)liberal regimes.

This chapter provides an in-depth examination of the politics of street vendors in New York City. It is guided by two key questions. First, how does the law, particularly multiple categories created by the law, structure political possibilities of vendors in New York? Second, given this situation, how and in what ways do street vendors make and defend claims on New York's public spaces? In answering these two questions, this chapter will utilize the case of vendor politics in New York to contribute to the broader knowledge of vendor politics and conflicts over urban space in general. The chapter begins with a brief review of the politics of street vendors around the globe, in order to put vendor politics in New York in context. The second section, drawing on archival research and in-depth interviews, will move on to a broad discussion of the political situation facing street vendors in New York. Finally, the third section, informed by in-depth interviews and twenty four non-contiguous months of participant observation, will analyze and discuss various strategies employed by vendors to exert claims on and defend their place on the sidewalks of New York.

I. Street Vendors, Politics and the State: Placing New York's Vendors in Comparative Context

The act of selling merchandise and/or food in public space is a social and spatial practice which occurs, to varying degrees, in nearly every large city across the globe. It is also true that wherever vendors operate, from Manila to Caracas, Lagos to Paris, they are almost always defined by municipal leaders as problematic. In fact, the similarities between the broad outlines of vending conflicts across the globe is striking. Opponents of street vending, who often include business leaders, real estate developers, local merchants, and various actors within local governments including city planners, health officials, transportation engineers and politicians argue that street vendors cause congestion, interfere with city beautification efforts, bring down the city's image, pose public health threats, engage in questionable business practices, and represent unfair competition to storefront businesses. Meanwhile, vendors and their supporters argue that street vending is an efficient means of providing consumers with low cost goods, that it is a dignified and honest way for the urban poor to make a living, that vending promotes hard work and entrepreneurship, and that it enlivens public space, making it safer due to more activity and eyes on the street.¹

The presence of street vendors on city streets usually stirs up conflict, but for some, the notion of street vendor "politics" is something of an oxymoron. The practice of street vending is sometimes viewed by scholars as a last resort or desperate survival strategy of the most marginal sector of the urban poor. For some, it was assumed that the vulnerability and marginal status of vendors would lead them towards a politics of desperation—either violent revolts or easy cooptation by local politicians (Cross 1998, Sanyal 1991). Therefore, for many scholars, the political engagement of street vendors and others in the informal sector was not a major area of inquiry. Marx, for instance, grouped street vendors into the *lumpenproletariat*—a sector of society including beggars, rag-pickers, and brothel owners, whose political commitments were uncertain and who could not be relied upon as agents of progressive social change (Bayat 2000). Later, Marxist scholars would variously classify vendors as "disguised workers" connected in exploitative ways to the formal sector or as a surplus pool of labor, a cushion against social unrest during times of economic restructuring, when workers are forced out of factories and peasants off the land (Birbeck 1978, Natrass 1987, Cross 1998). Meanwhile, liberal theorists conceptualized street vending either as a symptom of underdevelopment or as untapped economic energy in need of formalization and insertion into mainstream economy (De Soto 1989, 2000). In both of these approaches, street vendors are characterized as passive victims—either of an exploitative economic system or of overbearing and inefficient state bureaucracies. Their presence on the street is seen as a temporary symptom of structural inefficiencies or inequalities; something to be transitioned out of rather than a social position from which to exert a political claims or challenge dominant regimes of urban governance and spatial production.

In contrast to the more structuralist framing discussed above, this chapter conceptualizes various actions and strategies undertaken by vendors to better their situation, meet their daily needs, and protect and advance their (sometimes tenuous) hold

¹ See Bromley, 2000 for a detailed discussion of these arguments across global contexts.

on urban space as political acts in and of themselves. The political goals of street vendors are often relatively modest, they are not oriented towards broad social transformation and change, rather, are focused on more immediate needs: negotiating and winning a right to make a living in urban space in a relatively predictable, stable manner. The politics of street vending takes various forms, often depending on the political, economic, and social context vendors find themselves in. In relatively open and stable democracies, where vendors are voting members of society, collective political strategies which engage with the mainstream political arena tend to dominate. This form of political engagement carries with it risks of cooptation by political parties as well as the potential for large organizations and unions to lose sight of their mission, and become less responsive to the needs of individual vendors. On the other hand, in cities where vendors are unable to participate effectively in mainstream politics, either due to repressive regimes or marginalized social status, the politics of street vending often takes on a more individualized, less organized character. Politics here is much more about meeting immediate needs and defending modest gains, through tactics of negotiation, avoidance, and evasion. If we conceive of the political as actions taken to produce some sort of social, material change in conditions, however modest, then these tactics fall under the umbrella politics, for while not representing actions directed at broader social change, through these strategies, vendors are nevertheless able to alter their immediate social realities. Additionally, even if initial actions are themselves tend to be apolitical, when incremental spatial gains by vendors are threatened, atomized actors sometimes coalesce into collective resistance efforts (see Bayat 2000). Having defined two broad categories of the politics of street vending—collective and individualized—in what remains of this section, I will attempt to provide an overview of street vending politics across the world, in order to place New York street vendors in global context. As we will see, though the two organizing categories of vending politics are helpful analytical tools, the reality on the ground is often much more complex.

In many cities in Latin America and South Asia vendor unions or other associations play an important role in municipal, even national politics, and serve as the main vehicles for vendors to assert a political voice and claim rights to certain parts of the city. They have been shown to be important institutions both for negotiations between vendors and the state, as well as for resolving conflicts among different vendors and vendor groups (Bhowmik 2003, Peña 1999, Jones and Varley 1994). Vendor associations however run the risk of being co-opted precisely because they are able to centralize and unify vendor politics and establish close ties to individual politicians or political parties. For instance, Bromley, in his work on street vendors in Cali, Colombia, described the ways in which politicians would court vendors and relax enforcement in periods leading up to elections in order to garner support and avoid the political embarrassment and uncertainty associated with crackdowns, but that once elected, politicians would often revert to repressive tactics, especially in preparation for events which would put the municipality in the national spotlight such as sports tournaments (Bromley 1978).

By contrast, Cross, in his extensive study of vendor politics in Mexico City, found that street vendors organizations were generally effective in asserting and defending claims to space. They were able to exploit relationships of clientelism and avoided cooptation by playing their national party links against municipal enforcement, thwarting efforts of low-level enforcement agents to limit their presence on city streets through

appeals to more powerful party officials at the national level (Cross 1998). According to Cross, “the very mechanisms by which the political apparatus has attempted to co-opt street vendors into the system have given these vendors and particularly their leaders the ability to thwart the attempts of administrative officials to control them” (Cross 1998, 120). Additionally, vendor groups gained more political leverage due to the fact that vendor organizations in Mexico City were multiple and decentralized, and were able to nimbly attach and detach themselves from political parties as needed, promising votes and support only to those who treated them favorably (Cross 1998). This strategy of well-organized vendor groups scale-jumping in order to defend rights to space at a local level was also evident among vendors in Santiago, Chile. Stillerman found that “scale-jumping is the principle spatial strategy vendors use to break through their local [political] isolation” (Stillerman 2006, 520). Vendor organizations in Chile were able to forge links at the national level with political organizations and individual politicians in order gain influence over issues such as highway planning and construction which threatened their displacement.

While studies have shown that some vendor organizations are able to use political savvy and organizational strength to nimbly negotiate across party divisions and political scales, this is certainly not true across the board. In addition to falling into clientelistic relationships with political parties or politicians, vendor organizations themselves can often be corrupt institutions, taking actions that favor the political, ideological or financial interests of organizational leaders rather than those of most rank and file street vendors. For instance, Jones and Varley (1994) identified a disjuncture between the ideological position of organizational leaders and political interests of actual street vendors as the reason for the failure of vendors in Puebla, Mexico to contest their expulsion from the city center. Vendor organizations may suffer from a number of other problems as well. Different political alliances of various organizations within the same city may lead to conflict and competition among vendor groups, limiting their ability to affect broad change and win rights (Bromley 1978). Additionally, vendor organizations may simply suffer from weak leadership, unclear political strategies and goals, and low organizational strength, leading to a situation in which they only react to municipal threats, rather than proactively work to win and secure rights and political support. For instance, while recognizing that they are important elements on the political landscape of Indian cities, Bhowmik (2007) describes vendor unions and associations as mostly “stop-gap” operations, organizing protests and demonstrations when rights are infringed upon but not very effective, whether for lack of political power or lack of organization strength, in proactively influencing policy and legislative decisions. Even Cross, whose study of Mexico City vendor organizations portrayed them in a mostly positive light, admitted that while they were effective in negotiating enforcement norms, organizations were not as successful when it came to influencing legislative change (Cross 1998). Bromley was unimpressed with vendor unions in Cali, calling them “remarkably unsuccessful” (Bromley 1978, 1167). He identifies political factionalism as well as “a legacy of personalism, inefficiency and corruption in union leadership” (ibid) as the main factors leading to general ineffectiveness, even counterproductive nature of vendor organizations in that city.

Despite varying degrees of success and political influence, it is clear that vendor organizations are an important means of political engagement for street vendors in a

number of cities across the globe. Vendor organizations are most effective—and conversely most prone to cooptation—in nations with relatively stable democracies in which most street vendors enjoy full rights of citizenship both in a technical and substantive sense, i.e. not only can they vote, but they are viewed as legitimate sources of political support by mainstream politicians. The ability of vendors to assert a political voice and make direct claims on public space becomes more uncertain in urban centers of repressive or non-democratic nation states or where vendors are members of oppressed minority groups, lacking substantive citizenship rights even if they possess formal membership in the nation state. In some cases, vendors marginalized from mainstream political engagement are able to utilize alternative strategies to gain access to public space. For instance, Little (2007) demonstrates the ways in which indigenous Mayan handicraft vendors in urban Guatemala use tourist support and international sympathy as a hedge against local repression. Mayan vendors find themselves excluded from mainstream politics in Guatemalan urban centers, which are dominated by Spanish and *mestizo* elites. Through interactions with tourists, however, vendors are inserted into globalized networks of consumption *and* sympathy, thereby limiting the ability of the municipality to institution broad crackdowns, for fear of upsetting the local tourism industry and provoking responses from international NGOs and human rights organizations (Little 2007).

