Day Labor Markets and Public Space

Gregg Kettles, Loyola Marymount University

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Gregg W. Kettles†

Day laborers standing on street corners have become a more common, and more controversial, sight in many U.S. cities. Taking them to be evidence of public disorder and illegal immigration out of control, some communities have responded by adopting the strategy of exclusion. They have revived the enforcement of ordinances against loitering and vagrancy, and changed traffic rules to discourage drivers from stopping to pick up workers. Other communities have responded by adopting the strategy of shelter. Viewing street corner day laborers as vulnerable, these communities have opened indoor work centers that offer job placement and other services.

Both of these approaches are fundamentally flawed. The strategy of exclusion ignores economic theory, which justifies the presence of day labor markets in public space. Exclusion also overlooks the nation’s rich history of allowing day laborers and other temporary workers to use the sidewalk to solicit work. Exclusion further ignores fundamental economic and demographic changes that have increased demand for day laborers—whether illegal immigrants or not—and made public sidewalks the most efficient way to match these workers with potential employers. Finally, the strategy of exclusion is at odds with the contemporary push toward the “New Urbanism,” with its sidewalk-intense uses, and the character of today’s suburbs, which are increasingly integrated. The strategy of shelter similarly misunderstands the advantages offered by the street to day laborers. Like those who in earlier advocated sheltering the homeless and helping them find work, advocates of sheltering day laborers exhibit good intentions. But they risk turning street entrepreneurs into dependents. The defects of exclusion and shelter point to a third way to respond to day labor—one that gives them a place on the street.

Introduction

Day laborers standing on street corners have become a more common, and more controversial, sight in many U.S. cities. Viewing day laborers as traffic hazards, blight, and evidence of illegal immigration out of control, some communities have responded by adopting a strategy of exclusion. They have revived the enforcement of ordinances

† Visiting Professor, Loyola Law School Los Angeles, 2008-2009 AY; Professor, Mississippi College School of Law. I am thankful to my wife, Lorena Manriquez, who helped me observe day labor markets and interview people knowledgeable about them. I also thank Marc Poirier and participants in a faculty workshop at Loyola Law School Los Angeles and the 2008 Joint Annual Meetings of the United States Law and Society Association and Canadian Law and Society Association, in Montreal, Quebec, Canada for comments and suggestions.
against loitering, vagrancy, solicitation, and changed traffic rules to discourage drivers from stopping to pick up workers. Other communities have responded by adopting a strategy of shelter. Viewing day laborers as especially vulnerable when soliciting work from the curb, non-profit organizations and governmental entities have opened indoor work centers that aim to lure day laborers off the streets by offering job placement and other services. The main thesis of this paper is that both exclusion and shelter are fundamentally flawed strategies, not only from the perspective of the day laborers themselves, but for society as a whole.

The responses of exclusion and shelter have often been set up in opposition to each other. Advocates of exclusion see the strategy of shelter as a weak-kneed response to the problems posed by day labor. In their view, shelter only makes the problem worse by encouraging more people to become day laborers. In the absence of aggressive use of the tools of exclusion, these new day laborers swamp the shelters and end up spilling out on the street anyway. Worst of all, many of the people so encouraged to become day laborers are illegal immigrants. In the eyes of exclusion advocates, these people have no right to remain in the U.S., much less enjoy the benefits provided by taxpayer supported public work centers. Those who favor exclusion lobby local government to stop building shelters and start enforcing laws against street side day labor markets. Communities that have embraced this strategy have occasionally been met with lawsuits. Typically, local ordinances are claimed to infringe rights to free speech under the first amendment or to be preempted by state law.

These lawsuits are often applauded by advocates of shelter. They see exclusion as a heartless and short-sighted response to an especially vulnerable segment of the workforce. Leaving day laborers alone, however, is not the aim of the strategy of shelter. Shelter advocates perceive day laborers to be vulnerable to a number of dangers, such as bad weather, speeding vehicular traffic, and unscrupulous employers. The only way to protect them is take them off the street. So sheltered, day laborers will still be able to work as day laborers, but under safer conditions. To this end shelter advocates pressure local government and charities to fund off-street day labor work centers that provide day labor work referrals and other services. No strangers to law, they have also lobbied communities to enact rules requiring that these centers be supported by local businesses, such as home improvement stores, that are known to attract day laborers.

Choices confront policy makers at every turn. Local governments are told they must choose either a strategy of exclusion or a strategy of shelter. Courts considering legal challenges to local exclusion strategies are given a similar opportunity. The applicable legal doctrines leave ample room for policy concerns to influence judicial decision making. The general purpose of this paper is to help these decision makers form good policy judgments regarding the strategies of exclusion and shelter. To accomplish this, the paper is partly descriptive and partly normative. It lays out the facts of street side day labor markets, and views the practices of exclusion and shelter from a variety of perspectives, including economics, history, and contemporary land use planning theory. A central normative conclusion of the paper is that neither exclusion nor shelter strategies well withstand a critical assessment. Their weaknesses point to a third strategy, one rarely emphasized to local government policy makers: day laborers should largely be left alone and allowed to solicit work on the street.
That anyone should be allowed to use public property for private gain is a startling proposition. Accordingly, after telling the story of day labor in section I, and local efforts at exclusion and shelter in section II, in section III I begin my critical examination of exclusion by discussing what economics has to say about day labor markets operating in public space. The public goods aspect of streets and the danger of holdouts justify their public provision, not only for use as transportation corridors, but also as marketplaces.

Exclusion strategy not only runs counter to economic theory, it also overlooks the past, namely this nation’s rich history of allowing day laborers and other temporary workers to use public space to solicit work. During the last surge in casual laboring, nearly a century ago, day laborers were known as “hobos.” When they were not riding the rails to distant jobs, hobo day laborers crowded city sidewalks looking for work in an area of town that came to be known as the “Main Stem.” Even after the Main Stem declined into Skid Row, the practice of casual laborers waiting on street corners for work persisted.

Turning to the present, the strategy of exclusion also ignores powerful economic and demographic changes that have created a robust market for day labor. Automobile-driven suburbanization has fueled increased demand for day labor, and made the curb the best place for employers and workers to meet. While today the ranks of day laborers have readily been filled by illegal immigrants, there is ample evidence to support the view that street side day labor markets would persist even without them. Further, the strategy of exclusion is at odds with increasingly popular plans for the future of our cities. These plans, often labeled the “New Urbanism,” envision a world where automobile circulation makes room for a variety of other users and uses of the public space. Room should be made for pedestrians, not only to move about, but also to give them a place to stop and socialize or engage in trade. This mosaic surely includes day laborers soliciting work from street curbs and sidewalks. Despite the image of chaos peddled by some, most day laborers have incentives to seek some order on the sidewalk and have demonstrated an ability to arrive at that order informally. The strategy of exclusion is also swimming upstream against a powerful (and welcome) current of increasing integration in our suburbs.

As argued in Section IV, the strategy of shelter fares little better. Recent experience with indoor day labor work centers operated by government and non-profit organizations demonstrates that they do a poor job helping day laborers find work. Offering fewer work opportunities than the street, they are shunned by many workers. Their institutionalization and formalization of work makes them eerily similar to public homeless shelters, which promised independence and hope but delivered dependence and despair. Some work centers succeed in providing food, clothing, referrals, and shelter to day laborers. They need most of this relief not because they are laborers, however, but rather because they are poor. Seen in this light, relief provided by work centers duplicates relief provided to the poor generally, and risks duplication of effort and uneven distribution.

Day labor work centers also bear some resemblance to employment agencies. Once an important player in the placement of day laborers, private agencies have been rendered all but superfluous. Day labors and employers alike now find it preferable to avoid the middle man (and his fees) and deal directly with one another. Public
employment agencies have been even less adept at competing in the marketplace, making them essentially welfare agencies for the otherwise unemployable. Day laborers do not need much help, other than to be left alone. Thanks to repeat dealings between day laborers and their employers, good workers succeed in finding good employers. Abuse is the exception rather than the rule.

The defects of exclusion and shelter point to a third way to respond to day labor, one that gives them a place on the street. In the Conclusion I call for a revival of the Main Stem. Cities should impose fewer restrictions on the use of public space where informal day labor markets have emerged. Further, there is no need to spend a great deal of money on day-labor dedicated work centers and services. It is time again for day labor to walk out into the sun.

I. Day Labor Today

People standing on street corners waiting for work have become a more common sight in the United States over the past decade. Most often they are men seeking work as a construction laborer, gardener and landscaper, painter, roofer, or drywall installer. They are hired for very short periods of time, typically for the day, giving rise to the term, “day laborer.” There are many ways to find day labor. Private, for-profit agencies, non-profit hiring halls, and public employment agencies all place workers for short-term positions. Broadly conceived, the concept of “day labor” embraces these workers as well. But they find employers out of the public eye, and have escaped the greatest controversy. It is the day laborers who solicit business out of doors that have garnered the most attention from the news media and local legislative bodies. These street corner day laborers are the focus of this essay.

Day laborers have been found in growing urban and suburban communities all over the country. On any given day, more than 100,000 day laborers are either working or looking for work. Many of those who are looking are waiting out of doors on public sidewalks, roadsides, and streets. When day laborers wait for work, they rarely wait alone. Instead a stretch of sidewalk becomes an informal job market where dozens of day labors will stand and wait for prospective employers to drive up and stop for workers. Workers will arrive on the sidewalk in the morning. Those not hired early on may linger past noon hoping for a job. Competition for work can be fierce. The early bird gets the

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worn. Employers will often hire the first worker to show up at their car window. Knowing this, day laborers have been known to race toward stopped cars.5

Other aspects of day labor are no less informal. The sector has attracted a number of workers who lack documentation to work in the United States legally. Many employers do not bother to verify their immigration status—either because they are not legally required to do so, or because they have determined to ignore the law.6 One recent national survey of more than 2500 day laborers found that three quarters of them were undocumented immigrants.7 In addition, many day laborers are paid in cash,8 tempting some to avoid reporting all of their earnings for income tax purposes.9 Some employers decline to extend such workplace benefits as workman’s compensation coverage, minimum wage, safety equipment, and shift breaks.10 Day labor work is different from employment in the normal, formal economy.

