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# Constitutional Law--Vagrancy Ordinances--Their Future and Alternatives

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**Constitutional Law—Vagrancy Ordinances—  
Their Future and Alternatives**

Following their arrest under the vagrancy ordinance of Dunn, North Carolina, Richard and James Smith brought an action in the district court to enjoin the enforcement of the ordinance and requested a declaration of its invalidity. The Dunn ordinance provided, without definitions, that tramps, vagrants and persons under suspicion found with no visible means of support should not be allowed on the streets or other public places. On motion for summary judgment, the district court *held* the ordinance was unconstitutional as vague and overly broad, restraining freedom of movement, subjecting persons to arrest and detention on suspicion, requiring compulsory employment, creating a crime of the status of indigency and imposing sanctions on the poor which do not apply to the wealthy. *Smith v. Hill*, 285 F. Supp. 556 (E.D.N.C. 1968).

The *Hill* case is one of several recent decisions<sup>1</sup> which evidence the increasing susceptibility of vagrancy laws to constitutional attack and to possible declarations of invalidity. In light of this rising uncertainty concerning the future of the vagrancy laws, it becomes necessary to examine the value of these laws and also to examine some alternative devices in handling this particular problem.

Implicit in an examination of the vagrancy concept in the United States is a discussion of the origin of the vagrancy laws, their purposes, and their treatment in the American courts. The crime of vagrancy originated in fourteenth-century England with the passage of the first Statute of Labourers,<sup>2</sup> which restricted the movement of unemployed, landless persons in an apparent attempt to ensure an adequate supply of cheap labor in the aftermath of the Black Plague.<sup>3</sup> At common law, itinerants without means of support were punished as vagrants.<sup>4</sup> Almost all of the American states early

<sup>1</sup> *E.g.*, *Baker v. Binder*, 274 F. Supp. 658, (W.D. Ky. 1967); *Alegata v. Commonwealth*, 353 Mass. 287, 231 N.E.2d 201 (1967).

<sup>2</sup> 23 Edw. 3, c. I (1349). For a full discussion of the history of the vagrancy law in England and its development in America see Foote, *Vagrancy-Type Law And Its Administration*, 104 U. PA. L. REV. 603 (1956); Sherry, *Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision*, 48 CALIF. L. REV. 557 (1960).

<sup>3</sup> 20 STAN. L. REV. 782 (1968).

<sup>4</sup> See Note, *The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality*, 37 N.Y.U.L. REV. 102, 104-07 (1962).

enacted statutes embodying some variation of this common-law offense, and most vagrancy laws still closely resemble these statutes.<sup>5</sup>

Traditionally two views have been advanced to support the existence of vagrancy laws. The first is that vagrancy should be proscribed because vagrants have a propensity to engage in criminal behavior. It is argued that there is a valid social interest in seeking protection from harm through punishment and prevention of crime. This philosophy of the vagrancy statutes was adopted by the court in *District of Columbia v. Hunt*,<sup>6</sup> "A vagrant is a probable criminal; and the purpose of the statute is to prevent crimes which may likely flow from his mode of life." However, some commentators have

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<sup>5</sup> In the United States, vagrancy is a statutory offense in almost every jurisdiction. Some states, including West Virginia, do not define vagrancy and therefore the common-law definition is in force: "going about from place to place by a person without visible means of support, who is idle, and who, though able to work for his or her maintenance, refuses to do so, but lives without labor or on the charity of others." *Ex Parte Hudgins*, 86 W. Va. 526, 529, 103 S.E. 327, 328 (1920). For an examination of the law of West Virginia with respect to the crime of vagrancy, see *Huntington v. Salyer*, 135 W. Va. 397, 63 S.E.2d 575 (1951). In *Salyer*, the West Virginia Supreme Court of Appeals declined to determine the constitutionality of a municipal vagrancy ordinance, but held it was inconsistent with the vagrancy law of the state (common-law definition) and thus invalid under W. VA. CODE ch. 2, art. 2, § 10 (v) (Michie 1966). West Virginia did have a vagrancy statute in force at one time (Acts 1917, ch. 12, § 2). However, in 1920, the West Virginia Supreme Court of Appeals declared this statute unconstitutional as an unreasonable restraint on liberty and an imposition of involuntary servitude. *Ex Parte Hudgins*, 86 W. Va. 526, 103 S.E. 327 (1920).