While Mayan handicraft vendors were able to appeal to international sympathy as a way to make up for a lack of substantive citizenship rights in their own nation, other vendors have not been as successful. Questions of citizenship, rights, and belonging play a large part in Hunt's (2009) study of vendors in Bogotá. In this case, Colombian vendors were redefined as outsiders unworthy of substantive citizenship rights by urban elites. As Bogotá underwent massive infrastructural development and reengineering of public space around the turn of the twenty first century, citizenship was discursively redefined in a way which excluded street vendors. Public space in redeveloping Bogotá was inscribed with a newfound civic importance, redefined by city leaders as a Habermasian zone of ordered encounter between vastly unequal classes, critical for the formation and strengthening of citizenship bonds thereby weaving a fractured nation together. Mobility and walking in public space were defined by the state as “dignified, natural, and democratic” (Hunt 2009, 334). Street vendors, according to this viewpoint, were not simply unsightly or troublesome, but threats to civic ideals and the nation state. Vendors in Bogotá, defined as hostile to ideals of true citizenry, were denied a place or even a political voice in the city, despite holding formal citizenship rights. They found themselves relocated to offsite markets, where they were to be reformed and reconstructed as proper citizens who paid taxes, respected laws, and eschewed a “culture of informality”.

A similar situation is described by Swanson (2007) in Quito, Ecuador where the city instituted broad crackdowns on street vending which were inspired by Rudolph Giuliani's quality of life initiatives in New York. According to Swanson, racism in Ecuador takes on a distinctly spatial tone, with the city the rightful domain of whites and *mestizo* elite, while Ecuadorians of indigenous or African descent were seen as belonging to the countryside. The restructuring of urban space in Quito therefore took on explicitly racial tones, as the city undertook a project of *blaqueamiento* or “whitening” of public space, targeting indigenous and Afro-Ecuadorian vendors and other informal actors who

were defined as outsiders, with no place in the city center. Spatial and racial inequalities were intimately intertwined and largely prevented street vendors from asserting effective resistance to state projects of exclusion as well as leading to violent repression at the hands of police. In order to hold on to a precarious place in the city, vendors relied on tactics of evasion and avoidance, rather than asserting clear rights to public space.

In situations of such as the ones presented, where vastly unequal power relations lead to a loss of substantive citizenship rights, individualized tactics of evasion and resistance, rather than organized political challenges, are often more common. This is also the case where vendors operate under oppressive and non-democratic regimes (Bayat 1997). Bayat argues that this analyzing and recognizing tactics and “quiet encroachment” of the poor on public space is useful for understanding poor people’s politics where power relations are vastly unequal and traditional political possibilities are limited. For instance, Bayat describes the situation of street vendors in Tehran as one of institutional powerlessness. Vendors in the city did form associations, but these were relatively ineffective. Moreover, in instances where vendors decided to stand their ground and defend claims to public spaces, they were often subject to violent repression at the hands of police or government sanction bands of young thugs. But while active forms of political engagement were ruled out by state repression, Bayat identifies passive, “guerrilla tactics” of resistance employed by vendors in order to continue to make a living on the sidewalks. Rather than challenge the state directly vendors relied on tactics of evasion and avoidance, learning the parts of the city where they would meet with less repression from police, and employing tactics such as “selling and running” in more central, high value areas. For Bayat, these tactics were not defeatist or desperate survival strategies, but rather, were forms resistance and struggle, implicit yet clear claims by the urban poor on public spaces of the city (Bayat 1997).

A global review of vendor politics reveals a variety of political approaches, varying levels of effectiveness by vendors to claim and defend a place in public space. From this review, it becomes evident that the nature of citizenship rights, both formal and substantial, plays a large role in determining political strategies. It can be generalized that the formation of associations or vendor unions and traditional political mobilization through patronage politics is most common form of political engagement in democratic regimes where vendors represent a large voting block, are accepted in some sense as legitimate members of urban society, and are cohesive enough as a social group to form and maintain large organizations. Where any of these elements is absent, one begins to see more of a reliance on individualized tactics of resistance, avoidance and negotiation vis-à-vis state regulation. With this general template of vendor politics in mind, let us now turn to the to the example of street vendors in New York City.

II. The Political Landscape of Street Vending in New York City

In this section, I will sketch the broad outlines of the political context in which New York vendors find themselves, and by doing so demonstrate the ways in which the situation facing vendors in the city is relatively unique among street vendors globally. In short, despite the fact that vendors in New York operate in a democratic context amenable to the formation of politically oriented associations and pressure groups, they have not been able to gain similar levels of political influence enjoyed by other vendors

in democratic nations across the world and face a number of obstacles to effectively organizing into a collective political force. First, as a result of the contentious process behind the formation of vending regulations, street vendors in New York are divided by law into multiple categories with varying, sometimes conflicting interests. Second, unlike vendors in many other cities, the street vendor population in New York is made up largely of immigrants. While there are a number of vendors who are United States citizens—either naturalized immigrants or native born—the majority of street vendors are recent immigrants who lack citizenship status and, sometimes, legal residence. This means that the strategy of political engagement through the ballot box is not a viable option. Third, again unlike other contexts, where street vendors are often of similar ethnic backgrounds, or at the very least speak a common language, vendor in New York are a tremendously diverse group in terms of race, ethnicity and language, further inhibiting collective action. In this section I will examine each of these factors in turn, and discuss the ways in which they present challenges to broad-based vendor organizing in New York. My main contention is that, while all of these factors inhibit collective political engagement, more than any other factor, it is the division of vendors into various legal categories which hinders large scale, broad-based vendor political movements.

A. Legal Categories

There are five major legal categories of street vendors in New York, each with significantly different rights, levels of political power, and political interests. They include licensed general merchandise vendors and licensed food vendors who are regulated by city laws; military veteran vendors, who themselves are divided into three subcategories and are subject to New York State law;² First Amendment vendors (selling books, art or religious items) who by virtue of federal court rulings are largely exempt from laws regulating vending; and finally, unlicensed vendors with their own political interests and outlook. This extraordinarily high level of legal differentiation sets the political situation facing vendors in New York apart from that of vendors in many other cities, where legal categorizations are often much less complex. For instance, in Mexico City, all nearly street vending is technically illegal, according to the letter of the law (Cross 1998). Vendors in Los Angeles, CA face a similar situation, as street vending is, with only a few exceptions, illegal throughout most of the city. In India, many cities grant vendors licenses, however, a national law (Section 34 of the Police Act) gives the police the authority to clear street obstructions, which include vendors. This means all vendors, whether licensed or not, have a similarly tenuous legal hold on the sidewalk (Bhowmik 2003). The point of these examples is not to suggest that vendors in other cities are undifferentiated; certainly, divisions can and do arise based on a variety of factors, including neighborhood, merchandise sold, or political affiliations of different vendor

² The three subcategories of military veterans are: white licensed, yellow licensed, and blue licensed. White licenses are provided to non-disabled military veterans. They basically exempt military veterans from the municipal cap on general vending licenses, but do not grant veterans any special rights above those enjoyed by standard general merchandise vendors. Yellow licenses are provided to disabled military veterans. They allow the holders of the license to vend on any street outside the Midtown core, even if that street is off limits to vending according to city regulations. Yellow licensed vendors are not permitted in Midtown. Blue licenses, perhaps the most coveted of all vending licenses, allow a select group of disabled veterans (chosen according to a seniority system) to vend on side streets within Midtown.

organizations. Rather it is to emphasize the divisive nature of legal differentiation. Where vendors find themselves under similar legal classification, they also share a common experience vis-à-vis their relationship to the law and the state. This similarity of experience produces at least the potential for the formation of a collective consciousness and share subjectivity which can facilitate organizing around common interests and grievances. This potentiality is less present in New York City, as the multiple categories of vendors produce a highly differentiated landscape of rights, which in turn create multiple, sometimes conflicting interests.

The lines of differentiation are most sharply drawn between those vendors with specialized rights—military veterans and First Amendment vendors—and those vendors subject to city law, which include general merchandise, food and unlicensed vendors. The political engagement of military veterans and First Amendment vendors, when it occurs, is largely oriented towards defending and preserving the exclusivity of their rights. These groups have, in the past, opposed legislative proposals to overhaul vending laws, even those bills which were generally favorable to vendors. This opposition is driven by a fear of losing or having limits placed on their specialized rights. Moreover, the possession of specialized rights tends to make both First Amendment and military veteran vendors politically insular.

Case in point is ARTIST (Artists Response to Illegal State Tactics), New York's most vocal First Amendment vendor organization. The group is headed by Robert Lederman, a street artist and activist whose successful lawsuit against the Giuliani Administration secured First Amendment protection for art vendors. The political outlook of Lederman and ARTIST is undergirded by the idea that First Amendment vending is a unique practice not comparable to other forms of street vending. The sale of artwork on the sidewalks is viewed first and foremost as the exercise of a fundamental right, not simply a business enterprise. This leaves little room for negotiation or compromise either with the city or with other vendors. This unwaveringly principled approach has led to tension with other vendor groups and proved detrimental to cross-vendor coalition building involving First Amendment vendors. Lederman himself gave a pessimistic view of broad-based vendor advocacy, focusing on the ways in which the law structures and divides vendor interests:

But long term, forming one advocacy group, that's not going to happen. The laws are very complex and they are different for each category. For example, the disabled vets wouldn't want to extend their advantages to everyone. The street artists, we have restrictions, but many of ours are relative and quite different from other vendors. The interests of the different categories precludes a lot of collaboration. Plus when you collaborate, everybody loses their rights together.³

Among other categories of licensed vending—food and general merchandise—the differentiation of political interests produced by legal categories is not as stark, but nonetheless existent. Food vendors enjoy more rights than general merchandise vendors and are generally viewed as more legitimate presences in public space. This has much to do with the fact that food vendors have broad appeal as inexpensive, convenient meal options, and a perception that food vending is an authentically New York practice. This has long been the case, as evidenced by the public support for food vendors during

³ Phone interview with Robert Lederman (March 2008)

crackdown attempts by mayors Ed Koch and Rudolph Giuliani during the 1980s and 1990s, respectively. General merchandise vendors, on the other hand, exist at the bottom of the licensed vending hierarchy in terms of the rights. They are the most heavily regulated group of vendors, banned from the most lucrative parts of the city, including all of Midtown and many major commercial streets outside of Midtown. Being relegated to less desirable and high-traffic areas makes it difficult for general merchandise vendors to make a living and, as discussed in chapter four, many licensed general vendors attempt to sell in Midtown despite regulations banning them from the area. This high level of informal practice and legal evasion in the world of general merchandise vending produces a feedback loop of perceived illegitimacy: due to harsh regulations, many general vendors are forced to operate outside the law, which in turn reinforces the perception of them as petty criminals rather than legitimate merchants. Among licensed vendors, general merchandise vendors are the group with the most to gain from a regulatory overhaul, and most injured by the persistence of the current system.