II. Day Labor Responses: The Strategies of Exclusion and Shelter

These differences have caused day labor to be seen by some as a problem. Policy responses by local government and civic-minded non-profit organizations have tended to take one of two forms: exclusion and shelter.

Exclusion strategies are premised on the notion that day laborers hustling business on street corners harm others. The supposed harms fall into three general categories: accidents, petty nuisance, and immigration. First, day laborers increase the risk of accidents. They encourage passing motorists to stop, and sometimes run into the street to get to a prospective employer first.11 Vehicles following or passing the stopped motorist risk hitting that vehicle, a day laborer, or something else if they maneuver quickly to avoid them. Second, day laborers constitute a petty nuisance. Passersby suffer some psychic injury from seeing men so desperate for work that they wait outside. Day laborers obstruct the sidewalk and engage in inappropriate behavior, such as drinking alcohol, urinating, and talking loudly in public. This discourages the use of sidewalks by pedestrians and slows sidewalk circulation.12 Third, it is widely believed that most day laborers are illegal immigrants. Allowing day laborers to market themselves informally on the street, according to this theory, signals that immigration enforcement is lax. More illegal immigration is thereby encouraged.

6 Arturo Gonzalez, “Day Labor in the Golden State,” 3 California Economic Policy 3:1, 4 (2007) (employers are not required to verify the immigration status of independent contractors or casual workers performing domestic tasks on a “sporadic, irregular, or intermittent basis”)
The variety of harms posed by day laborers has drawn a variety of responses from policy makers. One response has been for local government to enforce existing ordinances prohibiting of vagrancy and loitering against day laborers. Long used by law enforcement to maintain order in public places, their discriminatory enforcement against racial minorities put such ordinances in a bad light during the civil rights movement. In 1972 a Jacksonville, Florida vagrancy ordinance was held to be unconstitutionally vague by the U.S. Supreme Court. Though vagrancy and loitering laws remain on the books in many cities, their continued validity is doubtful.

Localities have also attempted to avoid the public harms threatened by day laborers by enforcing against them ordinances restricting solicitation on streets, sidewalks, and parking lots. Typically these ordinances either ban acts of solicitation from an entire jurisdiction, a particular zone, or a certain kind of property. But as solicitation is communicative activity, laws restricting it implicate the First Amendment. Legal challenges have been brought against a number of these ordinances, including a few on behalf of day laborers. First amendment law is complex, and the validity of any particular restriction on expressive activity turns on a whole host of issues, such as whether the solicitation takes place in a "public forum," and whether the ordinance is content neutral, is narrowly tailored to achieve a significant government purpose, and leaves open alterative channels of communication. The outcome of individual cases is difficult to predict. Some solicitation ordinances have been upheld. Others have been held unconstitutional.

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13 Beth Duckett, “Cave Creek Aims New Laws At Day Laborers, Employers,” The Arizona Republic (Phoenix), September 14, 2007, p.5 (city considering ban on loitering); Adam Thompson, “Oconee to Pursue Day Laborer Charges Nearly 2 Years Later,” Athens Banner-Herald (Georgia), November 19, 2007 (reporting arrest and prosecution of day laborers for loitering); Sam Quinones, “The Nation; Drifting In on Katrina’s Wind, Laborers Alter the Streetscape,” Los Angeles Times, May 1, 2006, at A4.


19 Calderon v. City of Vista, Civil No. 06cv1443-L(LSP), 2006 U.S. Dist. LEXIS 54736 (S.D. Cal. 2006) (denying application for temporary restraining order based on First Amendment against enforcement of ordinance require employers of day laborers to register with the city). See ACORN v. St. Louis County, 930 F.2d 591 (8th Cir. 1991) (upholding ban on solicitation in the roadway); ISKCON v. City of Baton Rouge, 876 F.2d 494 (5th Cir. 1989) (upholding prohibition on solicitation of vehicle occupants from the roadway or roadway shoulder); Houston Chronicle Publ’ng Co. v. City of League City, Texas, 488 F.3d 613, 621-22 (5th Cir. 2007) (upholding restriction on street vendors at intersections controlled by a traffic signal). Cf. Smith v. City of Ft. Lauderdale, 177 F.3d 954 (1999) (upholding regulation against begging on beaches and sidewalks in certain areas of a city because it was narrowly tailored to serve the city’s interest in providing a safe and pleasant environment and in eliminating nuisance activity).

20 Comite De Jornaleros De Rendondo Beach v. Redondo Beach, 475 F. Supp. 2d 952 (C.D. Cal. 2006) (overturning fines imposed on day laborers, finding that though anti-solicitation ordinance was content-
Local solicitation ordinances may also be constrained or pre-empted by state law. For example, the Attorney General for the State of Maryland recently published an opinion on the validity of a solicitation restriction enacted by the city of Gaithersburg.\textsuperscript{22} Maryland has a state-wide prohibition on standing in a roadway to solicit employment or business from the occupant of any vehicle.\textsuperscript{23} The Attorney General opined that a Gaithersburg ordinance that restricted this same activity was pre-empted and could not be given effect independent of state law.\textsuperscript{24} In this instance, of course, the result was the same—solicitation was barred from the roadway. But pre-emption may also be used to give day laborers more rights to solicit than they would be allowed under local law. For example, if solicitation were specifically allowed or regulated by state law, a city ordinance that attempted to restrict solicitation further might be held pre-empted and given no effect.\textsuperscript{25}

In an addition to scorn, day laborers have evoked sympathy. Instead of seeking to exclude them, some organizations have taken steps to protect, or shelter, them. This strategy of shelter is putatively motivated by a desire to eliminate the dangers day laborers face in the informal economy. Advocates of shelter point to the risk of bodily injury in construction work.\textsuperscript{26} One national study of day laborers found that only 6\% of day laborers who were injured on the job had their medical expenses covered by their employer.\textsuperscript{27} Compensation for work injuries is just the start of it. Wage theft or


\textsuperscript{25} Cf. Town of Telluride v. Lot Thirty Four Venture, LLC, 3 P.3d 30 (2000) (overturning local rent control ordinance because it conflicted with state law prohibiting rent control); Envirosafe Services of Idaho, Inc. v. County of Owyhee, 735 P.2d 998 (Idaho 1987) (overturning local hazardous waste management ordinance because it was pre-empted by less restrictive state law on same subject).


underpayment by employers is a frequent complaint. To add insult to injury and underpayment, some employers abandon day laborers at work sites. Day laborers are occasionally harassed by neighbors. They also have encounters with law enforcement officers, who sometimes direct them to move on, check their immigration status, or arrest them. Exposed as they are to the public, day laborers are from time to time made victims of street crime. Still other commentators decry the chaos they perceive that prevails on the sidewalk, and seek to provide day laborers with an indoor setting where workers can be matched with employers in a more orderly fashion.

Shelter enthusiasts attempt to address the dangers faced by day laborers by providing them with an indoor space to find work. Advocates have been successful in turning their vision into reality. Prior to the year 2000 indoor spaces for day laborers, or work centers, numbered no more than 30. By 2004 they had increased to more than 60, spread across 17 states. Most work centers require some outside funding, which is typically provided by one or more of the following: businesses, non-profit philanthropic organizations, and government. Beyond that commonality, work centers tend to follow one of two models: labor union and social services. Under the labor union model day laborers organize themselves to manage a work center by consensus. These work centers tend to focus on employment issues, aiming to increase wages and employment for day laborers who are members of the work center, who pay dues to offset the costs of running the center. Members of the work center agree not to seek work on the street, and not to work for a wage lower than that established by the work center. Those who do either of these things risk being excluded from the center. Work center members actively discourage hiring on the street by passing out flyers to employers and “scab” day laborers. By using a stick as well as a carrot to get workers off the street, these labor union work centers appears to pursue not only strategies of shelter, but also exclusion.

Work centers that follow the social services model generally provide a broader range of services. They don’t just focus on getting jobs and setting floors on wages. These social services work centers also offer such things as English classes, free food and clothing, organized sports, and advocacy. While the day laborers themselves have a

37 Id. at 8-15.
voice in work center management, typically it is not controlling. Social services work centers tend to be run in more of a top-down fashion. Day laborers do not contribute financially to their operation, and their services may be enjoyed by anyone, even those who chose also to seek work on the street.\textsuperscript{38} They pursue the strategy of shelter wholeheartedly. More services cost more money. While labor union style work centers cost $60,000 to $100,000 to set up, work centers of the social services variety run as much as $350,000 per year.\textsuperscript{39}

III. The Strategies of Exclusion Are Flawed

The strategies of exclusion and shelter have been pursued in a number of places. Turning first to exclusion, my purpose in this section is to demonstrate that this approach is fundamentally flawed. Strategies of exclusion ignore economic theory, which suggests that the costs of allowing markets for day labor to operate in public space are outweighed by the benefits. The wisdom of economic theory is confirmed by practice, namely a rich United States history of street commerce generally, and day labor in particular. Exclusion strategies also swim upstream against contemporary events. These consist of powerful demographic and economic changes that have swept over U.S. society in the past twenty years—changes that promise to endure for sometime to come. Exclusion strategies further run counter to contemporary tastes for increased street life, as evidenced by now popular planning approaches like the “New Urbanism,” that seek to encourage more intensive use of sidewalks and curbs. Exclusion is also inconsistent with today’s suburbs, which, in terms of ethnicity, class, and gender, are becoming increasingly integrated. I elaborate on each of these criticisms in turn.