It has been observed that the traditional vagrancy statute has been enlarged to include over thirty categories. While the traditional vagrant was an idler or vagabond, now the vagrant can be a drunk, prostitute or window peeper. In addition to the enlarged scope of the vagrancy statutes, other status crime statutes have been created, which include such categories as public enemies, communists, and homosexuals. Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 HARV. L. REV. 1203, 1206 (1953). See Note, *The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality*, 37 N.Y.U.L. REV. 102, 109 (1962) [hereinafter cited as Note, *Vagrancy Concept Reconsidered*].

<sup>6</sup> 163 F.2d 833, 835 (D.C. Cir. 1957). Vagrancy statutes, "being the exercise of the police power, are generally looked upon as regulatory measures to prevent crime rather than as ordinary criminal laws which prohibit and punish certain acts as crimes." *People v. Belcastro*, 356 Ill. 144, 148, 190 N.E. 301, 303 (1934). In *Perkins, The Vagrancy Concept*, 9 HASTINGS L.J. 237, 253 (1958), it is stated that "society recognizes that vagrancy is a parasitic disease, which if allowed to spread, will sap the life of that upon which it feeds. To prevent the spread of the disease, the carrier must be reached. In order to discourage and, if possible, to eradicate vagrancy, our Legislature has enacted a statute defining vagrant persons and penalizing them according to its terms. We see no reason why this cannot, or should not, be done as a valid exercise of the police power." Also it is stated that "[i]n metropolitan centers . . . the vagrancy law is one of the most effective weapons in the arsenal of law enforcement, and if the officer's use of this weapon should be seriously impaired the security of the citizen would be grievously weakened." *Id.* at 252-53.

challenged this "breeding ground" premise,<sup>7</sup> and recently the Court of Appeals of New York, in invalidating the New York vagrancy statute, took the position that conduct which has been demonstrated to have no more than a tenuous connection with the prevention of crime and the preservation of public order can not be termed criminal.<sup>8</sup>

Even if the theory that vagrants are more likely to engage in criminal activity could be proven, the question arises whether the propensity to commit crimes is of itself a sufficient justification for applying criminal sanctions. In *Robinson v. California*,<sup>9</sup> the United States Supreme Court stated that punishment for mere propensity to commit an offense can, in many instances, be called cruel and unusual. The requirement that some action be proven is solidly established even for offenses most heavily based on propensity, such an attempt, conspiracy and recidivist crimes. The requisite action is easily found in other crimes of propensity (carrying concealed weapons, possessing burglary tools, etc.), but it is often argued that the crime of vagrancy lacks this action. This argument is rebutted, however, by one writer who distinguishes between the gist of the vagrancy offense and the reason for inflicting punishment. He points out that the gist of the offense is the condition or status of being a vagrant, just as the gist of the offense of conspiracy is membership in the unlawful combination. However, the reason for

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<sup>7</sup> These commentators point to scientific studies which are available purport to show little relationship between poverty and serious criminal conduct. While one study showed that persons arrested for vagrancy have a high rate of recidivism, this recidivism is limited to other vagrancy or drunkenness offenses. Even those who support the "breeding ground" theory admit that it does not breed serious criminality. The vagrant's criminal conduct is for the most part limited to minor offenses. European studies have also shown that vagrancy offenders are repeatedly convicted for vagrancy, but not for other criminal conduct. Foote, *supra* note 2, at 628. See Kinberg, *On So-Called Vagrancy; a Medico-Sociological Study*, 24 J. CRIM. L.C. & P.S. 552 (1933). For general studies on the problem of vagrancy, see N. ANDERSON, *THE HOBO* (1923); W. DAWSON, *THE VAGRANCY PROBLEM* (1910); H. GILMORE, *THE BEGGAR* (1940).

<sup>8</sup> *Fenster v. Leary*, 20 N.Y.2d 309, 229 N.E.2d 426, 282 N.Y.S.2d 739 (1967). The vagrancy concept has been used for many purposes including: (1) to harass reputed criminals, (2) to justify an otherwise illegal arrest, (3) to arrest for suspicion, (4) to arrest for investigation, (5) to round up a certain class of known criminals (e.g. prostitutes) and (6) to validate an otherwise invalid search and seizure. McClure, *Vagrants, Criminals, and The Constitution*, 40 DEN. L.C.J. 314, 320 (1963). It has been suggested that are not legitimate uses of the vagrancy law and are, furthermore, violations of the letter and spirit of the vagrancy law as originally conceived and enacted. *Id.* See Lacey, *supra* note 5, and Sherry, *supra* note 2.