Vending regulations produce one final legal category—unlicensed vendors—who enjoy no formal rights to space and therefore have their own political outlook. The main demands of unlicensed vendors are of course for the city to issue more licenses and permits in order for them to legalize their status and gain formal rights enjoyed by other vendor groups. Therein lies a natural conflict of interests between unlicensed vendors and licensed vendors: more licenses means more competition. The attitude toward unlicensed vendors varies among licensed vendors. Some treat unlicensed vendors as scapegoats, claiming that all of the negative conditions which real estate and business groups complain about are actually caused by unlicensed vendors.⁴ As one licensed vendor complained during an interview on the sidewalks of the tourist-heavy South Street Seaport area:

“There is only one or two [licensed vendors] per block here! We don’t cause any congestion. When people talk about a vending problem [in this neighborhood] they’re talking about the illegal vending, not us. If police would just enforce the rules [against unlicensed vending] nobody would complain [about vending].”⁵

This hostility towards unlicensed vendors is not universal though. Many licensed general merchandise vendors resorted to unlicensed vending before receiving a license from the city waiting list, and many that I interviewed expressed empathy and understanding towards unlicensed vendors. As one licensed merchandise vendor put it, “I understand why they do it, I used to do it. They have to feed their families, you know? Make some sort of money.”⁶ Additionally, the Street Vendor Project, one of the city’s largest vendor organization which is made up primarily (though not exclusively) of licensed vendors, supports lifting the cap on licenses and extending opportunities to vend legally. For instance, during a City Council hearing on unlicensed vending, the director of the Street Vendor Project stated, “[raising the license cap] will give more people a chance

⁴ see for instance: Munde, Jeanne (1985) “City Street Fight: Vendors vs. Realtors” *The New York Daily News*. 31 May; Kennedy, Randy (1995) “Ruling Sets Back Efforts to Limit Street Vendors.” *The New York Times*. 16, Sep; Duneier, Mitchell (2004) “Editorial: Let New York’s Vendors Vend” *The New York Times*. 4 Jan;

⁵ Interview with licensed general merchandise vendor, South Street Seaport area (July 2006).

⁶ Interview with licensed general merchandise vendor, Greenwich Village (July 2005).

to work legally, provide jobs for people who are out there and want to work, and often are working, but have to do it illegally. It brings people into the system. It makes them pay taxes and there's lots of room for them—it's a big city.”⁷

The political interests of street vendors are structured in a significant way by the legal categories in which vendors find themselves. The division of street vendors into these categories, each with their own rights and interests, presents a significant challenge to broad-based vendor organizing in New York and it is a situation that is relatively unique in the international context of street vending. Whereas in many other cities, most vendors in share a similar relationship to the law, in New York, this relationship is highly variegated. Building a social movement among various individuals requires a sense of shared identity or experience to bind individuals together, which in turn helps to form collective goals. In New York, by virtue of legal divisions, fostering a shared subjectivity among vendors becomes extremely difficult. Many vendors feel very little in common with their counterparts in other categories. This is especially true for vendors who enjoy specialized rights such as military veterans and First Amendment vendors. In addition to discouraging the formation of a common identity, the existence of different legal categories places the interests of various vendor groups in direct conflict, inhibiting the ability of vendors to formulate collective goals, for in an absolute sense, increasing the rights to space for one category of vendors dilutes the exclusivity of rights held by other groups. While this situation is not insurmountable, and there are vendor groups that have been able to organize across vendor category with some success, the legal differentiation of vendors, because it fractures the vendors into competing interests groups, remains the most significant obstacle to vendors becoming a cohesive political force in the city.

B. Citizenship Status

Legal differentiation is not the only obstacle to broad-based political engagement facing street vendors. The variegated citizenship status of street vendors in New York also poses challenges to vendors politically, and structures the methods by which vendors to assert a right to space. The majority of street vendors in New York are not United States citizens, meaning they lack formal rights and privileges of citizens, such as the right to vote. This removes a common avenue for political engagement utilized by street vendors in other contexts across the globe. Unlike vendors in other democratic nations, such as Mexico or India, where street vendors organizations often align with different political parties or candidates, vendors in New York are unable to exercise collective political power through the ballot box. While this creates some obstacles, it does not necessarily mean that New York's vendors are at a major disadvantage compared to vendors in other contexts who hold citizenship status, nor does it even mean they are excluded from mainstream political discussions.

First it should be noted that patronage politics are, of course, not necessarily ideal, for they carry with them the threat of cooption. Therefore, voting rights do not always equal true political power and influence. Secondly, to assert that simply because immigrant groups in New York—or any other U.S. city for that matter—lack influence over mainstream political debates simply because they cannot vote would be far off base.

⁷ Gerson, Daniela (2003) “Dealing with Unlicensed Vendors, Police, Council, Offer Variant Methods” *New York Sun*. 10 Oct.

Immigrants are able to exert a political voice through a variety of institutions such as community organizations, labor unions, religious institutions, among others (Diaz 2005, Hamilton and Stoltz-Chinchilla 2001, Valle and Torres 2000). While not taking a pluralistic view, it can nevertheless be stated that civil society institutions and pressure groups do provide immigrant groups in the United States with ways to engage politically, albeit indirectly.

In New York, organizations which represent non-citizen vendors tend to cleave along the lines of license categories. For instance, the Street Vendor Project (SVP), the largest vendor organization in the city and made up mostly of immigrants does exert some level of influence over local political discussions about street vending and provides vendors with a unified voice. But while SVP is officially open to all vendors and strives to build a broad-based vendor movement across categories, the membership of SVP is primarily made up of licensed vendors (both general merchandise and food) meaning the political agenda of the organization inevitably revolves around the interests of this group.

Vendors also find a political voice through established and politically vocal community-based organizations and non-profits, which will often take up their cause. For instance, the community-based organization Esperanza del Barrio, which focuses its efforts on assisting the Mexican community of East Harlem, was one of the first groups to organize and advocate for unlicensed Mexican vendors in the area. The political efforts of Esperanza del Barrio produced tangible results when political pressure by the organization proved instrumental in influencing Mayor Michael Bloomberg to issue an Executive Order in 2005, which repealed a provision requiring city officials to check the citizenship status of vending license applicants (before the executive order, vending licenses were the only license category in the city to require proof of citizenship or legal residency). To give another example, The Chinatown Manpower Project, an politically connected community-based organization focused on workers rights in Manhattan's Chinatown also advocates for the rights of licensed Chinese Street vendors in Chinatown, most of them recent Chinese immigrants. The goals of the Chinatown Manpower Project, reflect categorical divisions, however, for one of their main demands is for the city to control unlicensed vending in the area and respect the rights of licensed, "legitimate" vendors.

Immigrant street vendors make political claims on public space, that in some ways articulate an alternative notion of citizenship and belonging, one rooted not necessarily in formal citizenship and the nation-state, but in claims to membership within New York City's urban community. By discursively inscribing their experiences and struggle into New York's local mythology of immigrant success through hard work and entrepreneurialism, vendors assert a claim to belonging and membership that sits outside the bounds of formal citizenship. Citizenship in a substantive sense can be thought of as being about more than simply the right to vote and participate in politics in a formal way, rather, it also includes "other kinds of rights in the public sphere, namely civil socioeconomic and cultural" (Holston and Appadurai 1999, 14). The formal and substantive aspects of citizenship do not necessarily always correlate, as formal citizenship is not a guarantee for the enjoyment of substantive civil, political or socioeconomic rights, nor is it always required for accessing substantive rights (Holston and Appadurai, 1999, 4). Vendors, therefore, in their various forms of political

engagement attempt to expand the boundaries of substantive citizenship, which for their purposes means the gaining more secure rights to the city's public spaces.

C. Ethnicity/Nationality/Language Barriers

The sheer diversity of street vendors in New York is yet another factor which sets their situation apart from vendors in other cities with more homogenous populations. Reflecting the city in which they live and work, street vendors in New York speak dozens of languages, hail from all corners of the globe, and represent countless national, religious and ethnic groups. Each of these points of diversity also have the potential to serve as points of divisiveness. The ethnic/racial distinctions between street vendors is amplified by the fact that different ethnicities/nationalities tend to concentrate in different vendor categories and specialties. For instance, within the category of food vending, fruit vending is dominated by Turkish immigrants, halal kabob carts by Arabs of various nationalities, while hot dog vendors are primarily Bangladeshi. A good deal of licensed and unlicensed general merchandise vendors in Manhattan are West African, mostly Senegalese but also Nigerians, Malians, and Nigeriens, while many unlicensed food vendors in the outer boroughs are Mexican, Colombian or Ecuadorian immigrants. In Times Square Chinese First Amendment vendors operate alongside African American, white, and Puerto Rican military veteran vendors.

This dizzying level of diversity does create some tensions and divisions. For instance, within the military veteran vending category, there has long been a schism between white and African American vendors. There is also often tension between veteran vendors and immigrant vendors who sell around them in Midtown. As one veteran vendor complained, "you have 4,000 [sic] food carts in Midtown, but only 70 [sic] vets. How could you allow thousands of food carts, most of them run by Muslims, and not allow U.S. military veterans to sell in Midtown? It doesn't make sense."⁸

Despite these examples, outright conflict rooted in racial/ethnic tension is relatively rare. The more significant challenge to vendor organizing posed by diversity of the population is logistical. Quite simply, when so many different languages are spoken it can be difficult to form cohesive organizations across ethnicities. While language barriers are not as severe among licensed vendors, most of whom have at least basic English language skills, they especially affect unlicensed vendors, many of whom speak little or no English.

Nevertheless, these barriers are not insurmountable. Organizations such as the Street Vendor Project have successfully brought together vendors of different nationalities and ethnicities, with varying degrees of English language proficiency. Meeting of the organization are conducted in English, but efforts are made by members to translate during meetings for vendors with poor English language skills. This approach, while sometimes slowing down meetings, nonetheless allows for greater inclusion. In fact, when the SVP received an increase in membership of Chinese First Amendment vendors, many of whom speak no English at all, they used volunteers to

⁸ Interview with military veteran vendor (March 2008). It should also be noted that the vendor's numbers are exaggerated. There are 3,000 food vendors in New York, not 4,000 and not all food vendors are in Midtown. There are also 140 blue licensed veterans, not 70.

translate during meetings in order to increase participation by Chinese vendors with limited English.

While ethnic, national, and language differences among the vendor population present challenges to organizing, they can be characterized more as an inconvenience to be overcome rather than an immutable wedge dividing the vendor community. Where significant tensions do exist, such as the disdain of some veterans for immigrant vendors, often ethnic differences are not the root cause of tension. Rather, they amplify already existing tensions created by different legal categories. The diversity of the vendor population in New York presents challenges to broad-based organizing not faced by vendors in many other cities across the world with more homogeneous populations. Yet, when compared to divisions resulting from legal categories, these challenges are less daunting, and groups committed to building vendor coalitions across ethnicities have been relatively successful in doing so.