A. Economics and Day Labor Markets in Public Space

In an society where most markets, be they supermarkets, meat markets, or the market at the New York Stock Exchange are on private property, one might ask why a day labor market should ever be situated on the public sidewalk? To answer this, it is helpful to step back and consider the more general question of why we have public streets and sidewalks at all? One reason given by economics is that they are “public goods.” It is not practical to exclude people who haven’t paid for them. In theory, we could install a toll booth at every corner entrance to a street and sidewalk, but the costs of doing so would be exorbitant. Unable to recoup the costs of their investment in building streets and sidewalks, private actors won’t bother to build them in the first place. Transportation corridors of sufficient number will have to be provided publicly.\textsuperscript{40}

There is a second reason given by economists for the public provision of streets and sidewalks: market power. This refers to the situation where a single property owner has the ability to change the market price of a particular piece of property they own. The owner of a parcel of land might be tempted to hold out for a high price, when confronted

\textsuperscript{38} Id. at 8-15.
\textsuperscript{39} Id. at 31.
with an offer from a party seeking to assemble a number of contiguous parcels to build a road.\textsuperscript{41}

   The theories of public goods and market power help explain why streets and sidewalks are public, at least as long as we view those things as transportation corridors. One of the reasons why it is impracticable to charge tolls to users is that each uses that space for only a few moments, that is, the user is on the move. Similarly, the risk of holdout seems especially high when a user is seeking the shortest route from point A to point B, and another party’s property lies right in the way. In both cases it is the fact that the user is moving that helps justify making streets and sidewalks public. In other words, public streets and sidewalks are justified as transportation corridors.

   The trouble with this conclusion is that it may fall a little short of providing a justification for public streets and sidewalks in the way those things are used by day laborers. Before getting hired, a day laborer might stay on the sidewalk for a few minutes. Or he might remain there waiting for work all morning long. The longer the day laborer lingers, the less difficult it would be to impose a fee on his use. As a place to stand and wait for work for hours on end, the sidewalk begins to look less like a public good and more like a private good. The risk of holdout seems reduced as well. If the day labor is not going anywhere, but instead standing still, there would appear to be no single landowner that could hold-out for a high price for permission to use their property. If a landowner demanded from a day laborer more than market rate for permission to stand on her property, the day laborer could simply go bargain with another landowner. With so many substitutes, no landowner would have the market power necessary to enable her to holdout.

   Economic theory justifies the public provision of streets and sidewalks as transportation corridors. But can it also justify public provision of those things with respect to uses that are more stationary, like those of street corner day laborers? In her article, “The Comedy of the Commons,”\textsuperscript{42} Carol Rose raises a similar question in her examination of a series of judicial decisions that upheld public claims to otherwise private lands for purposes that had little to do with transportation. In the 19\textsuperscript{th} century English courts relied on custom to grant the public a right to use private property for horse races, dances, and cricket matches.\textsuperscript{43} On this side of the pond, U.S. courts similarly recognized that public squares and beach access for swimming could be found on otherwise private property.\textsuperscript{44} In each of these cases, the use was in essence not transportation, but rather stationary.

   These uses still justified making these lands public because of the customary nature of those uses. The customary nature of use creates an emotional attachment to a place. This emotional attachment is signaled to the landowner through repeated use.\textsuperscript{45} In other words, customary use by the public not only makes each subsequent use

\textsuperscript{41} Bradley R. Schiller, “Essentials of Economics” 215-216 (6\textsuperscript{th} ed. 2007); see Carol Rose, “The Comedy of the Commons, Custom, Commerce, and Inherent Public Property,” 53 U. Chi. L. Rev. 711, 753 (1986) (privatization of roads was considered dangerous because of the risks of holdouts and monopolies).

\textsuperscript{42} Carol Rose, “The Comedy of the Commons, Custom, Commerce, and Inherent Public Property,” 53 U. Chi. L. Rev. 711 (1986).

\textsuperscript{43} Id. 759.

\textsuperscript{44} Id. 753, 757; see also Baker v. Johnson, 21 Mich. 319, 350 (1870).

emotionally more valuable, it also reveals to the landowner the increasing value the public puts on that particular piece of property. The landowner now has market power and would be tempted to hold out. Thus economic theory justifies public provision of space even for uses that are stationary where, as in the case of rising emotional value through custom, the owner acquires market power.

Public provision of streets and sidewalks for use by day laborers to solicit business is justified for similar reasons. Individual day laborers may form emotional attachments to the sidewalk where they’ve been regularly standing for months on end. But that is not the basis of my argument. Rather, it is the fact that day laborers use a particular corner that makes that place increasingly valuable as a place for laborers to find work and for prospective employers to find laborers. Day laborers seek to trade their services for cash, and their prospective employers seek to trade their cash for services. Their trades generate wealth. But these trades cannot take place unless day laborers and employers know where to find each other. That is, they need a market, a place where these trades may be initiated, and they need to know where that market is situated. As more and more people learn that a sidewalk near some home improvement store or truck rental company is the place to go to find day laborers, the more valuable that particular sidewalk becomes. Potential holdout problems that would accompany private ownership of the sidewalk day labor market could be avoided by publicly providing that space.

What about over-use? In the language of economics, shouldn’t we fear that providing an open access sidewalk will lead to negative externalities? In the language of Garrett Hardin, shouldn’t we fear a “tragedy of the commons?” The answer is not necessarily. Sidewalk markets facilitate commerce. As Carol Rose observed, drawing on Adam Smith, commerce is an interactive practice whose exponential return to increasing participation runs without limit. The more who trade, the better. Not only must locations of trade and commerce be held open to the public, but the cost of using such locations should be kept at a minimum, and perhaps borne by the community as a whole.\footnote{Carol Rose, “The Comedy of the Commons, Custom, Commerce, and Inherent Public Property,” 53 U. Chi. L. Rev. 711, 769-770 (1986).} Public provision of streets and sidewalks for day labor markets is supported by economic theory.

Of course this leaves open the question of prioritizing uses. Transportation routes are just as important to commerce as markets. A market is worthless if there is so much traffic congestion that you cannot get there. Likewise transportation routes are worthless if they fail to get you to a market. Whose claim is superior? The day laborer on the sidewalk seeking work from passing motorists, or the passerby whose commute is slowed by the laborer’s presence next to the roadway? In answering this question, a little history may serve as a useful guide.

B. Day Labor History

The present controversy over day labor belies the rich tradition of people using outdoor public space to solicit work. This arose from the simple fact that the demand for labor from certain productive enterprises is highly variable.\footnote{C. Steven West, “Day Labor: A Labor Market Analysis of Temporary Industrial Workers” 8, 55 (Center for Urban and Regional Affairs, 1981).} Casual laborers and
employers alike are looking to find each other at a low cost.\textsuperscript{48} Sometimes this puts the labor market on the street, square, or other public place which is both readily known and accessible to the community as a whole.\textsuperscript{49} 

In fifth century Athens, a part of the agora, a public space for assembly, was set aside as a labor market.\textsuperscript{50} The New Testament of the Bible suggests this was a common practice in ancient times. The Parable of the Laborers in the Vineyard tells the story of a householder who hires day laborers, presumably in a marketplace.\textsuperscript{51} In medieval Europe, journeymen were hired from labor markets in public squares and in front of churches.\textsuperscript{52}

This same practice of public labor markets was brought by European colonists to the Americas. In the late 18\textsuperscript{th} and early 19\textsuperscript{th} century Irish immigrants filled the ranks of day laborers in New York City.\textsuperscript{53} In 1834 a place on city streets was set aside for them as a labor market.\textsuperscript{54} By the 1850s New York day laborers had adopted a practice of lining up daily at the city’s various docks and ports in hopes of getting hired for a half or full day.\textsuperscript{55} Each of these dockside labor markets came to be known as the “shape up.”\textsuperscript{56} This practice endured until charges of widespread labor union corruption led to its being outlawed in 1953.\textsuperscript{57}

Outdoor labor markets were also found in smaller communities. Agriculture has long experienced wide fluctuations in labor demand.\textsuperscript{58} Farmers hired help for short periods, including by the day.\textsuperscript{59} After sharecroppers, who enjoyed long term contractual arrangements with landowners, farm wage laborers were the largest agricultural labor group in the South before World War II.\textsuperscript{60} They were often paid in kind, but when they

\textsuperscript{48} Id.
\textsuperscript{58} Katharine DuPre Lumpkin, “The South In Progress” 45-46 (International Publishers 1940); Rupert B. Vance, “Human Factors in Cotton Culture: A Study in the Social Geography of the American South” 73, 166-67 (University of North Carolina 1929).
\textsuperscript{59} Katharine DuPre Lumpkin, “The South In Progress” 45-46 (International Publishers 1940); Rupert B. Vance, “Human Factors in Cotton Culture: A Study in the Social Geography of the American South” 73, 166-67 (University of North Carolina 1929).
\textsuperscript{60} Rupert B. Vance, “Human Factors in Cotton Culture: A Study in the Social Geography of the American South” 73, 166-67 (University of North Carolina 1929).
were paid in cash, they were paid by the day.61 Agricultural laborers in the South and Midwest were often hired from an outdoor labor market. This was found in such public places as the village main street, town square, and courthouse steps.62

The casual labor market ballooned in the late 19th and early 20th centuries. There was increased demand for temporary labor in agriculture, timber, and railroads, taking workers deep into rural areas.63 But when they were finished working a particular job, casual laborers would return to the city, which constituted their home base.64 There these workers would rent a cheap room close to the rail station, where they would catch a train to their next job.65 Today we are left with the pop culture image of these casual laborers, known as “hoboes,”66 riding the rails when not reveling in town near the train station. Near the station evolved a neighborhood with establishments that catered to the needs of casual laborers.67 The neighborhood became known as the “Main Stem.”68 Among its many establishments, foremost was the private employment agency. Agencies would set up offices in store fronts near one another, in a part of the Main Stem that casual laborers referred to as the “slave market.”69 Jobs were advertised on blackboards or signs posted on windows facing the street, inviting workers to stop and look from the public sidewalk.70

Well-known main stems emerged in cities all over the country. Main stems took root in the Bowery in New York, on Pratt Street in Baltimore, and on South Main Street in Los Angeles, to name just a few.71 But the best known was in Chicago. Its labor market was the subject of study by Nels Anderson, a one-time hobo turned academic, and other sociologists in the early 20th century.72 Their work provides an intimate portrait of

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61 Id.
62 Frank Tobias Higbie, “Indispensable Outcasts: Hobo Workers and Community in the American Midwest, 1880-1930” 12, 52 (2003); Interview by author of James Rosenblatt, one-time farmer in Wilkinson County, Mississippi (October 2007) (relating practice of farm day laborers to wait in the town square of Woodville, Mississippi during the 1950s).
one American city’s experience with outdoor labor markets. With forty railroads radiating out from it, and one half the nation’s population just a single night’s railroad trip away, Chicago became the largest center for casual labor exchange in the country. Lodging houses and inexpensive hotels in its main stem lodged 40,000 to 75,000 men per night. Each year men were placed in 250,000 jobs by 200 private Chicago employment agencies. More than 50 of these agencies catered to casual laborers.

