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improper for the public space in question. Subways are not for prolonged sleeping, and neither is Bryant Park in midtown Manhattan.

As this discussion suggests, the magnitude of pedestrians’ harms from bench squatting increases with the inelasticity of pedestrian demand for the space in question. The spectacular and uninvited views from Lafayatte Park and Palisades Park, for example, make them suitable for quick tourist stops and brief romantic strolls. However, decorous his behavior at any instant, a chronic bench squatter in a congested space that is designed for rapid turnover may be an egregious violator of an implicit time limit. A retired executive who wishes to read the whole of Proust should not be permitted to sequester the public bench with the best view of the White House. The varied enforcers of street norms, including nonstate entities,77 can benefit from having a test for identifying chronic street misconduct. Law, particularly the traditional law of public nuisances, suggests some formulations that any of these enforcers could use.88

1. A Proposed Prima Facie Case

Public-nuisance law, a stepchild of the far more analyzed private-nuisance law,89 deals in part with pervasive harms, usually minor at any instant, that persist for a long duration to the injury of the general public.90 Unless a


87. See infra text accompanying notes 141–49.

88. The Coase Theorem offers the reminder that in conceiving what would be possible for victims of a nuisance to do the offender to cease. For example, a restaurateur might hire a chronic panhandler to move to another location. While the Coase insight is invaluable in showing how a system has some answers for choosing to entitle the public to be free of, any nuisance, plausibly, rather than an entire panhandlers in their trade. First, as a matter of corrective justice, the violation of social norms should not become an avenue for profit. Second, post-Coase analysis requires attention to asymmetries in transaction costs. When the vast majority of members of a community honor a norm prohibiting certain behavior, it is administratively cheaper to punish the few violators of the norm than to pay the many who comply with it. More concretely, if a restaurateur had to buy off would-be panhandlers, many lesser people might flock to the restaurateur to dominate a deal of this nature. An advantage of deferring unforeseeable behavior with penalties is that fewer transactions need be closed. See Robert C. Ellickson, Order Without Command: Social Norms, Social Organization, and the Law, 62 COLUM. L. REV. 1, 49 (1962).

89. See RESTATEMENT (SECOND) OF TORTS § 821C & (1979) (on special injury); id. § 821C(2)(b) (on actions by public officials or private persons); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 90 (5th ed. 1994) (describing how state can seek court order to make or cease criminal prosecution).

90. See 3 PROSSER, supra note 4, at 5–10, 25–49 (drawing on nuisance law to inform analysis of problems of public officers). But see Homer L. Daniel, "Disgust" and Punishment, 59 YALE L.J. 881, 901–09 (1947) (invoking Feinberg’s argument that reactions of disgust are culturally defined and therefore should be beyond reach of criminal law).

91. See Robert Altmann & Val Washington, The Misunderstood Law of Public Nuisance: A Comparison with Private Nuisance Twenty Years After Brown, 54 AM. U.L. REV. 359, 363–74 (1995) (standard of liability in public-nuisance action is strict; see also RESTATEMENT (SECOND) OF TORTS § 821B (1979) (advocating strict liability for activity declared to be public nuisance by statute). Instead of being judged by a strict-liability test, individual patterns of street behavior might be subjected to cost-benefit analysis, such as the Lorain-Notmand form for negligence withstands at United States v. Carroll Towing Co., 159 F.2d 69 (2d Cir. 1946), 173 U.S. 177 (1908). See RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 155–67 (4th ed. 1992). If the street behavior were to cease, would pedestrian values their gains more than the nontransitory costs of the infringements? A decisive drawback of this negligence approach is that actual attempts to quantify costs and benefits can be opinions, unacceptably costly to carry out, or both.

In economics, cost-benefit analysis involves application of the Kalioke-Hicks criteria. See id. at 13–15. Especially because many panhandlers and bench squatting have been demonstrated, the outcome of a cost-benefit calculation may turn on how the entitlements are originally allocated. On the general point, see Richard S. Markovits, Duncan’s Do Not: Cost-Benefit Analysis and the Determination of Legal Entitlements, 36 STAN. L. REV. 1109, 1118–08 (1984) (discussing intertemporal in cost-benefit analysis).
The goods of special classes