III. Demanding a Piece of the Promise: Political Strategies of Street Vendors in New York

By outlining the political landscape of street vending in New York, the previous section demonstrated the ways in which the situation facing vendors in the city is relatively unique compared to that of vendors in other cities across the globe. Multiple legal categories divide vendors into a collection of interest groups with at times conflicting political agendas, street vendors are for the most part not citizens and therefore cannot participate in local politics in a formal way, and finally, vendors in New York are much more diverse as a group than their counterparts in most other cities, leading to unique challenges posed by this diversity. More so than any other factor, however, the division of vendors into multiple legal categories—ironically largely the result of political and legal victories of certain vendor groups—hinders the ability of street vendors in New York to organize as a collective force. Despite these challenges, street vendors do engage politically in order to contest their treatment by the state and claim rights to space.

In what follows, I analyze various strategies of political engagement utilized by vendors in New York, while keeping vendor discourses concerning liberalism, rights, citizenship and belonging in sharp focus. I divide the political strategies of street vendors into three categories. The first includes political strategies aimed at influencing or changing actual laws, either proposing or supporting favorable legislative changes or fighting undesirable proposals. Lacking the right to vote, vendors and their advocates rely heavily on influencing and controlling public discourse in order to defend and expand rights to public space.

The second category involves the more immediate concern of challenging enforcement norms. This is a politics grounded in everyday experience where licensed vendors challenge informal enforcement practices by educating themselves and each other about legal rights and demanding from the state and enforcement agencies legal clarity and consistency. On the other hand, unlicensed vendors seek to challenge harsh or abusive enforcement policies and while not explicitly demanding a right to vend in violation of laws, seek respect, understanding and a level of tolerance from enforcement agencies.

While the first two categories encompass active political engagement and explicit demands, I include under the umbrella of politics a third strategy, that of spatial tactics. Tactics of evasion and avoidance are mostly employed by unlicensed vendors in high value areas and are not directed towards any specific end goal, rather, they represent a micropolitics of day to day survival. While spatial tactics do not necessarily fall within traditional notions of “the political”, they are nevertheless an important strategy employed by some street vendors in order to make a living on the sidewalks of New York and alter their immediate material situation.

A. Discursive Politics: Contesting Spatial Exclusion, Claiming Urban Citizenship

September 28th, 2007. It was a beautiful early autumn evening in Tompkins Square Park. The park was tranquil this evening, a green oasis in the center of the gentrified Lower East Side. Nearly twenty years earlier, though, in August 1988, Tompkins Square Park was the object of and location for violent riots which pitted the NYPD against a group of squatters, homeless park dwellers, and anti-gentrification activists in a battle over the right to urban space.⁹

Though one could be forgiven for not noticing, on this particular September evening in 2007, another much more subtle chapter in the broader struggle over spatial justice in New York was unfolding in Tompkins Square. Sitting on the park’s asphalt basketball courts were five food vendor carts with lines snaking from them, 20, 30, 40 people deep. Meanwhile, hundreds of people, having successfully negotiated the lines, happily enjoy the street fare at long communal tables.

This was the Third Annual Vendy Awards, an increasingly popular event put on by the Street Vendor Project, the city’s largest vendor advocacy group. In the months leading up to the event, New Yorkers nominated their favorite food vendors, and the five most popular were chosen to square off at the Vendys. At the event, each vendor’s food is rated by a panel of judges (made up of food critics, local chefs, and minor celebrities) and at the end of the evening, the top food vendor in New York is crowned. This particular year, the Vendy went to Thiru “The Dosa Man” Kumar, a Sri Lankan vendor with a popular operation near New York University. Kumar beat out competitors which included a Mexican taco truck, a Bangladeshi vendor serving grilled halal meats, a vendor from Trinidad selling Caribbean cuisine, and a Palestinian vendor known as the “King of Falafel”.

At first glance, there is little that is overtly political about the Vendy Awards. On the face of things, the event is simply a celebration of New York street food. But in a city where the right to sell goods on the sidewalk is a fiercely contested issue, few things are apolitical. The Vendy Awards are more than just a culinary event, they are a calculated maneuver by street vendors to influence discourse surrounding the practice. For decades, business and real estate interests and their allies within city government have attempted to delegitimize street vending, calling it outdated, unsanitary, disorderly and unfair competition. But production of legitimacy or illegitimacy is a process of constant inscription and reinscription. The Vendy Awards is a way of countering negative portrayals of street vendors by demonstrating the popularity they enjoy with the public, while emphasizing vendor’s roles as classic small-scale immigrant entrepreneurs

⁹ See Smith 1996 for an account of the conflict.

participating in a narrative that has been repeated time and time again over the course of New York City's history.

These counter-narratives are subtly woven into the otherwise lighthearted event. Throughout the evening, while diners enjoyed tacos, dosas and ox tail, they were informed and reminded of the plight of vendors in a number of ways. Vendors who were members of the Street Vendor Project attended the event and engaged diners in discussions, explaining to them the difficulties and obstacles they faced in their trade. A listening station allowed attendees to hear prerecorded interviews with street vendors which detailed the struggles they face on the street, from police harassment to the frustratingly complex vending code, to harsh restrictions which severely limit legal vending locations. It is not just food vendors whose story is told at this station, but general merchandise and unlicensed vendors as well. At the presentation of the winner's trophy, the director of the Street Vendor Project, Sean Basinski, was sure to mention the broader goals of the organization: to stand up not just for exceptional food vendors, but also for the average hot dog man, the woman selling hats and scarves from a card table, the Chinese artist peddling his wares in Times Square. The awards were at once a celebration of New York street food, and an assertion that all forms of street vending were legitimate spatial practices deeply engrained in the cultural landscape of New York City.

The term landscape refers to an ideological representation of space which naturalizes socio-spatial relations in order to support and legitimize particular regimes of accumulation (Mitchell 1996). Mythmaking and discourse play an important role in producing landscapes. As Mitchell states, “. . . representations of landscape become pure ideology, able to be reshaped by all manner of powerful interests, and available to be put to use to structure and control not just meaning, but also the lives of those who live in the landscape” (1996, 9). The power to produce a landscape—to represent spatial relations as a natural, inevitable and settled—is a potent one. But it requires control over myth making, discourse and representations. In New York, despite the best efforts of powerful property interests organized through Business Improvement Districts and their allies within city government, the representation of New York's public spaces is far from a settled question. Though BIDs and many government officials seek to construct neoliberal landscapes of carefully choreographed consumption, tourism and entertainment which maximize the value of property, street vendors continue to interfere with the script by relying on powerful myths and discourses of their own. Absent direct electoral power or the organizational and financial capacity to effectively lobby local politicians, discourse, mythmaking and the construction of counter-representations of space are an extremely important strategy employed by vendors in order to contest regulatory practices of the city and exert influence over politicians.

The Street Vendor Project, being the largest and most well-organized vendor organization in the city, serves as the clearest, most coherent outlet for vendor discourse. While different vendor groups and organizations utilize various discursive arguments to legitimize their practice, nearly all hinge on notions of free market populism and New York's mythic history of street vending and immigrant success, and the Street Vendor Project is no exception. In press releases, public hearings, on their website and at events like the Vandy Awards, the SVP maintains a clear message: that street vending is an integral part of New York's economy and history, that it serves as an economic stepping

stone for immigrants and the urban poor, and should therefore be encourage rather than discouraged. In the introduction to a proposal for new vending regulations submitted to the city council, the SVP reminded politicians that:

“[w]ave after wave of immigrants and entry level entrepreneurs have used vending as a steppingstone to success on their way to realizing the American Dream. The primarily Jewish and Italian peddlers of yesteryear have today been replaced by Egyptians, Chinese, Mexicans, African-Americans and many others—but vendors continue to be a symbol of our city’s ambition and cultural vibrancy.”¹⁰

Part of the reason these discourses are so compelling and resonate with the public and local politicians, is that they are rhetorically nested within broader myths and ideologies which serve to legitimate liberal regimes of accumulation. These myths are also profoundly localized, intertwined with longstanding historicized notions of New York as a city of immigrant opportunity and capitalist ambition. In a sense, vendors’ discursive claims appeal to what people would like to believe about capitalism and New York—that every group of newcomers has the opportunity to succeed, that hard work is rewarded and that New York City is an especially hospitable environment for ambitious immigrants willing to work their way to the top. This framing is often echoed and reinforced by the local media. For example, in public interest article on street vending in the *New York Daily News* opened with familiar rhetorical overtones of bootstrap capitalism and immigrant entrepreneurship,

“[Street vendors] are the ultimate New York small business operators, selling their wares from stainless steel carts as iconic as the yellow cab or the Brooklyn Bridge . . . Street vending has historically been dominated by immigrants. Their stories often evoke themes of hard work and sacrifice, struggling at a menial job in order to give their children a better life.”¹¹

By contrast, the actions of Business Improvement Districts and other business and property interests disconcertingly reveal the more unseemly side of the free market capitalism—the tendency towards consolidation and centralization and the rather ruthless imperative to maximize profits at the expense of smaller, less powerful entities. By framing their struggle as one which pits small scale immigrant entrepreneurs against powerful and wealthy real estate and business interests, vendors establish themselves as relatively sympathetic figures and provide themselves with a sort of political bulwark against further restriction. Politicians in New York, many of whom are eager to appear immigrant friendly—or at the very least not hostile to the ideal of immigrant entrepreneurship—are reticent to support legislation which is explicitly anti-vendor. To use the words of a lobbyist for business interests once again, local politicians, “are afraid of fallout, the anti-immigrant, anti-small entrepreneur stuff. All progressives you know, so they don’t see political capital in [placing more restrictions on vending].”¹² In this

¹⁰ The Street Vendor Opportunity Bill: A Proposal to Increase Economic Development and Promote Small Business Growth by Revising NYC Laws on Street Vending. Available online at <http://www.streetvendor.org/media/pdfs/Vendor%20Opportunity%20Bill%20Memo.pdf>

¹¹ Levisohn, B. 2007. “Pushcarts: Vendors Work in the City’s Small Business Trenches” *The New York Daily News*. 30 April.

¹² Interview with lobbyist for business community (March 2008).

way, discursive struggle over the right to and proper use of public space becomes an important political asset for street vendors who lack conventional political power.