Though hiring was a private enterprise, ample use was made of the public space. Jobs were posted in employment agency windows to be viewed from the public sidewalk and street, which teemed with job seekers. Men looking for work as casual laborers would “parade the streets and scan the signs chalked on windows or smeared over colored posters.” They would “window shop” from the sidewalk before choosing a job. Nor did the employment agents—known as “man catchers”—wait at their desks for prospective laborers to come inside. “For the average small labor agent an office is only used as a place to hang a license. He gets his patrons by standing on the street and soliciting. The other private agents are playing the role of man catcher, and he must do the same if he would succeed.” Some agencies operated out of saloons and restaurants, which were packed with casual laborers. “Because of the crowded condition, most of the ‘placing’ is done on the street, and benches are placed along the sidewalk for the crowds who cannot get it.”

This intensive use of public space for a labor market was not confined to Chicago. Omaha’s main stem had “crowded and busy sidewalks—swarming with migratory workers.” In 1907 one could see at least 1,000 men on the sidewalk there. Men stood in knots outside employment agencies that displayed large signs advertising work positions. By one account, the “sidewalks outside of Minneapolis’s eighteen employment agencies got so crowded during the early summer that men stood ‘so close

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78 Nels Anderson, “The Hobo: The Sociology of the Homeless Man” 5 (1923); see William Edge, “The Main Stem,” 18 (Vanguard 1927) (“Stiffs were standing on the curbs, deciphering the scrawly blackboards behind the windows of the employment agencies.”).
together you couldn’t put a newspaper between their elbows!”85 Not all main stems were big enough to support an employment agency year round.86 But even in their absence, the labor market continued to flourish on the sidewalk. Job seekers would stand about, trading tips with other casual laborers or negotiating directly with prospective employers. During the harvest in turn of the century Hays, Kansas, the farming town of 5,000 swelled with an influx of 1,000 job seekers. “Farmers were there hiring men, standing on the street talking to one man or another.”87 Communities that lacked a main stem as such still had a place that functioned as outdoor casual labor market. One hobo looking for work in Salt Lake City, Utah found it by stumbling upon others just like himself: “The men standing here and there were recognizable.”88

After World War I, mechanization, unionization, and a lengthy pause in infrastructure development caused demand for casual labor to decline.89 For example, by 1925 most of the men on Milwaukee’s main stem were no longer hobos, but rather “steady casuals,” who stayed in the area doing odd jobs three or four days a week.90 The Great Depression sent many unemployed to the Main Stem, hastening its transformation from a home base for casual laborers to a home of last resort for the mostly unemployed. The Main Stem turned into Skid Row.91 The market for casual labor continued to decline after World War II.92 Unskilled non-farm labor as a percentage of all employed workers declined from 12.5 in 1900, to 9.4 in 1940, to 4.8 in 1960.93 Though most would-be casual laborers found stable employment in post-war America, some demand for casual labor persisted. The outdoor labor market continued to be a part of the landscape in many American cities.

Minneapolis is a case in point. In the 1960s, its skid row was home not only to a number of employment agencies, but also to an informal street corner labor market, known as the “slave market.”94 Two decades later the sidewalk continued to be a place where casual workers were recruited. A 1981 study found the office personnel of a private employment agency “taking to the sidewalks to solicit passersby to determine

86 See Nels Anderson, “The American Hobo: An Autobiography” 124 (E.J. Brill 1975) (Ex-hobo Nels Anderson could not remember whether there were employment agencies in Los Angeles’s main stem).
87 Nels Anderson, “The American Hobo: An Autobiography” 98 (E.J. Brill 1975). See also id. at 124 (in Los Angeles’s main stem, “Many men were standing about,” sharing information about work opportunities in agriculture).
their interest in working a temporary job.”

Informal corner labor markets persisted in many other cities as well. Atlanta had one in the early 1980s. This was before that city experienced a large influx of Latin American immigrants in the 1990s and afterward. Back in the 1980s Atlanta’s day laborers were mostly African American men.

This history is not meant to suggest that street labor markets flourished without controversy. Casual laborers long included among their ranks a number of workers who were “homeless,” by which I mean, lacking a fixed abode, leading an impoverished lifestyle, and having weak or non-existent family support. Living a life not structured by work and family, they have been viewed with suspicion by others. When the homeless became numerous and conspicuous in colonial and post-revolution America, some communities responded by enacting vagrancy statutes, which were occasionally enforced to exclude the homeless from a community. After the Civil War, the ranks of the homeless swelled. Some states responded by lengthening jail time for vagrancy, and localities, especially smaller ones, redoubled their efforts to exclude the homeless by running hobos out of town. But over time many communities came to view the homeless as a mere petty nuisance and accepted them, so long as they stayed in their place, in the area of town that became known as the Main Stem.

Community tolerance for the homeless may be measured by enforcement of street order laws, such as ordinances against drunkenness, vagrancy, and disorderly conduct. At the beginning of the 20th century, during the peak of the outdoor casual labor market, arrests for vagrancy dropped substantially. As one observer reported, a Chicago cop could walk down the street in the Main Stem any day and see at least one man who could be arrested on some street disorder charge, such as vagrancy, drunkenness, or begging.

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But in practice only the most conspicuous cases were arrested. The homeless, including those seeking work as day laborers, had a place to go.

After the Main Stem declined into Skid Row, police tolerance for the homeless became less certain. Some commentators have argued that police went on the offensive against disorder in Skid Row, while others contend that the police remained tolerant. Police response likely varied by city and according to pressures to redevelop the area. In either event, even at their most aggressive, police enforcement of street order laws appears to have been aimed at those who posed a risk of serious harm to themselves or others. Those who were merely waiting on the street, whether for work or a handout, were likely to be left alone. At least in one part of town, day laborers were welcome on sidewalks and street corners.

Today’s day laborer is the successor to yesterday’s hobo. Communities once made room for casual laborers hustling business on sidewalks and street corners. This suggests that they can and should do it again.

C. Contemporary Economic and Demographic Forces

Any policy response to the phenomenon of day laborers hustling work from street corners should rest on an understanding of the economic and demographic forces that are driving it. Day labor exists to satisfy a market demand that is not otherwise being satisfied and, more importantly, is a demand that is not likely to go away any time soon. There are a number of forces putting men on the sidewalk waiting for cars to stop and take them to work. Immigration plays only a small part. In other words, even if the flow of illegal immigrants were cut-off tomorrow and all undocumented workers sent home, it is likely that the phenomenon of day laborers would continue. The only difference would be that the day laborer you picked up in front of your local home improvement store would have a legal right to work.

1. Increased Demand for Day Labor

History has witnessed many productive enterprises that have faced great fluctuations in their demand for labor. They have found day labor particularly

During the last boom in day labor, nearly a century ago, these enterprises included agriculture, logging, railroad building, ship loading and unloading, and construction. Mechanization substantially reduced the demand for day labor in all of these industries, except for construction. The failure of mechanization to reduce demand for casual labor in construction was evident as early as the first half of the 19th century. In the 1830s and 1840s New York City experienced a building boom in public works and residential construction, overwhelming the limited number of skilled artisans and leading to the hiring of low wage labor crews. Mechanization of certain aspects of construction allowed contractors to replace skilled artisans with machines operated by low skilled workers.

The recent controversy surrounding day labor has coincided with a boom in construction. From 1997 to 2006, permits for new privately owned housing units averaged 1.3 million per year, representing an increase over the prior ten year period of 34%. Not only were more houses going up, they were getting larger. The median size of privately owned housing units started went from 1660 square feet in 1986 to 2263 square feet in 2006, an increase of 36%. The boom was not limited to construction of new housing. It has also reached existing housing, which has seen substantial renovation activity. The total annual value of additions and alterations to single and multi-family housing units grew from an inflation-adjusted $102 billion in 1986 to $160 billion in 2006, a gain of 57%. In a national survey of day laborers, more than a third reported being hired by construction contractors, one of the two most common employers of day labor.

Day labor further faced increased demand from homeowners, specifically for work in maintenance and home improvement. From 1995 to 2005, the total number of housing units in the United States increased from 109 million to 124 million, an increase of 14%. Over that same period, the median square footage of existing single detached

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115 Id. at 133.
117 Id.
118 Id.
119 Id.
and mobile homes grew from 1686 to 1758, a gain of 4%. During the boom in construction of suburban housing tracts after World War II, Levittown developer William Levitt famously quipped that, “No man who owns his own house and lot can be a communist . . . He has too much to do.” Historically a substantial amount of maintenance and home improvement was performed by the homeowner themselves. But this tradition has been weakened in recent years. This is not only due to increases in the size of housing units. The past decade has witnessed a disproportionate amount of the growth in total housing units occur in the category of condominiums, where maintenance over common areas is typically hired out.