<sup>9</sup> 370 U.S. 660 (1962).

punishment is the misconduct which caused that condition.<sup>10</sup> If vagrancy is thought of as a condition describing a certain pattern of behavior, its proscription may be more easily justified.

The absence of a vagrancy provision in the proposed official draft of the Model Penal Code lends support to the criticism of the propensity theory. The most relevant section in the Model Penal Code makes it a crime for a person to loiter or prowl in an unusual place or manner or at an unusual time "under circumstances that warrant alarm for the safety of persons or property in the vicinity."<sup>11</sup> This section differs from Tentative Draft No. 13 in that the basis of the offense was changed from justifiable "suspicion" that the actor was engaged or about to engage in crime, to justifiable "alarm" for the safety of persons or property. The American Law Institute deemed this change necessary to save the section from attack and possible invalidation as a subterfuge by which the police could arrest and search without probable cause.

The second view supporting vagrancy laws is that, regardless of any propensity to commit crimes, vagrancy itself is bad and should be proscribed. It is argued that there is a social interest in encouraging the idle and indigent to seek employment and thus contribute to the general social and economic good. While this is a legitimate object of attention, it has been questioned whether the imposition of short jail sentences effectively encourages the idle to seek employment.<sup>12</sup> Also questioned is the legitimacy of imposing criminal sanctions to effect the elimination of undesirable pests.<sup>13</sup>

<sup>10</sup> Perkins, *supra* note 6, at 258-60.

<sup>11</sup> MODEL PENAL CODE § 250.6 (Proposed Official Draft 1962). Unless impracticable, a peace officer is required to afford the actor the opportunity to dispel any alarm by requesting identification and explanation of his presence and conduct.

<sup>12</sup> Quite the opposite result may be effected since arrest and conviction for vagrancy may render such persons unemployable altogether. 20 STAN. L. REV. 782 (1968).

<sup>13</sup> Hall, *The Law Of Arrest In Relation To Contemporary Social Problems*, 3 U. CHI. L. REV. 345, 369 (1936). The vagrancy law is useful in the city "clean-up" campaign. It is used to sweep the streets and public areas of drunks, tramps, streetwalkers and loafers. It also provides a means to deal with unwanted persons such as the mentally incompetent, the aged, the alcoholic, and the juvenile troublemaker. Conviction for vagrancy allows the magistrate's court to place in detention all types of persons for lack of a more convenient or practical manner in which to handle problems which appear to have no immediate solution. Foote, *supra* note 2, at 631 (this article provides a comprehensive study of the vagrancy law and its application in Philadelphia, Pennsylvania).

While this nuisance problem is a legitimate object of attention, it may be argued that it is not the proper object of criminal sanctions. "The economic

The view that vagrancy itself is bad may gain some support when the offensiveness of the vagrant's style of life is compared with the offensiveness of other crimes such as lewdness, indecency and obscenity (offenses against morality and decency). Notwithstanding the truth of the propensity theory, a possible reason (leaving aside the question of justification) for the vagrancy offense is that the mere presence of vagrants engenders a fear among persons that they and their property are in danger. It is this fear which makes vagrancy most offensive.

To determine whether social interests in proscribing vagrancy are being satisfied, it is necessary to examine the treatment of the vagrancy laws in the American courts. Courts in the past have generally rejected constitutional challenges to vagrancy laws in summary fashion.<sup>14</sup> However, in a series of recent cases, vagrancy statutes in several jurisdictions have been overturned on a variety of constitutional grounds, including vagueness, violation of due process, and equal protection.<sup>15</sup> Probably the strongest constitutional argu-