The potency of this discourse is revealed in part by the vigor with which business and property interests attempt to contest and discredit the “David versus Goliath” framing. Large scale property interests constantly attempt to portray vendors as big businesses disguised as individual entrepreneurs. Donald Trump, whose disdain for vendors is well known in the city, accused them of being, “a small band of extremely wealthy people...[with]...homes in New Jersey and Connecticut.”¹³ Others in the real estate industry claimed (without providing any evidence) that, “the people on the street are largely employees”¹⁴; that “vendors aren’t the struggling little man, they are working for big corporations”¹⁵, and “it’s not just the little guy selling his wears—it’s run by a few guys who have 50, 60, tables each. It’s a regular underground economy.”¹⁶

The periodic accusations that vendors are big businesses in disguise has gained little traction in the public discourse. In one on one interviews, leaders of Business Improvement Districts lamented their inability to gain control of discourse. For instance, during one interview, the Director of Public Safety of a major Manhattan BID reflected on how frustratingly engrained street vending was in the city’s history and cultural landscape, even relating his own personal experiences:

Somebody from Wisconsin comes and says, “I ate a hot dog on the streets of New York and I got a pretzel! I was sick to my stomach three hours later but...” [laughs] You know that has nothing to do with it, and I think that’s part of the experience. I mean, it’s ingrained in our culture here in the city. Everybody knows a family who had a grandfather or a great grandfather who was a street vendor in New York. I know people who knew people, so it’s, you know, a part of the culture. I mean, I lived in Flushing [Queens] and the guy would come up the block ringing the bell selling fruits and vegetables. It’s not like you go to Beverly Hills where if you have a street vendor on the street it’s an aberration. Here you have, you know, “oh my grandfather used to sell apples!”¹⁷

An official in another Manhattan BID related a similar frustration, and pointed towards the need of Business Improvement Districts actively reshape public opinion and discourse.

The other issue is that people like the vendors, they like a bargain. The press also. They love stories about the poor little guy. And this creates a real problem, you know? . . . So it’s really up to us [BIDs] to market the idea of how detrimental vendors can be to the city and make people realize they’re hurting the city by patronizing vendors.¹⁸

One developing strategy by business interests to contest populist vendor discourse came to light in a leaked 2007 email from Richard Lipsky, a lobbyist for retail businesses

¹³ Blauner, P. 1987 “Out of Africa: The Senegalese Peddlers of New York.” *New York Magazine*. 16 Feb.

¹⁴ Tom Cusick, President of 5th Avenue Association quoted in Levine, R. 1990 “On the Sidewalks, Business is Booming.” *The New York Times*. 24 Sept.

¹⁵ *ibid*

¹⁶ Molloy, J. 1988 “Selling Off the Books” *New York Magazine*. 17 October.

¹⁷ Interview with the Director of Public Safety of a Manhattan Business Improvement District (January 2008).

¹⁸ Interview with high level official in a Midtown Business Improvement District in Manhattan (July 2006)

who has consistently taken anti-vending stances. The memo was addressed to the directors of two major Business Improvement Districts, one of whom is also the head of the New York City BID Managers Association. In the memo, Lipsky suggested that anti-vending activities and lobbying needed to be spearheaded, at least publicly, by a multi-ethnic front of immigrant small business owners, “[i]n order to effectively challenge the peddler status and the concomitant mythology that surrounds their activity”.¹⁹ The only way to effectively counter vendor discourse was through cloaking anti-vending arguments in the same rhetoric of immigrant entrepreneurship while, “underscor[ing] the extent to which the peddlers do not represent a true entrepreneurial class.”²⁰ Lipsky closed the email by laying out his plan to use immigrant small business owners as the public face of anti-vending campaigns.

It would be my suggestion that we look to create a diverse umbrella coalition that has the financial support of the major real estate organizations. In this way we will be able to generate strong public support for beleaguered (and often minority) shopkeepers while at the same time generating enough resources from larger behind-the-scenes business interests.²¹

After the memo was leaked and published in the *New York Observer* the Business Improvement District officials to whom the memo was addressed issued statements that they had no official connection to Lipsky, an independent lobbyist, and did not necessarily agree with the proposals made in the letter.²² Nevertheless, the memo demonstrates the extent to which business interests feel they are at a discursive disadvantage to street vendors, and their desire to regain control over discourse. It also further reinforces the fact that the ability to shape discourse and public opinion is a key source of political power held by street vendors.

Holston and Appadurai argue, in the introduction to their edited volume *Cities and Citizenship* that, “...citizenship concerns more than rights to participate in politics. It also includes other kinds of rights in the public sphere, namely, civil, socioeconomic, and cultural. Moreover, in addition to the legal, it concerns the moral and performative dimensions of membership that define the meanings and practices of belonging in society” (Holston and Appadurai 1999, 14). The discourses put forth by vendors inscribe them into the cultural landscape of New York City. In effect, they become alternative claims to urban citizenship based not on formal membership, but on active participation in and contribution to the urban fabric. They are attempts to expand the notion of citizenship to a “new social basis” (Holston 1999, 170) rooted in lived experience rather than formal rights.

Alternative claims to citizenship provide vendors with significant political leverage, but there are drawbacks to this approach. First, discourse is most effective when utilized in a defensive sense, that is, to contest and discourage attempts by the city to

¹⁹ Memorandum from Richard Lipsky to BID Managers Association, 2007.

²⁰ *ibid*

²¹ *ibid*

²² It should be noted that Lipsky’s leaked memo gained the most attention not for its exposé of anti-vending strategies, but for a section where Lipsky listed a number of council members, evaluating their level of sympathy to the cause, political effectiveness and legislative competence. It was Lipsky’s bluntly worded negative assessments of a few council members which drew the most coverage from the local press.

enact further restrictions against vending. Vendors have had little success in persuading city politicians to enact new laws in their favor, i.e., to lighten restrictions, increase number of licenses available or open more streets to vending. This is not for lack of trying. Vendor organizations often hold protests on the steps of city hall, with vendors chanting and carrying signs attempting to appeal to the sympathies of New Yorkers. Many signs and slogans carry explicitly liberal notions of free markets, entrepreneurship, and virtues of work over welfare or crime. For instance, in April 2009, in the midst of the economic crisis, the Street Vendor Project organized a protest of unlicensed vendors, demanding the city lift the cap on licenses in order to create jobs in a city with soaring unemployment rates. Vendors carried signs that read “Create Jobs not Criminals!” and “I want to work!”. Evoking timely language of economic stimulus, the co-director of SVP Michael Wells told the *New York Times* that, “This initiative [of lifting the license cap] is ‘shovel-ready’ to provide jobs for New Yorkers.”²³ Yet these and other similar protests have had little success in encouraging legislators introduce and support pro-vendor legislation. Most politicians strive to remain relatively neutral on the issue, not explicitly anti-vendor, but also not an active champion of vendor rights. Discourse, then, is a relatively effective and important hedge against further marginalization but has proved less effective in actively producing positive legislative changes.

There are also limits and contradictions inherent in vendor discourse. The discursive arguments put forth by vendors operate as a double edged sword. On the one hand, vendors exert a powerful critique by holding liberalism accountable to its promises; effectively destabilizing an exclusionary regime of spatial regulation and calling into question top-down representations of space made by property interests. At the same time, however, these discourses reinforce and operate through neoliberal ideals of legitimacy and rights. The right to space claimed by vendors is derived from and legitimated by notions of individualism, entrepreneurialism and self-reliance. The possession of these liberal virtues helps vendors inscribe themselves into New York’s landscape. Taken to their logical conclusion, however, vendors’ claims become discourses of exclusion as well, as they implicitly delegitimize claims to substantive citizenship and urban space made by groups who do not exhibit the same liberal virtues. For instance, vendors commonly define themselves in opposition to groups deemed implicitly or explicitly as less worthy, such as the unemployed, the homeless or the welfare dependent. As an example, the following are two similar quotes from street vendors. The first is from a Bangladeshi hot dog vendor near the City Hall, the second from an Egyptian coffee vendor on Wall Street:

America good, in my heart. I can’t move back, Bangladesh. America good country, good future everything. But, this tickets [for vending violations], and this city close [streets]? [It creates] big problems for me right now. I no ask for help, no welfare. I take care my family, man, but very hard right now. They give this license, but one by one these streets they close. Why this vendor license if no streets open? You close everything! Ok New York, you close everything? Help, give me this government help, this welfare help for everything I need. That’s it. Close streets? Ok Bloomberg, pay my house. That’s it. Close everything? Ok. Bloomberg pay my food. That’s it. But I no bum. I no ask city [for] money, I work, for family, for my family.²⁴

²³ Lee, J. 2009 “Street Vending as a Way to Ease Joblessness.” *The New York Times* CityRoom.com [cityroom.blogs.nytimes.com] 29 Apr.

²⁴ Interview with Bangladeshi hot dog vendor (July 2007)

Which one you rather to do as a city, as an official? Would you rather for me to give you money or take money from you? Take public assistance? I don't want you—I don't need your money. I just need you to give me a chance to work. I don't ask you to feed my child, I want to work. My child's got to eat. Whether you let me work or not as a city, my child will eat, whether you like it or not.²⁵

It is difficult to read vendors' claims as a demand for the "right to the city", in a pure Lefebvrian sense, that is, they do not necessarily place the use value of public space over its exchange value. For most vendors, the right to public space is a means to an end. Public space is not valued outright for its open and inclusive nature, rather, access to public space is viewed by vendors as a vehicle for their individual ambitions. Interestingly, some anti-vendor interests have used this line of reasoning to argue against the practice of street vending, claiming that vendors are violating the true spirit of public space by appropriating the commons for their own gain. "[Street vending] is so selfish you know, expropriating public sidewalks," claimed one property owner in Lower Manhattan in an interview. He went on to add, without a hint of irony, "you know, I was a '60s radical, and a slogan that the Black Panthers used to yell, and one I still feel strongly about today is that the streets belong to people, not petty bourgeois merchants that the peddlers are."²⁶

While passionate appeals of wealthy property interests for a radically inclusive public sphere should be taken with a grain of salt, it is true that, for the most part, the claims of street vendors are not necessarily based on radical or insurgent notions of spatial inclusion. Vendors demand inclusion both in public space and urban society based on the idea that, unlike some other groups, they are playing by the rules of liberalism. They define themselves as iconic immigrant entrepreneurs, connecting themselves to contemporary discourses of free market efficiency as well as to historically embedded liberal discourses of New York City as the quintessential city of opportunity. Their claims are insurgent in that they destabilize elite representations of public space, expose contradictions within liberalism and hold it to account, but this ultimately occurs at the cost of reinforcing neoliberal notions of legitimacy and rights and tends to close the door on more radical reimaginings New York's sidewalks as inclusionary spaces.