Not only do homeowners have less occasion to do their own work, they also have less time. Increases in workforce participation by women and the length of the workweek for both men and women have left homeowners with less time to work on their homes. Most of these increases began in the late 1970s and early 1980s, and were complete by 1990—only a few years before day laborers on street corners became an issue. If households are busier, they are also wealthier. Real median household income has increased 31% since 1967. Even though some recent years were flat or declining, real incomes in 2006 were 7% higher than they were in 1995. Americans are plowing an increasing portion of their take-home pay into improving their homes. Over the last


127 Id.


129 Id.
decade the U.S. home improvement market nearly doubled in size, to $280 billion.\textsuperscript{130} Home owners and renters are the most common employers of day labor.\textsuperscript{131}

Recent tightening of credit and declines in home values in some over-heated markets represent only a pause in strong activity in home construction and maintenance. The Joint Center for Housing Studies at Harvard University identified a number of factors that promise to help renew demand in the U.S. construction and home improvement market.\textsuperscript{132} Among other things, continued immigration and movement of the echo boomers into their prime housing participation years will ensure a growth in the number of households over the next decade.\textsuperscript{133} Further, the nation’s already large housing stock will continue to age, thereby guaranteeing strong demand for maintenance and renovation work.\textsuperscript{134} The Center projects that over the next decade home improvement spending will increase by 40%.\textsuperscript{135}

2. Continued Dependence on the Automobile

Today’s street corner day labor markets are driven not only by historically high demand for day labor. Day labor markets are being pulled to the street by another powerful force: our continued dependence on the automobile. The automobile has not only revolutionized transportation itself, it has also changed where we live and work. Because so much of day labor work is oriented toward construction and maintaining what we have built to live and work in, the automobile has contributed both directly and indirectly to the emergence of street side markets for day labor. These sidewalk markets exist because of the automobile.

During the day labor’s hey-day a century ago, hobos and other day laborers made ample use of the public sidewalk to find work. There they promenaded, window shopping for jobs offered private employment agencies set up in store fronts. The sidewalk was sometimes the scene of sales pitches and negotiations between employment agents and laborers.\textsuperscript{136} Day laborers’ attention was directed storefront windows and other people on the sidewalk, not to the roadway of the street. Most work was out of town, and transportation to it would have been found at the train station a few blocks away.\textsuperscript{137} Even if a job awaited them on the other side of town, a day labor would likely have reached it by electric trolley. At the turn of the 20\textsuperscript{th} century this was the primary mode of intra-city transportation in the U.S.\textsuperscript{138} The automobile was still only a curiosity.

\begin{enumerate}
\item Id.
\item Id. at 4.
\item Id. at 5.
\item Id.
\item See discussion supra, at notes __ to __.
\end{enumerate}
The Main Stem declined into Skid Row over the same period that the automobile rose to compete with and eventually eclipse the electric trolley. The number of persons per passenger vehicle in the U.S. decreased from 1078 in 1905, to 13 in 1920, to 5 in 1930. By 1970 there were only 2 people for every passenger vehicle. The automobile became the sole mode of transportation for many people. Markets for day labor responded accordingly. Prospective employers came to Skid Row in their cars. Day laborers stood on the sidewalk watching the street and waiting for them to drive by.

Today the automobile is more important that ever. Household vehicle ownership rates continue to rise. Today the number of persons per passenger vehicle in the U.S. has decreased to 1.2. Evidence of our car dependent culture abounds: the interstate highway, garage, motel, gas service station, shopping center. Not only are there more cars, those who have them resist getting too far away from them, if they get out of them at all. No fast food restaurant would think to open a new franchise without a drive through window. Not to be outdone, some casual restaurants that lack drive through windows now take food out to patrons waiting in their cars at the curb. It should not be surprising then that, just like their predecessors, today’s day labor markets continue to emerge on the sidewalk readily accessible to automobile traffic on the street. That is where their prospective employers are waiting for them.

146 Melanie Warner, “Family-Style Restaurants Deliver Food to Cars at Curbside, For Meals that Nobody at Home Had to Cook,” New York Times, section c, p. 1, June 6, 2006 (curbside takeout at casual dining chains has grown about 10% annually over the past 3 years, double the annual rate of their overall growth).
The logic of day laborers looking for work at the curb is further reinforced by the where they go to work once hired. Today’s day laborer is hired most often to work on construction and landscaping jobs in the same city where he resides. That work increasingly takes place in suburban communities, where growth has been exceptional, especially since World War II. These communities are characterized by low population density and tend to be situated on the periphery of the city. These suburbs could not exist without inexpensive transportation, which has been provided by the automobile. Despite the best efforts of public transportation planners, for vast swaths of suburbia, the automobile remains the preferred mode of transportation. Day laborers work to build and maintain the suburbs, which would not exist but for the cheap transit offered by the car.

A car trip might be rendered unnecessary if the day laborer needed by a householder lived down the street. But that is rarely the case. Suburbs have traditionally been characterized by economic homogeneity. Working class day laborers cannot afford to live near many of the suburban homes and office parks where they do their work.

The dominance of the automobile and the creation of class-segregated suburbs have helped bring about street corner day labor markets. Such informal hiring sites for day laborers have emerged in places with easy access for automobile traffic. Some sites have been characterized by a national survey of day labor practices as, “independent.” They tend to be situated on major thoroughfares or near freeways. Even “dependent” sites, which are defined as those located in front of businesses, such as gas stations and home improvement stores, are also likely similarly situated. In our car-centered culture, Home Depot won’t build a store without easy automobile access.

3. Even Aside from the Undocumented, a Ready Supply of Day Labor

Another factor that has lead to the phenomenon of sidewalk day labor markets is a ready supply of workers. These markets could not exist without them. To their

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151 Carolyn Pinedo Turnovsky, “Doing the Corner: A Study of Immigrant Day Laborers in Brooklyn, New York,” 29 (dissertation, City University of New York, 2006) (a New York City street corner where day laborers wait for work is situated in an area that receives little pedestrian traffic but a great deal of automobile traffic).
Detractors, day labor markets are commonly perceived to be the result of illegal immigration. Stop illegal immigration, so the logic goes, and you’ll stop men from hanging out on street corners looking for work. This perception has plenty of intuitive appeal. A national survey of day labor concluded that most day laborers are illegal immigrants.¹⁵⁴ That is, they do not have a legal right to work in the United States. Employers are generally required to verify the employment eligibility of the people they hire, unless they are independent contractors or casual workers performing domestic tasks on a sporadic, irregular, or intermittent basis.¹⁵⁵ Undocumented status is the reason most frequently given by day laborers when asked why they do not have a regular job.¹⁵⁶ Many illegal immigrants lack fluency in English¹⁵⁷ and have little education,¹⁵⁸ further hampering their ability to find employment. Faced with few options, illegal immigrants turn to the sidewalk to look for work as manual laborers.

Taking away illegal immigrants would not, however, eliminate the demand for day labor, or make less convenient the practice of hiring them on the street. It would merely change the identity of who does the work. Given the continuing, yet volatile, demand in construction and home maintenance, there is a persistent need for day laborers. If that need were not satisfied by illegal immigrants, it would be filled by someone else. This is confirmed by history. In early 19th century New York City, day laborers were Irish immigrants, presumably here legally, and African Americans.¹⁵⁹ Later, during the golden age of the hobo day laborer, most of them were native born.¹⁶⁰ This fact is made even more surprising given that this was a time when the immigrant population of the United States was proportionately high.¹⁶¹ Immigrants may have

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preferred to take steady jobs in textile mills, stockyards, and steel plants.\textsuperscript{162} After the Main Stem turned into Skid Row, day labor continued to be dominated by legal residents. Illegal immigration was not an issue.\textsuperscript{163} Now that it is an issue, it bears pointing out that one quarter of today’s street corner day laborers are legal residents.\textsuperscript{164} Apparently, lack of documentation is not the only thing drawing day labor to the street.

\section*{D. The Streets and Suburbs of the Future}

Of course, just because day laborers are on the street because of powerful economic forces, it does not automatically follow that they should be allowed to remain there. Even if critics can be persuaded to separate issues of illegal immigration from day labor, day labor markets still raise other issues that must be addressed. Their use of the street still imposes costs on others, mainly in the form of traffic congestion and visual blight. The presence of day laborers in ex-urban communities has also changed the population of suburban communities. In this section I explore whether this is a future that society should embrace. I conclude that contemporary street corner day labor markets are consistent with our hopes for lively street life and suburban integration. Rather than suppress such markets, they should be embraced.

\textbf{1. We Want More from Our Streets than Just Traffic Circulation}

The presence of day laborers on sidewalks imposes costs on others. They contribute to traffic congestion and are sight some would rather not see. These costs do not lend themselves to easy measurement, handicapping both those who point to these costs as a reason for excluding day labor from the sidewalk, and others who discount those costs and advocate open access for day labor. I have no hard numbers on costs and benefits to offer. Instead, in this section I aim to persuade critics of street side day labor markets to reconceptualize some of the supposed “costs” as “benefits.” This reconceptualization is partly premised on putting traffic circulation in context, both historically and in a contemporary planning movement, the “New Urbanism.” It is also premised in part on understanding the informal order that does occasionally arise among day laborers on the street.