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purposes which once gave vagrancy a function no longer exist, and the philosophy and practices of welfare agencies have so changed relief methods that a criminal sanction to enforce an Elizabethan poor law concept is outdated." *Id.* at 649-50. The elimination of this problem is certainly a valid objective, but it is doubtful that the use of criminal sanctions will be of value in attaining it. Intermittent imprisonment is not a very useful method of caring for or rehabilitating the inhabitants of skid-row. 20 STAN. L. REV. 782 (1968). [A] short term in the county workhouse where all kinds and conditions are huddled pell-mell, with work of the meanest character has no beneficial effect upon the shiftless." Lisle, *Vagrancy Law; Its Faults And Their Remedy*, 5 J. CRIM. L.C. & P.S. 498, 511 (1915). The rate of recidivism in vagrancy is convincing evidence that the traditional "get tough" attitude accomplishes little or nothing towards solving the problem. Douglas, *Vagrancy And Arrest On Suspicion*, 70 YALE L.J. 1 (1960). Such problems might be better resolved through social welfare and rehabilitation measures. Note, *Vagrancy Concept Reconsidered*, 37 N.Y.U.L. REV. 102 (1962). In line with this reasoning, the court in *Fenster* held inappropriate the use of any criminal penalties to effectuate such public interests advanced by the state. *Fenster v. Leary*, 20 N.Y.2d 309, 229 N.E.2d 426, 282 N.Y.S.2d 739 (1967).

<sup>14</sup> In *State v. Gaynor*, 119 N.J.L. 582, 197 A.360 (1938), the court defined the vagrancy statute as a police regulation to prevent crime in the future rather than as a means of punishing past or present conduct. In *Lewine v. State*, 110 N.J.L. 467, 166 A. 300 (1933), it was stated that the vagrant was a type of nuisance, and that it was the undeniable duty of the state to arrest those persons who would commit crime. The court further stated that to deny the state this right was to question its right to punish the crime itself.

<sup>15</sup> In *Baker v. Binder*, 274 F. Supp. 658, 662 (W.D. Ky. 1967), the Kentucky vagrancy statute and several municipal ordinances were declared unconstitutional. The district court stated that the statutes were an affront to the due process clause of the Constitution of the United States by encouraging arbitrary arrests and convictions. The Supreme Court of Massachusetts in *Alegata v. Commonwealth* 353 Mass. 287, 231 N.E.2d 201 (1967), held that the Massachusetts vagrancy statute was unconstitutional since it fur-

ment against most vagrancy offenses is that they are too vaguely defined to satisfy the requirements of law imposed by the fourteenth amendment.<sup>16</sup> Although the United States Supreme Court has not yet considered the constitutionality of criminal statutes directed toward the status of vagrancy,<sup>17</sup> it has given some indication of how it might view the vagrancy statutes. In *Connally v. General Construction Co.*,<sup>18</sup> the Court declared that “[a] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” In addition to the vagueness question, the vagrancy laws also raise other problems such as an imposition of a penalty based on indigence,<sup>19</sup> an imposition of involuntary servitude,<sup>20</sup> a violation of the commerce clause,<sup>21</sup> an imposition of cruel and unusual punish-

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nished a convenient tool for discrimination by prosecution officials against particular classes. See also *Fenster v. Leary*, 20 N.Y.2d 309, 229 N.E.2d 426, 282 N.Y.S.2d 739 (1967). For a more detailed discussion of vagrancy statutes and due process see 9 WM. & MARY L. REV. 1162, 1167 & n.28 (1968).

<sup>16</sup> *Supra* note 3, at 790.

<sup>17</sup> In *Hicks v. District of Columbia*, 383 U.S. 252 (1966), the Supreme Court had an opportunity to consider this question, but upon rehearing, a previously granted writ of certiorari was dismissed as improvidently granted. In a dissenting opinion, Mr. Justice Douglas declared that the broad reach of the vagrancy concept is patent and that the provision of the vagrancy statute is too vague to meet the safeguarding standards of due process of law in this country. He also stated that “I do not see how economic or social status can be made a crime any more than being a drug addict can be.” *Id.* at 257.

<sup>18</sup> 269 U.S. 385, 391 (1926). In *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939), it was declared that “[i]n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.” In *Winters v. New York*, 333 U.S. 507, 540 (1948) (dissenting opinion), it was stated that the vagrancy statutes are not fenced in by the text of the statute or by the subject matter so as to give notice of the conduct to be avoided. In *Cox v. Louisiana*, 379 U.S. 536, 572 (1965), it was declared that “government by the moment-to-moment opinions of a policeman on his beat is not constitutional.”