B. Grounded Politics: Contesting Informal Enforcement, Defending Informal Claims

Discursive politics are primarily directed at influencing politicians and legislative change, but legislative changes—proposed or actual—are relatively few and far between. For instance, though no less than 36 bills related to vending were proposed in the intervening years, the Green Carts Bill, passed in 2008, was the first major change in vending laws since 1997. Legislative change occurs slowly, if at all, and for many vendors, their relationship to and experience with the law is not one of long horizons, political organizing and legislative battles, but one of day-to-day negotiation of already existing laws. Therefore, the sidewalk is just as critical an arena for the politics of space

²⁵ Interview with Egyptian coffee vendor (July 2007)

²⁶ Interview with the head of a property owners association in a residential neighborhood of Lower Manhattan (January 2008)

in New York as the city council chambers, if not more so. This politics of space is born out of lived experience and addresses immediate issues rather than broader social change. But unlike de Certeau's concept of spatial tactics (1998), or Scott's "everyday forms of resistance" (1985) which avoid direct confrontation with authority, and are more or less individualized, unorganized, and spontaneous responses by the poor to unequal power structures, the politics of space discussed in this section are overtly defiant and are the products of organized, conscious efforts to contest regulatory norms.

Street vendors contest and negotiate norms of enforcement in a variety of ways. Differences in strategy reflect the different relationships various vendor groups have to the law. For instance, unlicensed vendors—when they are organized—often attempt to negotiate with local police precincts in order to reach understandings or agreements on levels and methods of enforcement. On the other hand, because enforcement of vending laws against licensed vendors is often unpredictable and informalized (see Chapter 3), much of the grounded politics of licensed vendor organizations revolve around clarifying and elucidating law. They attempt to draw it out of the murky depths of informal enforcement norms and hold police and others accountable to the letter of the law. This section will provide two examples of politics revolving around enforcement norms: one by a group of unlicensed vendors in the Bronx, the other by the Street Vendor Project, a vendor organization made up primarily of licensed vendors.

1. Negotiating Enforcement in the Bronx

Fordham Road is a major east-west thoroughfare in the Bronx, running through a number of neighborhoods and serving as a destination retail corridor for the borough. On weekends, its foot traffic rivals that of the busiest streets in Manhattan. For much of its length, the street is a bustling mix of low-cost chain stores and small businesses catering mostly to a low-income Latino and African American clientele. Street vendors are a well-established presence in this busy retail atmosphere. Many of the vendors along the street, particularly near the busy intersection with the Grand Concourse, are recent Mexican immigrants, most of them vending without a license. These vendors sell everything from toys, to flowers, to fresh mangos and are an integral part of the shopping experience on the street. Despite their popularity with shoppers, however, they are quite unpopular with store and property owners and face a number of familiar accusations: they constitute unfair competition, they bring down the image of the street, they contribute to congestion and crowding, and the unlicensed food vendors are a threat to public health.

In 2005, business and property owners along the street formed a Business Improvement District. The Fordham Road BID markets the area as an "outdoor mall experience", implying order and safety in an area still plagued by relatively high crime rates. According to the BID, the presence of unlicensed street vendors undermines the image of ordered public space and in the years since its founding the BID has increased pressure on police to deal with vendors along the thoroughfare. In response to harsh and even abusive treatment by the police, vendors along Fordham Road organized to form *Vendedoras Ambulantes Movilizando y Organizando en Solidaridad Unidos (VAMOS Unidos)* in 2007²⁷. *VAMOS Unidos* advocates for legislative change, but their most

²⁷ Translated into English, the full name of the organization is Street Vendors Mobilizing and Organizing in Solidarity United.

successful campaigns have come at the ground level and are focused on negotiating enforcement norms with local police precincts. The director of VAMOS Unidos, Rafael Samanez, describes the approach:

While we are dealing with [pressuring politicians to increase the number of vending licenses] at the same time we know it's gonna take a long time. So we have to somehow stop the abuse at the local levels, at the precincts within each neighborhood, you know? Vendors that are having a lot of problems with police, at our meetings say look, this is happening, enforcement is being stepped up, we want to go to this precinct. So at the moment we're going to four precincts, soon to be five. So our capacity's extremely limited but it's important, that part of the work, to go to the precincts, sometimes we're very badly received, you know? But once we put forward the human part of it, these are workers, and they need to be respected. These are single mothers, and they need to get—you know, this is their only source of income, they don't have any other income. They're kind of forced, the police are forced to start talking to us, on a one to one level. So we ask for a meeting, usually the captain talks to us and says, you know, we have to give tickets and there are some times that we've had to threaten with direct action and we have done direct action...like protests, press conferences, you know, with our target being the precinct, to expose what's going on. Once that press starts coming in, the reality of what's going on, it makes the multiple summonses, the arrests, the abuse of vendors, stop.²⁸

The actions of VAMOS Unidos have been relatively successful. While police have not agreed to ignore laws or condone unlicensed vending, VAMOS Unidos has been able to reduce harassment and abusive tactics by police, and influence the ways in which vending laws are enforced. For instance, in July of 2008, the organization announced an agreement with the 46th Precinct after nearly a year of discussions. Vendors, many of them women, defended their presence on the sidewalk by arguing that they were simply trying to support their families, that their informal status was the result of unfair regulations preventing them from obtaining licenses, and they therefore deserved to be treated with respect and dignity, even if they were technically breaking the law. After listening to stories of the devastating effects of Environmental Control Board summonses, which carry fines as high as \$1,000, the precinct agreed to change ticketing policies and begin to issue Criminal Court summonses instead, which carry \$25-\$200 fines, a much lighter burden. In coming to this agreement, police implicitly acknowledged that street vendors as struggling businesspeople rather than petty criminals, and that they had a place in the neighborhood even though they were selling goods without licenses. Given that vendors' place in public space is based on informal agreements rather than formalized rights it is an uneasy and insecure compromise and increased pressure from the local BID always threatens to swing the pendulum of enforcement norms back in favor of anti-vending interests. But, as Samanez stated in the interview, gaining formal rights through legislative change is a long term processes, and not likely to happen any time soon. Therefore ground level politics of influencing everyday enforcement norms is important short-term strategy to help vendors claim a tentative place in public space.

²⁸ Interview with Rafael Samanez, director of VAMOS Unidos, (February 2008),

2. Civil Obedience: Challenging Irregular Enforcement Practices

The condition of informality and informal practice is often conceived of in a liberating sense, a condition which exists in opposition to state power. For instance, Bayat states that “[Informality] reclaims significant political space from the state,” (Bayat 1997, 15) while anthropologist Michel Laguerre goes so far as to claim that, “urban informality is the expression of the freedom of the subject” (Laguerre 1994, 24). As was demonstrated in the previous chapter, however, in New York informality also serves state purposes, allowing for flexible management of space through informalized and context-specific enforcement norms. Building managers, store owners, private security forces and the police often use the complex, contradictory and opaque nature of vending laws to manage vending through intimidation and threats. Often, because they do not understand laws or due to fear of getting arrested, even licensed vendors are forced out of legal vending locations.

For licensed vendors then, the immediate political project revolves around contesting informal enforcement norms through appeals to formal law. Vendor organizations such as the Street Vendor Project attempt to demystify and clarify complex and opaque regulations through education campaigns. The Street Vendor Project also teaches vendors—many of them new immigrants unfamiliar with the U.S. legal system—about how to stand up to and interact with police officers when their rights are being violated. For many licensed vendors in New York, where informalized methods of enforcement lead to uncertain and insecure claims to space, appeals to and knowledge of formal laws and rights become an important weapon in the broader struggle over the city’s sidewalks.

One of the ways in which the Street Vendor Project educates its members about their rights is through role playing demonstrations during monthly meetings. In these demonstrations, either a vendor or the director of the organization, Sean Basinski, plays a policeman while different vendors practice their responses to the policeman’s threats. All the vendors in the room tend to participate, shouting out suggestions to the vendor taking part in the role playing, booing or scoffing knowingly at the policeman’s harassing orders, and asking further questions for clarification.

The role playing demonstration during one SVP meeting in early 2008 is illustrative. Munnu, a Bangladeshi peanut vendor mentioned during a previous meeting that was being harassed by a policeman in Times Square. The officer forced him off his legal vending location multiple times, and he was afraid to contest the policeman’s orders. A month later, at the next meeting, Munnu was called to the front of the meeting room to practice police interaction. Standing behind a small makeshift vending cart Munnu was “confronted” by Basinski, dressed in policeman’s hat, thick fake mustache and reflective sunglasses. The costume added a bit of levity to the exercise, but the members knew they were dealing with a serious matter. Basinski walked up to Munnu and in an intimidating voice told him, “look, you have to move. You’re blocking this advertisement here, and Coca-Cola paid good money for that add. Time to move.”

Vendors at the meeting chuckled knowingly at this fallacious claim. The soft spoken Munnu treaded lightly at first, even in this practice situation. “No sir”, he muttered deferentially, “I have a right to be here, this is not a rule”. “Officer Sean” continued to harass the Munnu, “Well look, the building wants you to move, so you have to get out of here.” With a little more confidence this time Munnu responds, “this is not

the building's sidewalk, they didn't pay for this. This is the city's sidewalk. And the city gives me a right to vend here." At this point, Munnu is threatened with a series of expensive tickets. Basinski begins writing imaginary tickets on a small notepad, while vendors in the audience shout, "You have a right to stay if you are in a legal spot!" and "Don't move! If he makes you move, who is going to feed your family?" Another more resigned vendor mutters, "he'll just lock him up if he don't move".

Munnu takes the correct steps at this point. He writes down the officer's badge number. He takes out a disposable camera (which SVP issues to all its members) and takes pictures of the officer, his cart, and the surrounding location to document his compliance and to use it as evidence in the hearings he will have to go to in order to challenge the fallacious tickets he receives. Some vendors in the audience have questions. "Can you take pictures of the police?" asks one. "No, you are not allowed, they do not let you do that!" another vendor responds. Here, Basinski breaks character to make a point clearly: "you *are* allowed to take pictures if a policeman is giving you a ticket. It's critical that you do take pictures so that you have evidence to contest the ticket. *Never* let a policeman tell you that you are not allowed to take pictures. That's a major and serious violation of your rights. You need to be respectful but firm and stand up for yourself and your rights." The skit ends with Munnu accepting the officer's tickets, but staying put, confident he will be able to successfully challenge the citations with photographic evidence. The vendors in the audience clap. Then, the rather timid Munnu, perhaps channeling frustration of past encounters with police, shouts, "I'll see you in court!" as Basinski walks away.