Streets and sidewalks are public spaces. Historically they were used not only for circulation, but also a variety of other activities. At the time of the Civil War, most urban residents lived in row houses. Lacking private outdoor space and facing high

\textsuperscript{162} Roger A. Bruns, “Knights of the Road: A Hobo History” 144 (Methuen 1980).
\textsuperscript{163} Samuel E. Wallace, “Skid Row as a Way of Life” 83-86 (The Bedminster Press 1965) (discussing Minneapolis’ skid row and informal corner day labor market); Michael Harrington, “The Other America: Poverty in the United States,” 25 (Penguin Books 1962) (day laborers seeking work at a public employment agency were Puerto Ricans, blacks, alcoholics, drifters, and disturbed people); C. Steven West, “Day Labor: A Labor Market Analysis of Temporary Industrial Workers” 16 (Center for Urban and Regional Affairs, 1981) (sample of day laborers in Minneapolis, MN found that 53% were Caucasian, 24% were American Indian, and 23% were Black).
transportation costs, residents used the streets to socialize and engage in trade. Children
used the street for play, and pushcart vendors brought their wares to urban housewives. Los Angeles, California is often stereotyped as a car-obsessed city devoid of pedestrian-oriented street life. Today that generalization is unfair. But in late 19th century it was just plain wrong. At that time L.A.’s streets and sidewalks teemed with life:

Vendors sold tamales, popcorn, sandwiches, lemonade, fruit, vegetables, meat and household wares. Street speakers and advertisers shouted from doorways, porches and soap boxes. Businessmen and middle class consumers walked to their office buildings, banks, and department stores. Hobos traded information, procured work, and passed the day. Posted handbills advertised deals and sales, and store windows displayed goods and information. Bootblack and fruit stand operators carved out small niches, and cigar and news stands offered places to congregate. On the street, people and activities overlapped.

The city exercised little control over these street activities. That changed with the arrival of progressive politics in the 1880s, though, as the city began to enact a series of increasingly restrictive regulations on vending and speaking. The stated purpose was to improve traffic circulation. This was plausible. Horse-pulled trolleys were beginning to be replaced by electric trolleys, which, in lowering fares and speeding travel, encouraged the middle class to move to new streetcar suburbs. But these same city restrictions on vending and speaking also rewarded certain special interest groups. The city required that vendors be licensed, and later barred them from operating in certain areas. This stifled business competition and benefited storefront merchants. By the 1930s, sidewalk vending was prohibited throughout Los Angeles.

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166 E.g., Amy Elizabeth Ray, “Welcome Me,” performed by Joan Baez on the album, “Ring Them Bells” (Guardian/Angel 1995) (“Welcome me to the city of angels/Devil prophet still hold my hand/I walk your stillborn streets for hours/Ethnic echoes spitting out their trials”).
168 Id. at 110-111.
169 Id. at 116.
were treated much the same. The city placed restrictions on standing and soliciting on the street. This burdened day laborers but placated nativists, who stereotyped all of these casual workers as unwanted Chinese immigrants.

Similar restrictions developed in New York. That city had regulated the vending of food in the streets since colonial times and street solicitation by day laborers not long afterward. These restrictions were motivated in part by the same anti-competitive and anti-immigrant pressures that later found their way into Los Angeles politics. In the late 19th century, traffic circulation became yet another justification for city control over public spaces in New York. Street regulations multiplied.

But even at the height of the progressive era, street life still had a place in the city, if only in the Main Stem. New York City’s congestion relief measures were aimed at Broadway, not the Bowery. The widespread adoption of Euclidean zoning ordinances by cities across the United States in the 1920s may be viewed as an attack on street life. Those ordinances designated areas to be developed with single family detached homes exclusively and thereby helped create the car suburbs we know today. But these early zoning ordinances still allowed for the construction of apartment buildings and other more dense land uses that encourage the use of streets for socializing and commerce. The aim was not to exclude street life, but merely segregate it and keep it in its place. The Main Stem was left intact. As the Main Stem turned into Skid Row, that benign neglect continued. Especially after World War II, center cities were abandoned in favor of homes in the suburbs. Streets were meant to speed commuters to distant jobs. They were for circulation, not socializing or commerce.

Now tastes are turning full circle. Today many people want more street life, not less. Increasingly calls are made to integrate uses, and get people out of their cars and

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175 Id. at 117.
176 Id. at 116.
178 Kenneth Kusmer, “Down and Out on the Road: The Homeless in American History” 8-9 (Oxford U Press 2002) (in the early 19th century the homeless, many of whom were Irish, were derided by the middle class as foreigners who would not adopt the American lifestyle); Sean Wilentz, “Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850,” 110 (Oxford University Press, 1984) (By the mid-1850s over half of New York City’s male Irish workers were day laborers or cartmen).
into alternative modes of transportation, such as walking. Among the most vocal advocates of this new approach to land use planning are adherents to the “New Urbanism.” The charter of the Congress for the New Urbanism declares:

We advocate the restructuring of public policy and development practices to support the following principles: neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions;

Cities and towns should bring into proximity a broad spectrum of public and private uses to support a regional economy that benefits people of all incomes.

A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use. 182

Long privileged among other uses of public space, automobile circulation is now being called upon to share, if not give up entirely, certain spaces. Rather than speeding traffic circulation, steps are being taken in some places to slow it. Traffic signals, speed bumps, rotaries, and other devices aim to slow down drivers to make the adjacent sidewalks more attractive to pedestrians. 183 As users of the street that would benefit from slower automobile traffic, day laborers would seem to be one group that the new urbanism aims to help. Like the National Forests, which are managed to accommodate a variety of competing and complementary uses, streets and sidewalks should also be the “Land Of Many Uses.” 184

Of course, not all uses are welcome on the sidewalk. The problems of disorder posed by bench squatters, panhandlers, and other street people have been carefully explored by a number of commentators, including Professors Robert Ellickson185 and Nicole Stelle Garnett. Day laborers are occasionally lumped into the same category, and claimed to be a blight on the sidewalk. Some drink alcohol and urinate in public, talk loudly, and interfere with pedestrian traffic. 186 Contrary to the assumption among many that street life among strangers is unavoidably chaotic, there is a substantial amount of informal order among day laborers. In her study of day laborers on a street in Brooklyn, 187

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186 Arturo Gonzalez, “Day Labor in the Golden State,” 3 California Economic Policy 3:1, 12 (2007) (more than 20% of day laborers surveyed in California said they saw another day laborer participate in a crime within the past year).
New York, Carolyn Pinedo Turnovsky found that the workers physically segregated themselves into groups based partly on race and ethnicity, and partly on their level of commitment to day labor.\(^{187}\) Those who looked for work almost daily were known as “Regulars;” those who sought it less frequently were known as “Temps.”\(^{188}\) What disorder appeared on the street was largely instigated by the Temps. They were mostly U.S. citizens who did not rely on day labor as their livelihood.\(^{189}\) Lacking a strong incentive to maintain decorum, they did not bother to try. When they were not sitting, they were playing or making excessive noise.\(^{190}\) Regulars maintained order, at least among themselves. Newcomers would be invited to stand with the Regulars without much scrutiny, and over time acceptance would extend to making referrals for extra work or a roommate.\(^{191}\) These benefits were withheld by Regulars from men that had a reputation for dishonesty or unruliness.\(^{192}\) Regulars actively discouraged men from drinking or doing drugs on the corner.\(^{193}\) They sought to project a professional image to attract employers.\(^{194}\) Day labor is not inconsistent with street order. Real day laborers want order on the sidewalk, and manage to create it among themselves. What disorder does take place is not due to too much day labor, but rather not enough. If the Temps went full time, they would likely clean up their act. In any event, the Regulars should not be tarred by the misconduct of a few.

2. Integrating the Suburbs By Ethnicity, Class, and Gender

Day labor represents a dramatic change to our traditional view of the suburb. Suburban living is partly rooted in nineteenth century industrialization, which separated married couples from each other during the workday. As husbands and work left home, wives became responsible for everything connected to the home. Then home left town. The emergence of the single family detached home outside the central city was promoted by a number of commentators, who urged wives to raise children in a semi-rural setting. Urban areas were viewed as places of business and masculinity. The suburban home, and suburban areas in generally, were considered feminine.\(^{195}\) Early suburbanization was influenced not only by a fashion for gender segregation. A number of people who left the city for the suburbs during the first half of twentieth century sought to distance themselves from urban immigrants and the working class. Accelerating suburbanization in the decades following WWII was also driven by race, as white parents of school age children sought to avoid court-ordered integration of urban public school districts.\(^{196}\)

\(^{188}\) Id. at 32.
\(^{189}\) Id.
\(^{190}\) Id. at 32, 84, 102.
\(^{191}\) Id. at 33.
\(^{192}\) Id.
\(^{193}\) Id. at 33, 103.
\(^{194}\) Id. at 104.
Day labor history from the early part of the 20th century is consistent with this segregated and exclusionary view of the suburbs. Hobos made their home on the Main Stem, not in the suburbs. They waited for work on sidewalks near downtown, not in outlying residential districts. Even though hobos were predominantly white and native, they were still poor and male. 197 Yesterday’s day laborers were kept in their place, away from the suburbs. Today critics of day labor might be heard to argue for the same treatment. Skid Row occupies the same physical space that was once known the Main Stem. Surely contemporary day laborers could hustle work in Skid Row and similar locations in the urban core. Why should contemporary day laborers be allowed to wait on street corners in the suburbs?