<sup>19</sup> *Supra* note 3, at 785. In *Griffin v. Illinois*, 351 U.S. 12, 17 (1956), the Supreme Court broadly asserted that “[i]n criminal trials a State can no more discriminate on account of poverty than on account of religion, race or color.” Thus, strong rational justification should be required for vagrancy statutes that directly impose criminal penalties on the basis of indigence. Note, *supra* note 3, at 786. In *Edwards v. California*, 314 U.S. 160, 184 (1941), it was stated that “a man’s mere property status, without more, cannot be used by a state (or a municipality) to test, qualify or limit his rights as a citizen of the United States.”

<sup>20</sup> *Supra* note 3, at 786.

<sup>21</sup> Making itinerancy an element of the offense tends to inhibit the free movement of persons from state to state. Other measures restricting the interstate movement of indigents have been held to violate the commerce clause or the right of interstate travel. *United States v. Guest*, 383 U.S. 745 (1966); *Edwards v. California*, 314 U.S. 160 (1941).

ment,<sup>22</sup> and an infringement of the right against self-incrimination.<sup>23</sup> Vagrancy laws have also experienced difficulty when applied and enforced against activity protected by the Bill of Rights.<sup>24</sup>

In view of the preceding discussion, the status of the vagrancy laws appears questionable. The susceptibility of these laws to a possible Supreme Court declaration of invalidity necessitates some thought as to a more stable alternative. In formulating an alternative, an effort should be made to accommodate more effectively the interests of the state, while at the same time to provide a maximum protection of individual rights. The immensity of the problems involved evidences the lack of a simple solution.

Recent Illinois legislation may provide some of the important steps toward a possible alternative to the vagrancy laws. In completely eliminating the vagrancy concept, the new Illinois Criminal Code imposes sanctions only when there is clear and definite proof of the commission of specific criminal acts.<sup>25</sup> It is contended that the interests of both society and the individual are more effectively served by punishing specific acts when they occur rather than by punishing a present status in anticipation of criminal conduct.<sup>26</sup> Since seemingly no factual foundation has been established support-

<sup>22</sup> *Supra* note 3, at 787-88. In *Robinson v. California*, 370 U.S. 660 (1962), the Supreme Court invalidated, as imposing cruel and unusual punishment, a California statute penalizing narcotic addiction. However, in *Powell v. Texas*, 392 U.S. 514 (1968), it was held that chronic alcoholism is no defense to a charge of being intoxicated in public. It was stated that the appellant was convicted, not for being a chronic alcoholic, but for being drunk in public, and thus, as distinguished from *Robinson*, was not being punished for a mere status. *Id.* at 532.

<sup>23</sup> Many vagrancy statutes require the suspect to give a good account of himself. It is questioned whether the suspect's refusal to supply incriminating answers should be the basis for a vagrancy conviction. *Miranda v. Arizona*, 384 U.S. 436 (1966), requires the police interrogator to inform the suspect of his right to remain silent, while the common vagrancy statute commands the suspect to speak. This inconsistency may require the elimination of the subsequent use of the suspect's statements as evidence against him. *Supra* note 3, at 790.

<sup>24</sup> In *Baker v. Binder*, 274 F. Supp. 658 (W.D.Ky. 1967), civil rights demonstrators sued in a federal court for declaratory relief against the enforcement of certain state and municipal vagrancy statutes and ordinances. The Court held unconstitutional vagrancy statutes combining loitering, idleness, and indigence elements, holding them vague and grossly susceptible of overreaching federal constitutional guarantees.

<sup>25</sup> ILL. ANN. STAT. ch. 38, § 35-1 (1961), repealing ILL. REV. STAT. ch. 38, § 270 (1874). See conduct-criminality provisions formally covered under typical vagrancy provisions: ILL. ANN. STAT. ch. 38, § 28-1 (gambling), § 11-14 (prostitution), § 26-1 (disorderly conduct), § 11-19 (pimping), § 11-16 (pandering) (1961).