There are four major points that these role playing demonstrations attempt to convey to vendors. First and foremost, that they should not be afraid of the police and that they have rights that the police cannot violate. Second, they must stand their ground and stand up to the police, respectfully arguing for their rights without doing anything to provoke arrest. Third, they need to document unjust police action with photographs. Finally, they should be familiar with vending regulations and to strive for compliance so that the police cannot write them multiple tickets for minor violations. In theory, the Street Vendor Project is teaching its members the classic tactic of civil disobedience, i.e. challenging police action through non-violent methods. In this case, however, challenges come not through disobedience but *obedience*. Vendors contest informal enforcement norms by defiantly following the law and insisting that enforcement agents do the same.

This strategy of course requires knowledge of the complex regulatory system. The Street Vendor Project has long made it one of their priorities to teach their membership about current regulations—even as the organization fights to change them. One of the first tangible results of this effort was a small pamphlet distributed to all members entitled, *Is My Spot Legal?* This pamphlet clearly laid out the acceptable dimensions of carts, rules on placement of carts, and other minor regulations that vendors often receive tickets for.

In 2009, the Street Vendor Project collaborated with the Center for Urban Pedagogy, non-profit design and research organization, to create an illustrated guide to street vending regulations that SVP could distribute to vendors across the city. The guide, entitled *Vendor Power!* was designed to clearly and as simply as possible inform vendors of regulations and their rights. Reminiscent of airline safety manuals, the guide relies heavily on illustrations so as to be comprehensible to people regardless of language.

Where words are used, they are simple phrases written in five languages: English, Spanish, Arabic, Bengali and Mandarin. The guide boils down complex legal language of the vending codes into concise statements of rights. For instance, one panel states unequivocally that, “If you follow the rules, you have a RIGHT to vend on a public sidewalk. Store owners and security guards can’t make you move.”²⁹ The guide goes on to state that, “The police can’t move you unless: There is an emergency (Fire!)” or “A big event (Parade!)”.³⁰

There are illustrations of proper dimensions and positioning of vending carts, as well as instructions about what to do if confronted by police (take pictures, write down badge number of officer, etc.). With an eye to popular discourse, much of the rest of the guide is targeted more towards the general public, providing a brief history of street vending in New York as well as anecdotal information about vending, such as a list of celebrities who were once New York street vendors, including comedian Jerry Seinfeld and recording artist Jay-Z. The release of the guide, in which members of the Street Vendor Project walked the streets of New York handing them to fellow vendors was covered widely by major newspapers and other local media outlets.

Informal enforcement techniques, such as police harassment, intimidation by store owners and private security guards, or the illegal placement of planters and street furniture is one of the major ways in which the spatiality of vending is managed in New York. For licensed vendors, informality does not represent freedom from state control, but rather, is the very mechanism by which the control and management of public space is carried out. The illustrated guide and other educational efforts by vendor organizations attempts to bring regulations out of the obscurity of informal enforcement norms, hold the city and its enforcement agencies accountable to the law, and to defend the meager rights granted to them by current regulations.

C. Spatial Tactics and the Politics of Everyday Survival

It was October of 2007, and the monthly meeting of the Street Vendor Project was dragging into the night. The meeting room was cramped and hot, and tensions were running high. At this particular meeting, the organization’s leadership board was attempting to get members to participate in an upcoming protest against mayor Michael Bloomberg. The Street Vendor Project had consistently attempted to meet with mayor Bloomberg to discuss vending issues, but despite being the largest and most influential vendor organization in the city, the mayor’s office ignored all their requests. In response to these brush offs, the SVP came up with a novel protest idea. They planned to set up a vending table with the organization’s T-shirts in front of the mayor’s rowhouse on East 79th Street (a street open to vending). Every day, as the mayor left for work and as he returned home, he would be greeted by a vendor at his doorstep, politely requesting an official meeting. The protest was to be a 24 hour vigil lasting until the mayor agreed to meet with the organization. Therefore, it would require nearly full participation from members, who were asked to sign up for 8 hour shifts at the table. The leadership of the organization (who signed up for shifts as well) made clear that members would be

²⁹ VENDOR POWER! A Guide to Street Vending in New York City. pg. 2. Candy Chang and The Center for Urban Pedagogy. [emphasis in original]

³⁰ *ibid*

sacrificing time, money, and sleep to carry out this protest, but that these sacrifices would be for the good of all vendors.

At first, shifts for the first week of the protest filled up quickly. But the sign-up session eventually stalled and with nearly a dozen shifts remaining to be filled, one group remained conspicuously reluctant to participate. The Street Vendor Project includes in its membership a large number of Senegalese general merchandise vendors, many of them unlicensed. Though there were certainly a few who signed up, for the most part this group of vendors declined to participate in the protest. As it became evident that the reluctance of the Senegalese vendors would likely undermine protest plans, the meeting became heated. Through an interpreter, many Senegalese vendors claimed they were afraid, arguing that “you don’t go to the mayor’s house!”. Other members wondered aloud how the Senegalese vendors could be brave enough to vend illegally in Midtown, but not to participate in the protest. Leaders of the organization attempted to make clear to the Senegalese vendors that the spot in front of the mayor’s house was not restricted to vending and they had the legal right to be there. Plus the protest would be well covered in the news making it unlikely that the mayor’s office would offer a harsh response. But the group of Senegalese vendors would not budge. The meeting ended with the protest being put on hold for lack of volunteers and many left the room frustrated and disappointed at the failure to mobilize membership. For the first and only time during my nearly 15 month participant observation with the Street Vendor Project, the meeting did not end with a collective “Vendor Power!” cheer.

At first glance, one might assume that the reluctance of Senegalese vendors to participate in the protest stemmed from some sort of cultural aversion to these types of actions. Perhaps, in Senegal, one simply did not confront leaders so directly. But discussions with the Senegalese vendors in the days after the meeting revealed a very different reason for their reluctance to undertake this form of protest, one which had little to do with cultural norms. In fact, this particular impasse vividly demonstrates conflicting political strategies and outlook of different categories of vendors—even those within the same organization.

Many of the Senegalese members of the Street Vendor Project—and nearly all of those at the meeting who refused to participate in the protest—are either unlicensed vendors or licensed general merchandise vendors doing business in Midtown in violation of street restrictions. In discussions after the meeting, they revealed that they felt protesting in front of the mayor’s house would provoke a backlash by the city and that mayor Bloomberg would start strictly enforcing rules against vending in Midtown as a form of retribution. Though subject to periodic spikes in enforcement, most Senegalese vendors in Midtown have, through a variety of strategies, found ways to operate informally in the lucrative, yet off-limits section of the city. Therefore, they opposed the protest-oriented strategy of the Street Vendor Project, as they were worried it would upset the balance in Midtown. In their minds, classic goal-driven confrontational politics actually threatened their ability to make a living. They did not want to draw attention to themselves, rather they preferred—through a variety of spatial tactics—to eke out a living on the streets of Midtown and survive day-to-day by exploiting gaps and blind spots in the power structure, rather than directly confronting it.

As described in chapter three, many licensed general merchandise vendors have found blocks in Midtown, mostly those between the jurisdiction of two major Midtown

BIDs, where enforcement is relatively light. They still receive tickets periodically for vending in restricted locations, but for the most part are able to carry out their business, selling handbags, watches, sunglasses and t-shirts to tourists and locals alike. They have also devised ways to evade enforcement, despite the stationary nature of their operation. According to the letter of the law, it is illegal to display and sell merchandise in Midtown, but not simply to be in possession of goods. Therefore, if they are tipped off that a police officer is on the way, vendors will cover their tables with a tarp. Technically, with a covered table, they are no longer “vending”, and therefore not subject to tickets. When the officer is out of sight, the tarp comes off the table, and the vendors get back to business.

Unlicensed vendors utilize similar strategies to evade enforcement. Because unlicensed vending is a criminal offense and vendors risk jail-time and confiscation of merchandise if they are caught by the police, they tend to remain mobile rather than setting up a table like their licensed counterparts. As is the case for licensed vendors, simply being in possession of merchandise is not against the law. Unlicensed vendors must be caught actually selling merchandise—which mostly consists of handbags, sunglasses and watches—to be arrested. Therefore, most unlicensed vendors carry their merchandise in a large cardboard box which they push around Midtown on a hand truck. Between sales, the merchandise is covered with cloth or some other material. As they walk through Midtown, they mutter “handbags, handbags” under their breath as they pass tourists or other prospective customers. If someone shows interest, they will uncover their merchandise and let the customer peruse the goods. If a police officer enters the area, the vendors are able to cover their merchandise quickly and be on their way. In some areas and on some days when enforcement is relatively light, unlicensed vendors will actually unpack their boxes and lay their merchandise out on the sidewalk atop a cloth or rug. This tactic is conceived of with mobility in mind as well though, as vendors are able to quickly tie up the cloth, conceal their merchandise and place it back on their hand truck should police appear.

These tactics while not overtly or self-consciously political, nevertheless constitute a challenge to the dominant spatial order in Midtown Manhattan set forth by property interests. Like “everyday forms of resistance” discussed by Scott (1985) these tactics employed by vendors in Midtown are diffuse and require little or no coordination or planning, make use of implicit understandings, represent a form of individual self help and typically avoid any direct, symbolic confrontation with authority (Scott 1985). They do not seek broad change, but rather, attempt to make due within the current context. By doing so, unlicensed and informal vendors in Midtown, while not claiming space in an explicit sense, nevertheless (temporarily) appropriate space, subvert dominant notions of spatial order and practice, and most importantly for their own purposes, enable themselves to make living selling goods in relatively lucrative areas of the city. Unlike political mobilization and protest, which offers the *possibility* of change far off on the horizon, everyday tactics employed by Senegalese vendors in Midtown successfully alter their immediate material situation.

Given the creativity and guile with which Senegalese vendors evade and subvert exclusionary laws, it is easy to over romanticize these individual forms of resistance. But analytical satisfaction with the notion that evasive practices constitute an end unto themselves, tends to gloss over unequal power relations and in some ways even justifies

or at least naturalizes them. As Bayat argues, the “resistance paradigm” suffers from an under-theorization of state power, leading to scholarly accounts where “acts of resistance. . . float around aimlessly in an unknown, uncertain, and ambivalent universe of power relations with the end result of unsettled and tense accommodation with the existing power arrangement” (Bayat 1997, 544).