The reason lies in a reconsideration of the character of the suburb, especially today. Suburbs were never entirely feminine, white, middle class spheres. As early as the nineteenth century, some suburbs attracted industry, or became home to immigrant and ethnic communities. 198 White middle class neighborhoods had a day time population of peddlers, domestics, gardeners, and other suburban service providers, many of whom were male persons of color or immigrants. 199 During the 1970s and 1980s, women entered the workforce in large numbers, further contradicting the image of the suburban residential neighborhood as a feminine sphere. The suburbs also underwent substantial ethnic and economic change, change that continues today, as recently explained by Professor Nicole Stelle Garnett. 200 Suburbs are attracting minorities and immigrants more than ever before. Minorities were responsible for the greater part of population gains experienced by suburbs in the 1990s, and immigrant population growth in the suburbs outpaced that in cities. 201 Today the nation’s immigrant population is evenly split between urban areas and the suburbs. 202 Many of the most diverse suburbs are home to large Hispanic immigrant populations, 203 the same ethnic group that today comprises the majority of day labor.

The economic relationship between center city and suburb has changed as well. Once a bedroom for jobs and shopping in the center city, the suburb has since become a job center and shopping center in its own right. Most retail and manufacturing jobs are in suburbs. 204 Half as many suburbanites commute to jobs in the center city as commute to jobs in another suburb. 205 As suburbs have become places not only to sleep, but also to work and shop, they have become more dense. Increasingly, the suburban housing stock includes apartments and townhouses. 206 Center cites are likewise undergoing a transformation, if only to become more like the suburbs that threaten to eclipse them. No

197 Cf. Elvin Hatch, “Biography of a Small Town” 125, 132, 135 (Columbia 1979) (describing the community hierarchy of a small town in terms of wealth and land ownership, putting transient laborers at the bottom).
199 Id. at 106-107.
201 Id. at 287, 292-93.
202 Id. at 292-293.
203 Id. at 293.
204 Id. at 295.
205 Id.
206 Id. at 302.
longer for business only, downtowns increasingly market themselves as places to live. Some downtowns are pursuing some the exclusionary strategies of the suburbs of yesterday, however, and it remains to be seen if they will regain the diversity they once enjoyed. But the story in the suburbs is different. Today’s suburbs are the scene of a tremendous mixing. If the suburbs welcome home improvement centers, which attract pick-up truck-driving contractors, plumbers, and electricians, surely the casual laborers such centers also attract should be welcomed as well.

Day laborers do tend to make masculine the street corners where they congregate. While some day laborers are women, the overwhelming majority of them are men. Some might be concerned that day laborers are squeezing out other uses of the public space, namely uses by women. Day laborers are not the only service providers that eschew employment agencies and prefer to deal directly with their prospective employers. Domestic workers do, too. Most domestic workers are women. Yet one rarely sees these women looking for work on street corners. Is this because female domestics have been pushed off the sidewalk by male day laborers? Are men excluding women from public space?

I think the answer is “No.” The reason lies partly in the differing skill set demanded by day labor on the one hand, and domestic work on the other. Day laborers are most often hired for activities in construction and landscaping, activities which can call for substantial physical strength. While a reference from a prior employer might help, a day laborer’s strength may be roughly measured by the prospective employer in a moment’s glance. This is why sidewalk day labor markets function fairly well—an employer can glean much of the essential information without having to get out of their car. Domestics are not hired for their physical strength. Cleaning houses and caring for children demand certain skills, patience, and honesty, qualities that cannot be readily communicated by outward appearance. Street markets for domestic help would likely not flourish even if male day labor markets were completely eradicated. Thus, while day labor markets may be fairly characterized as masculine uses of space, such markets should not be seen as displacing feminine uses. They merely make more intense use of spaces that would be underused, if used at all.

For all the foregoing reasons, the strategy of exclusion pursued by many communities in response to day laborers is not the solution. Day labor markets should be allowed to exist on sidewalks and street sides throughout metropolitan areas, including the suburbs.

IV. The Strategies of Shelterization are Flawed

Rather than simply getting day laborers off the street, many advocate giving them somewhere to go. This has led to the opening of a number of day labor work centers, indoor spaces where day laborers can, at minimum, wait for work out of sight. These centers are supported not only by critics who decry the costs street side day laborers

207 Id. at 303.
208 See id. at 303; Mike Davis, “City of Quartz: Excavating the Future in Los Angeles,” 230-234 (Verso 1990) (Through architecture and police policy, Los Angeles sought to contain the homeless on Skid Row and prevent them from moving into nicer parts of downtown).
impose on others. They are also touted by advocates who worry about the risks faced by
day laborers themselves. Work centers are seen as a way to help day labor.

In this section I discuss the effectiveness of work centers in helping day laborers. I begin by considering the history of similar enterprises with much longer track records, such as public overnight shelter for the homeless, and public and private employment agencies. That history suggests that these programs often failed to help those they were designed to serve. I then turn to our experience with day labor work centers, a number of which have been built across the country in recent years. The results are mixed. Centers may bring greater physical comfort to day laborers and accord them an added measure of respect. But work centers under-perform in terms of job placement and risk turning entrepreneurial day laborers in the dependents. Respect for their profession would be better demonstrated by letting them solicit work from the street.

A. Sheltering the Homeless

Contemporary calls to shelter day laborers bear a striking similarity to earlier pleas to shelter the homeless. A century ago the Main Stem was a home base for the casual laborer, and offered him low cost housing that he could afford. After the Main Stem was transformed into Skid Row, government became more involved in housing the poor. Increased regulation made it difficult either to continue to operate existing low cost housing or build more, and urban renewal destroyed much affordable housing that the working poor would have continued to call home. This drove many poor into government-run shelters.

The experience of Chicago during the Depression was typical. Seeking to manage demand and maintain order, public shelters attempted to identify the deserving and protect them with strict rules of conduct. Shelter life was characterized by a great deal of waiting in line, a lack of privacy, and a lack of outside contacts. The shelters tended to be situated in neglected areas of the city and were viewed as undesirable by the neighborhood, which increased the sense of isolation felt by shelter residents. Men were required to work, but no effort was made to match skills with jobs—they were assigned by lottery. Social workers tried to entertain the residents, by showing movies and organizing outdoor games. They also tried to educate them by offering training classes. Only the movies were well-attended. Other than some young men and a “small group of immigrants who wished to learn English, the men in the shelters were rather

apathetic towards the educational program.” Depression may have partly accounted for this response, but “a large number felt that all they were interested in was a job and that the program bore little relation to this need.”

For those whom these programs were putatively designed to serve, the result was not a happy one. When men first entered the shelters they were eager to keep looking for work on the outside and aspired to moving out of the shelter. But shortly after their arrival, each new shelter resident began a process of “shelterization.” He gradually gives up trying to look for work, assumes the attitude of “dependency,” and accepts his status as a bum. Said one resident: “There’s no life in these shelters.” “All a man in the shelter wants is to be left alone in his misery.” Instead of encouraging independence, shelters fostered dependence.

Outside of the shelters, in what affordable private housing remained, informal support networks continued to thrive. The poor undertook to help each other, mostly through referrals to jobs, private shelter, or medical care. Private housing was often obtained at inexpensive hotels, known as “flophouse hotels” or “cage hotels.” According to one observer, hotel residents seemed tougher than those at the public shelter. Compared to public shelters, the flophouse hotels had better food,

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accommodations, and services. They offered were not overcrowded and had no long
lines. Residents enjoyed more freedom to come and go, and less social stigma.

Recognizing the advantages of private living, Chicago and other cities during the
Depression experimented with providing men who would otherwise have been placed in
a shelter with “outdoor relief.” This meant compensating some men for their work in
cash (as opposed to in-kind, shelter) and leaving it to the men to maintain themselves in a
place of their own choosing. These men were able to return to the community from
which they had come and reestablish the more normal contacts and relationships shelter
life would have forced them to abandon. Employers were impressed with their
attitudes and the men felt pride.

B. Employment Agencies – Private and Public

Employment agencies, both public and private, are a part of the U.S. labor market. Both have had a role in placing day laborers in jobs. But private employment agencies
appear to be preferred to public ones, by laborers and employers alike.

Private agencies have existed in various places since ancient times and emerged in the United States in the early 1800s. These early middlemen specialized in
female domestics and manual laborers. Increasing demand for casual labor in the late 19th and early 20th centuries, brought more work to private agencies. Day laborers
called private agents “labor sharks,” and complained that they were gruff and
discourteous. They preferred the labor shark to the public employment office, though,
“mainly because he serves them better. They hate him for his fees but he gets them the
jobs they want.” But even though private agencies got jobs for many day laborers,

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they did not get them off the street. Laborers still sought work outside in broad daylight.  

What private agencies did do, though, was attract government oversight. A 1912 U.S. Department of Labor investigation found that many private employment agencies were guilty of a variety of abuses, including charging a fee and failing to find work for the applicant, sending an applicant where no work or unsatisfactory work existed, and charging exorbitant fees. States undertook to remedy this by regulating private agencies and establishing public agencies that offered work referrals free of charge to the worker. They got what they paid for. At the height of the hobo era there were three public employment offices in Chicago, none of which was favored by workers for a variety of reasons. First, the agencies were not situated in a place convenient to the workers and did not make job notices visible from the sidewalk. Second, the public agencies were required by law to collect certain information from workers and employers, and both of them preferred to avoid such red tape. Third, public agencies failed to attract the best jobs from employers, who instead used private agencies. Fourth, public agencies made efforts to “follow up” on the job applicant to see how the placement went. This was attention that most hobo workers did not welcome. Unable to compete with the private sector, public employment agencies became welfare agencies.

Since the era of the hobo, private agencies have gone up-market and now devote most of their attention to white collar employment. Many agencies have taken to hiring the casual workers themselves, and “placing” them with their ultimate employer. In doing so these temporary help services, or “temp agencies,” avoid state regulation. Employers have plenty of reason to prefer private agencies over public ones. Rather than first-come, first-served, private agencies assign workers based on their reputation for dependability. They punish workers who walk off the job by making them wait to get paid, not transporting them from the workplace, or cutting them off from future work.

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239 See discussion supra notes ___ to ____.