<sup>26</sup> Note, *Vagrancy Concept Reconsidered*, *supra* note 5, at 133.

ing the proposition that society's interest in preventing crime has been furthered by the proscription of the vagrancy status,<sup>27</sup> perhaps adherence to the concept of "conduct criminality" would be desirable. Proponents of this concept contend that under properly drawn conduct statutes, the social interest of crime prevention is more effectively accommodated. Under this approach, only those members of the vagrancy status group actually engaging in criminal conduct would be incarcerated. Also, it is argued that the punishment for specific conduct violations can be applied commensurate with the degree of the offense.<sup>28</sup>

Individual rights might also be better protected through strict reliance on "conduct criminality." In support of this contention, three reasons are offered: first, statutes based on conduct provide satisfactory criteria for the identification of the criminal and also give the individual adequate notice of the consequences of specific conduct; second, suspicion causation and the arbitrary attribution of criminal responsibility is replaced by a clear causal relation between the proscribed conduct and the resulting harm; third, tangible standards amendable to effective judicial supervision are provided by "conduct criminality." Under this approach, selective enforcement and arrests without merit are more easily revealed since there is a clear delineation of the grounds for arrest and conviction.<sup>29</sup>

In addition to adherence to the "conduct criminality" concept, the recent case of *Terry v. Ohio*<sup>30</sup> may provide another step toward

<sup>27</sup> *Id.* at 119. Traditionally, crimes are defined as acts or omissions, and it is usually stated that an act or omission is a necessary element of a crime. It is argued that vagrancy is an exception to the foregoing statement, since it is not dependent upon an act or omission but only upon one's certain condition or character. Lacey, *supra*, note 5, at 1203. *But see* Perkins, *supra* note 6, at 258-60.

<sup>28</sup> Note, *Vagrancy Concept Reconsidered*, *supra* note 5, at 134.

<sup>29</sup> *Id.* at 135.

<sup>30</sup> 392 U.S. 1 (1968). In *Terry*, an experienced police officer had observed two men repeatedly walking past a store window and returning to an "observation post." They were briefly joined by a third man, once more commenced their ritual after his departure, and finally walked off to rejoin him. Suspecting that the men were "casing" the store for an armed robbery, the policeman approached them, identified himself, and asked their names. When the men "mumbled something," the officer grabbed petitioner Terry, spun him around and patted down the outside of his clothing. Feeling a pistol in Terry's coat pocket, the officer seized it and then patted down the other two men, discovering another weapon. Terry and the other armed man were arrested and convicted of carrying concealed weapons. The Supreme Court, in affirming the conviction over petitioner's objection of an unreasonable search, held that the on-the-spot police response involved in the

a more satisfactory solution of the problems created by the vagrancy laws. While an arrest on pure suspicion<sup>31</sup> may encounter constitutional difficulties, the United States Supreme Court recently held in *Terry* that where a reasonable prudent police officer is investigating suspicious conduct and is warranted in believing that his or others' safety is endangered, he may make a reasonable search for weapons of the person believed to be armed and dangerous, regardless of whether he has had probable cause to arrest that individual for a crime or whether he is absolutely certain that the individual is armed. The Court concluded that the government's interest in control and prevention of crime and the interest of the individual policeman in protection from attack by suspected armed individuals whose conduct he is legitimately investigating are sufficient to justify a limited search for weapons.<sup>32</sup> It was recognized that the evidentiary standard necessary to justify an intrusion as a reasonable one, of which probable cause is one example, will be determined by a balancing process and will vary according to the respective strength of the government's interest in initiating the search and the individual's interest in seeking protection from the particular intrusion.<sup>33</sup>

In light of the *Terry* decision, the way has been potentially cleared for a new set of flexible police responses to problems of crime control.<sup>34</sup> The existence of this new avenue of crime prevention is significant in that it presents a voluntary or possibly involuntary alternative to the vagrancy laws, depending upon their future treatment by the courts. Since the vagrancy problem may outlive the vagrancy laws, the alternatives provided by the conduct criminality concept and the *Terry* decision should be given much consideration.

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stop and frisk situation is not the type of activity governed by the probable cause standard of the warrant clause of the fourth amendment. See *The Supreme Court, 1968 Term*, 82 HARV. L. REV. 63, 199 (1968).

<sup>31</sup> Douglas, *supra* note 13, at 13.

<sup>32</sup> *The Supreme Court, supra* note 30 at 179.

<sup>33</sup> *Id.* at 181.

<sup>34</sup> *Id.* at 184.