It should be made clear then, that despite their ability to evade enforcement, Senegalese vendors still find themselves in a vastly unequal power relationship which produces hardship, both economic and social. Though many vendors successfully avoid the police, there are also those who get arrested, have hundreds of dollars of merchandise confiscated, spend time in jail and/or are subject to harsh fines. Moreover, for most property owners and other Midtown business leaders, while unlicensed vending is certainly an annoyance and disruptive, it would be an exaggeration to claim that they somehow threaten the dominant spatial order in any sort of fundamental way. Nevertheless, in including an analysis of spatial tactics of evasion practiced by unlicensed vendors in central areas of the city, I attempt to present the diversity of responses by various different vendor groups to exclusionary policies. Transgressive actions of vendors in Midtown are modest and fleeting victories; victories which must not be exaggerated, but also should not be dismissed or ignored when discussing the larger struggle over street vending and urban space in New York.

IV. Conclusion: Differentiated Political Interests and the Potential for Radical Critique

One afternoon late in the summer of 2009, I found myself in the offices of the Street Vendor Project, discussing vendor politics with one of the assistant directors of the organization, Ali Issa. I had just finished a rough draft of this chapter, and Ali was interested in hearing and discussing some of my findings. In particular, we were discussing my assertion that one of the more effective strategies vendors had used to defend their rights was the ability to discursively inscribe their practice into the grand narrative of New York City as a city of opportunity and immigrant entrepreneurialism.

Ali agreed that this had been a relatively successful line of public argument for vendors, but, he also picked up on some of the ideological trade-offs that came with fighting to be part of the current capitalist system of accumulation rather than challenging it. In general, though not officially stated, the Street Vendor Project as an organization, and its members as individuals take a left-libertarian bent, hence the ideological tenor of their public voice. But Ali, who was new to the organization, was trying to move the it in a more radically progressive direction, or at the very least, begin to make contacts with political activists working on issues of social and spatial justice in New York, and he found the current line of argument ideologically frustrating. Basically, Ali wanted to begin shifting the organization’s agenda from individual rights, to a broader social justice oriented approach. He admired some of the work being done by VAMOS Unidos, who saw street vendor advocacy as part of a broader workers rights movement, with particular attention to workers in the informal sector. But Ali was growing discouraged with the mindset of members in his own organizations, who were mostly licensed vendors. Most of them were either uninterested in moving the organization in this direction or simply did not fully understand what it was Ali wanted to do.

This conversation with Ali highlights a few key points concerning street vendor politics in New York City. First, by bringing up the different outlooks of VAMOS Unidos and the Street Vendor Project, he raises a fundamental question about street vendors. Are vendors “workers” exploited by the larger political-economic system and therefore potentially agents of progressive social change? Or are they entrepreneurs, taking advantage of opportunities in a free market economy and stifled by a burdensome, over-zealous state regulatory apparatus?

This is, of course, a tautological question and there is no single, easy answer. Different groups of vendors fit both framings to varying degrees, but this ontological uncertainty and the questions it raises are important. It reminds us that one simply cannot speak of “vendor politics” as a unified concept. The high level of differentiation among vendors—both in terms of legal category and socio-economic position—makes a unified political project nearly impossible. An undocumented immigrant scraping by on meager funds earned through his unlicensed vending operation in the Bronx likely will have a more of an interest in, or be more amenable to, talk of radical social transformation than a relatively successful, self-defined small businesswoman running a popular lunch cart in Midtown, complete with reviews on food blogs and in local newspapers. This is likely one of the reasons some of the vendors in the Street Vendor Project rejected Ali’s more radical framing of their political project. Likewise, vendors enjoying specialized rights such as military veterans and First Amendment vendors have little interest in political action other than to defend rights already gained—an example of the depoliticizing tendency of rights and the uncertain nature of rights-based progressive politics. These vendors were dedicated to fighting for fair treatment on the part of the city and larger real estate interests, but not necessarily to broad-based, or revolutionary progressive change or a radically inclusive public sphere. In fact, I am reminded of a long-time food vendor from Bangladesh I spoke with early in my fieldwork who, while critical of Giuliani’s anti-vending policies, nonetheless viewed the former mayor in a favorable light, because he was able to, in the vendor’s words, “sweep the bums off the streets.”

Though they occur in and are about public space, one cannot necessarily view all vendor politics as a clear call for a “right to the city” in a pure Lefebvrian sense. For licensed vendors, the struggle is not so much one over some abstract notion of the public sphere, and more about the right to pursue their entrepreneurial activities and inscribe themselves into the mythical liberal promise that is New York City. This does not necessarily mean that the politics of street vendors, save a few politically active groups of unlicensed vendors, should be overlooked when considering sources of progressive change and socio-spatial justice.

As I have tried to emphasize in this chapter, there is progressive potential in vendors’ challenges to the current regime of urban governance and public space management. In fact, it can be read as an even more destabilizing critique of neoliberalism because it emanates from within liberalism itself and uses liberalism’s own vocabulary of entrepreneurialism and immigrant advancement through hard work to hold liberalism accountable to its unfulfilled promises. In this way, vendors exert a powerful critique of the current regime of neoliberal urban governance dominated by large-scale property and business interests and draw out, sometimes in sharp relief, contradictions inherent within the system

Epilogue

In the spring of 2010, Mayor Bloomberg, long reticent to get embroiled in street vendor-related issues, finally stepped foot into the ring. And for his opponent, he chose perhaps the most formidable group of vendors to do battle with: First Amendment vendors. The issue of contention was the sale of artwork in city parks. As on city streets, thanks to a federal judicial ruling, the city cannot prohibit artists from selling goods in any part of the park where there are also city-licensed park concessionaires. The Bloomberg Administration claimed that artists offering quick portraits or selling original works and vendors selling pictures of landmarks and other tourist-oriented goods were sullyng the city's parks, adding a brash commercial atmosphere to what should be a peaceful retreat from the hustle and bustle of the city. The commercialization of park space, it should be noted, did not seem to bother the Administration much when they regularly closed Bryant Park (one of the only green spaces in Midtown Manhattan) for corporate events such as New York Fashion Week, allowed large corporations to take over vast swaths of Central Park for advertising events, or flooded Union Square, Bryant Park and others with "Christmas Markets" during the holidays, full of temporary vendors selling holiday items and—more importantly—paying a fee to the city for the right to be in the parks.

These hypocrisies were picked up on by art vendors, led by intractable Robert Lederman and his activist group ARTIST, who vowed to challenge the mayor's plans on First Amendment grounds. Lederman organized protests outside of public hearings on the proposed rule, claiming Mayor Bloomberg was infringing on the First Amendment rights of artists in order to make way for private, corporate use of the parks. Once again, questions over the appropriate level of vending regulations led to questions of the proper use and nature of public space. Ahead looms what is sure to be a long legal battle over the proposed Parks Department rules to limit art vendors in the city parks, one which, given his successful track record of defending the First Amendment rights of vendors, will likely be decided in favor of Robert Lederman and ARTIST. What is ironic about all of this, though, is that the city could avoid these legal battles if they simply started issuing more licenses for merchandise vending. At the crux of ruling that made First Amendment vendors exempt from licensing requirements is the fact that the hard cap on vending licenses acts as de-facto censorship, for it prevents any artist from selling his or her work under city law. But because powerful business and real estate interests continue to define street vending—and general merchandise vending in particular—as a nuisance, eyesore, and as bad for business and the city in general, the cap remains in place, the legal logjam persists, and strange side effects and twisted legal meanings of a complex and convoluted set of vending regulations continue to be the norm on the city's sidewalks.

As this dissertation has demonstrated, however, the dominant discursive definitions of the street vendors and street vending are not stable and are constantly challenged. Coinciding with Mayor Bloomberg's assault on art vendors, another event served to place street vendors at the forefront of the public eye—this time painting them in a very positive light. On May 1st, 2010, Faisal Shazhad parked a sports utility vehicle carrying a homemade bomb on a busy corner in Times Square. The poorly made bomb

sputtered out, ultimately failing to detonate, but as the device smoldered inside the SUV, it was two street vendors—merchandise vendors as it happened—who alerted police of the threat. The two vendors Lance Orton and Duane Jackson were hailed as heroes, interviewed by countless news outlets, given handshakes and expressions of gratitude from passersby in Times Square, and were even the recipients of a congratulatory phone call from President Barack Obama. Numerous articles were written praising the two street vendors' vigilance but one, by Fred Kaplan in *Slate*, went a step further. It claimed that the entire episode, which ultimately ended with the successful apprehension of the attempted bomber, was a victory not only for the U.S. security apparatus, but also for Jane Jacobs—the urbanist who wrote about the importance of vibrant street scenes and the benefits of having “eyes on the street” As Kaplan put it:

Jacobs, who died in 2006, would not have been surprised to learn that it was two street vendors who first notified police of the suspicious Nissan Pathfinder parked on West 45th Street just off Broadway. Lance Orton and Duane Jackson, both disabled Vietnam War veterans who were hailed as heroes after their roles in the foiling became clear, have been keeping their "eyes upon the street" for years and—like many of their fellow vendors—have frequently tipped off police to strange and illegal activities.¹

It was not the multitude of NYPD and private security cameras that helped stop the bomb plot, it was two pairs of eyes on the sidewalk. Vendor advocates were, of course, quick to jump on this point, arguing that street vendors, in addition to providing convenient and inexpensive products, also helped to keep the city streets safe. They noted all the other times a street vendor intervened to stop a purse snatcher, or alerted police of illegal activity such as drug dealing. It was the complete inverse of the real estate and business interest discourse which sought to inscribe vendors into the broader notions of disorder and “broken windows” in the public sphere. Whether vendors will be able to translate temporary good feelings about street vendors into any sort of broad-based reform is yet to be seen. For now, the event was just another chapter in the ongoing struggle over the validity of street vending as a social practice, and the meaning and nature of New York City's public spaces.

A closer look at the street vending issue in New York reveals a system of spatial management embedded in a contentious political environment, complex legal situation, and an political-economic reality which makes large-scale reform untenable. Piecemeal solutions, such as the Bloomberg Administration's new rules for art vendors in city parks inevitably only add to the complexity, while the very validity of the practice of street vending is always up for definition and redefinition, as the aftermath of the failed Times Square bombing demonstrated. Within this contentious environment, informality arises to smooth over contradictions, facilitate spatial management of vending, and ultimately shape the landscape of the practice. As this dissertation has demonstrated, the vending situation—while it may look like it at first glance—is not a “colossal public policy failure”, but rather an example of an emergent regime of governance—one in which informality is an organizing principle and legal uncertainty is used as a flexible technique of spatial management.

¹ Kaplan, F. 2010, “Cheney's Wrong, Jacobs was right and Cameras do Work: Three Lessons from the Times Square Bomb” *Slate*. 3 May.

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