245 Tomas Martinez, “The Human Marketplace: An Examination of Private Employment Agencies” 38, 74 (Transaction Books, 1976) (90% of the placements made by private agencies are for white collar positions).


assignments.\textsuperscript{249} Even with low-skill labor, employers recognize a difference among the kinds of workers supplied by different firms, and prefer to do business with firms that send dependable and high quality employees.\textsuperscript{250} These services are not provided for free. By the time deductions are made for fees, taxes, and transportation, employment agencies pocket anywhere from 10\% to 50\% of the amount paid by the day laborer’s employer.\textsuperscript{251}

C. Day Labor Work Centers

It is against this historical backdrop that today’s day labor work centers should be viewed. While these work centers come in all shapes and sizes, making generalizations difficult, they share many commonalities. Many of their features are strikingly similar to those found in the homeless shelters and public employment agencies of the past, and suffer from a similar set of drawbacks.

Work centers get day laborers off the street.\textsuperscript{252} Most go beyond that by matching day laborers with employers, often on a first come first served basis.\textsuperscript{253} To assist in wage collection efforts, many work centers require employers to provide certain information before hiring a laborer for the day.\textsuperscript{254} This registration process can take a substantial amount of time.\textsuperscript{255} Some centers also attempt to set a minimum wage.\textsuperscript{256}

\textsuperscript{249} C. Steven West, “Day Labor: A Labor Market Analysis of Temporary Industrial Workers” 45, 51 (Center for Urban and Regional Affairs, 1981).
\textsuperscript{250} C. Steven West, “Day Labor: A Labor Market Analysis of Temporary Industrial Workers” 57 (Center for Urban and Regional Affairs, 1981).
\textsuperscript{251} Samuel E. Wallace, “Skid Row as a Way of Life” 81 (The Bedminster Press 1965) (1960s New York City private employment agencies charged 10\% for a day’s work); Charles Hoch and Robert A. Slayton, “New Homeless and Old: Community and the Skid Row Hotel” 103-104 (Temple University Press 1989) (private employment agencies on Skid Row made deductions for fees, taxes, and transportation, totaling as much as 1/3 to 1/2 the amount paid by the employer); C. Steven West, “Day Labor: A Labor Market Analysis of Temporary Industrial Workers” 79 (Center for Urban and Regional Affairs, 1981) (temporary help services mark-up the price of labor 42 to 102 percent).
Most day laborers do not use work centers, many of them even when they have an opportunity to do so. One reason is the loss of control over work task and employer. Day laborers on the street occasionally refuse work—especially from employers with a reputation for dishonesty. The method of assigning jobs on a first come first served used by many centers induces day laborers to go to work earlier than they would have felt necessary had they been seeking work on the street. At one Los Angeles, California day labor center, the sign-in list is made available each morning at 6:30 a.m. For some day laborers, going to a work center would “feel more like a job.” Some day laborers left jobs in the formal economy to escape mistreatment by their employers. Having won some control over their lives, these street entrepreneurs are not eager to give it up. Some day laborers also mourn the loss of community among “Regulars” that accompanies going to work centers. Their need for social community is heightened, since many of them had left behind families in their home countries.

Lower take-home pay is another reason why most day laborers may avoid work centers. All day laborers spend a substantial amount of time looking for work. But the amount of time varies depending on whether the job seeker is on the street or in a work center. A survey of California day laborers found that, compared to their counterparts on

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260 Interview of Manuel Aguirre, City of Los Angeles, Day Labor Organizer, at Wilshire/Union Day Labor Center, Southwest Corner of Union Ave. and Shatto St. 10/18/08, 9:30 a.m. to 10 a.m.


266 Arturo Gonzalez, “Day Labor in the Golden State,” 3 California Economic Policy 3:1, 10 (2007) (California day laborers look for work full time, but actually work only 23 hours per week).
the street, day laborers who frequent work centers spend fewer hours per week working. This is so even though the time spent working and looking for work combined is essentially the same. Getting a job at a day labor center involves more waiting and less working. Apparently, employers prefer the convenience of hiring day laborers on the street. Just as the drive through window has taken over casual dining, the street side market has taken over the hiring of casual labor.

Even when placed next to home improvement stores, day labor centers can end up being poor places for laborers to find work. A center in the MacArthur Park neighborhood of Los Angeles, California is one example. The center was built by the city in the parking lot of a Home Depot home improvement store. The store faces Wilshire Boulevard, a major 4 lane artery that runs 10 miles from downtown Los Angeles west to the Pacific Ocean. But rather than put the center on that busy street, the center was situated at a side entrance to the Home Depot lot, one block away from Wilshire Boulevard. This side entrance is one that is used by motorists only rarely. On one Saturday morning, there were approximately 20 day laborers in and about the center. Most of them were sitting inside, watching television. The scene was completely different on the other side of the Home Depot parking lot, the part fronting busy Wilshire Boulevard. Cars frequently entered and exited the lot from Wilshire. This was where more than two dozen day laborers chose to stand and solicit work. Like the public shelters and employment centers of the past, this labor center had not been built in the place where workers would best be able to get work.

Many day labor centers serve as vehicle for the delivery of social services. I do not dispute that many day laborers could use a helping hand. Lacking command of English, unaware of their legal rights, and hesitant to call upon legal authorities for assistance, many day laborers are vulnerable to hardship and abuse. By physically gathering day laborers in one place, day labor centers make it easier to help them. One objection to this approach is that it results in an uneven distribution of services. Day laborers are not the only ones who might benefit from free clothing, food, and legal advice. Dishwashers, janitors, and garment workers are similarly vulnerable to hardship and abuse, yet they do not enjoy the benefits of centers dedicated to them. Instead of tying assistance to vocation, it would be better to give assistance according to need.

A second objection to day labor centers has to do with the impact on the state of mind of the day laborers. Centers do succeed in according day laborers a measure of respect. They are a tacit admission on the part of the community that day laboring is an honorable profession. But they also risk turning working men into dependents. Waiting for one’s turn to work is demoralizing. As one study of employment agencies for day laborers observed a century ago: “[T]he applicant must sit in idleness day after day, fearing to be absent lest he lose his position. . . . To a small extent these agencies attract vagrants to the cities in which they are, and they may become loafing centres, unless this

268 Id.
269 Melanie Warner, “Family-Style Restaurants Deliver Food to Cars at Curbside, For Meals that Nobody at Home Had to Cook,” New York Times, section c. p. 1, June 6, 2006 (curbside takeout at casual dining chains has grown about 10% annually over the past 3 years, double the annual rate of their overall growth).
In trying both to find work and to distribute relief, day labor work centers risk doing neither very well. Some communities have closed their day labor work centers. Occasionally this has been because of concerns that a center might be held liable for injuries suffered by day laborers. Others have closed due to perceptions that the costs of running a center did not justify the benefits.

D. Street Side Day Labor Markets

Day laborers and their employers have long sought to avoid a middle man, be it public or private. Yesterday’s day laborer—the hobo—preferred to deal directly with his employer. He went into town to find work without using an employment agency if at all possible. The superiority of the street to an agency is demonstrated by a study of casual labor in Minneapolis, Minnesota in the 1960s. There an employment agency placed only 23 men in 16 hours. A nearby informal day labor market on a street corner placed 50 in a single morning.

This practice continues today as employers shun work centers and continue to look for the day laborers on their own. Day laborers are only too happy to meet them, and are hardly babes in the wood. Laborers have developed informal mechanisms to help avoid getting ripped off by employers. Prevailing wages are well known, and negotiation on price is discouraged. Repeat dealings and word of mouth help ensure that bad employers get the reputation they deserve. At one informal hiring site in New York, day laborers refused to work for a man who was known to be dishonest. Most of today’s day laborers have been hired repeatedly by the same employer. This is not a new phenomenon. Similar practices existed among day laborers in the past. Employers know whom they can trust. So do day laborers.
Conclusion

Both the strategies of exclusion and shelter suffer from a number of defects. These defects and the history of day labor point to a third way, one that accepts outdoor labor markets and gives day laborers a place on the street. It is time to revive the Main Stem. That work-centered district developed largely accordingly to market forces in the days before government undertook substantial regulation of the use of land and the streets. With today’s overlay of zoning ordinances and traffic controls on top of long-lived ordinances against public disorder, giving day labor a place in the sun will require some cooperation on the part of municipal authorities.

Cities should look to see where informal day labor markets have emerged in their communities already. Much as the first attempts at zoning largely codified existing land use practice, cities should consider making the law fit actual practice. Zoning ordinances will have to be examined and amended, as appropriate, to ensure that a restriction, say, against selling goods and services on city streets, does not bar day laborers from marketing themselves on the sidewalk. Restrictions on solicitation of otherwise legal work would have to be lifted entirely. Enforcement of ordinances against vagrancy, loitering, and solicitation, as well as traffic rules against stopping and standing, would be need to be relaxed. Neighboring businesses, once appropriate for the area, might suffer. But new businesses, ones that thrive on having a number of hungry and thirsty workers lining the street outside would do well to relocate there. The community as whole would benefit from sanctioning this use of the public space.

Communities not persuaded by this analysis and still bent on exclusion may still have their strategy challenged in court. Courts will have opportunity to consider the policy arguments suggested by this paper. They may become relevant to the analysis of the “alternative channels” for expression under the first amendment. Or they may be germane to an inquiry into the potential conflict between local law and a state traffic code provision empowering localities to enact traffic rules only for the “public interest.”

At the other end of the spectrum, cities that embraced a shelter strategy should reconsider. There is no dispute that unskilled laborers are vulnerable and need help. But that need has little to do with standing on street corners and much more to do with being poor. Surely their needs can be served through existing channels to help the needy. Tying aid in the form of food, education, and referral services to occupation seems unduly narrow and likely to lead to inconsistent levels of service being delivered to otherwise similarly situated claimants. Day laborers, as day laborers, should be allowed to stand on their own.