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Introduction

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HOMELESSNESS

INTRODUCTION

Kim Hopper, the medical anthropologist who in the early 1980s conducted the pioneering research into the plight of America's homeless, has often said that much contemporary descriptive work on homelessness is "rhetoric rich but data poor." If that is only arguably true in the anthropological and sociological spheres, it is unalterably true in the legal arena. Typically, legal theories advancing the rights of the homeless poor have been lodged in intuitive notions of equity and little more. The court's entire legal analysis in the seminal *Callahan v. Carey*¹ case, the New York suit that first recognized the right to shelter, was contained in a single sentence footnote.² This issue of the *New York Law School Human Rights Annual* is a first step in formulating a scholarly basis for what civilized people everywhere should consider as "minimal rights."

There is little genuine debate over the causes that have left up to three million Americans homeless during this economic boom time of the mid-1980s. Simply put, in cities, suburbs and rural areas throughout the United States, the supply of affordable housing for poor people has dried up. With an inelastic demand for the survival commodity of housing exceeding the supply, there just is not enough affordable housing to go around.

1. *Callahan v. Carey*, N.Y.L.J., Dec. 11, 1979, at 10, col. 4 (N.Y. Sup. Ct.).

2. *Id.*

In such a market, the only law that has a broad and meaningful application is that of Charles Darwin.³ Social Darwinism predicts quite plainly what happens when the demand for a survival need surpasses the available supply. First, a competition is sparked for the available goods. This competition will be won by the strongest and lost by the weakest. The losers in this desperate struggle for housing become, by definition, the homeless. By and large, American law provides few checks on this competition. The result is preordained: the weakest of our neighbors fall out of the housing market and take to a canny improvisation of human living on city streets, abandoned buildings, in cars, parks, train stations and a host of other public places, refuges limited only by the reaches of human imagination.

A profile of the uncompetitive groupings in American society defines with some precision the categories of people who are now homeless. As history edges through the 1980s, the majority of homeless Americans may eventually come from that most defenseless group—children. Nearly a quarter of America's children now live below the poverty line.⁴ That means, by definition, that 25 percent of the nation's youngsters live in households with incomes below what the federal government defines as the bare minimum required for subsistence.⁵ In New York City, 40 percent of the children fit this category.⁶ There is no surprise that homelessness and hunger now are both epidemic among children.

Besides the children, of course, there are many other homeless Americans. Again, their profiles explain why they lost in their individual battles for housing. The homeless include the parents of young children, usually women with poor educations and few job skills. An entire generation of young men and women have been squeezed out of a dwindling post-industrial job market. They are uneducated and untrained for technological or service industries, and may never—without assistance—gain the wherewithal for productive labor. With no income from work, they cannot—predictably enough—compete for

3. See generally R. HOFSTADTER, *SOCIAL DARWINISM IN AMERICAN THOUGHT* (1950).

4. See generally 1980 U.S. CENSUS, U.S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS.

5. The Federal Government has defined the poverty level for a family of four as being those families with a yearly household income of below \$10,989.00 *Id.*

6. According to the 1980 U.S. Census, *supra* note 4, of the 1,391,981 persons living below the poverty level in New York City, 551,533 are under 18 years of age.

housing. Instead, they join the ranks of the homeless on the streets and in squalid emergency shelters.

Perhaps most indecent has been the continuous refusal of society to lend a hand to the chronically mentally ill who comprise some 20 percent of America's homeless. Mentally ill people do not yearn for the liberty of hunger or frostbite, but they are frail and uncompetitive. It is axiomatic that they will be unsuccessful at competing in a tight housing market, yet they have been abandoned to compete with other poor Americans for what remains of low-income housing. Deinstitutionalization of mental health care was a great legal, moral, economic and pharmaceutical triumph of the 1960s and 1970s. The failure to ensure that communities received not just former patients but also resources to aid the fewer patients, is the great legal and moral shame of the 1980s.

HOUSING

As with Tolstoy's unhappy families, every homeless person or family has travelled their own tortured and heartbreaking path to the streets. But the one common denominator for all these people, be they single mothers with children or young men who left high school illiterate, is that they have no housing. Each homeless person needs a place to live. The market forces of gentrification swept many poor people out of central city housing in the early 1980s. But more insidious has been the near-total abdication of the federal government's role in supporting the creation of housing for the poor. For over four decades, there was broad based, bi-partisan recognition in the White House and the Congress, that the private housing market was not capable of providing enough dwelling accommodations for the poor. As a consequence, presidents as diverse as Dwight Eisenhower and Lyndon B. Johnson aggressively supported federal programs to create, or to stimulate the creation of, low-income housing. In the first five years of the Reagan Administration, however, there has been a radical repudiation of those programs. Some \$20 billion in federal housing expenditures have been cut, and new federal monies for building housing for the poor are not foreseeable. The result, again predictably, is mass homelessness.

Still, the war against homelessness in America continues to gain momentum. Members of the United States Senate and the

House of Representatives have joined in sponsoring omnibus legislation entitled "The Homeless Persons' Survival Act of 1986" that would appropriate some \$4 billion to provide both emergency relief and long-term solutions, primarily housing, to homelessness.⁷ In state courts around the country, attorneys are advancing new rights of the homeless, typically based on state law. In the absence of low-income housing, much of this litigation is centering around rights to shelter and other survival needs. It is on the margin of survival that these cases are being fought, and the articles in this issue of the *Human Rights Annual* provide ammunition for these skirmishes.

Many of the leading advocates for the homeless from across the United States have contributed articles to this issue. Many of the authors are already accomplished litigators active in the representation of homeless people. As a body, this issue of the *Human Rights Annual* offers both historical perspective on homelessness and an implicit call to legal action on behalf of the homeless.

David R. Woodward's stirring, and at times, playful discussion of the variety of avenues for advocates, is a useful primer on the interplay among the strategies of litigation, politics, theater and media. Referring to the unleashing of cockroaches in the halls of Congress, Mr. Woodward concludes, "cockroaches and TV cameras work better against contemporary dragons than lances and suits of mail." Cockroaches may work better than injunctions too, yet Mr. Woodward points to the utility of legislatures and the courts to secure relief for the homeless poor.

Michael O'Connor, a respected legal services lawyer long active with the Chicago Coalition for the Homeless, reviews the recent enactment by a handful of state legislatures of relief measures and longer-term housing initiatives for the homeless. Mr. O'Connor proposes new ways to secure state funds for housing programs that actually work.

Arlene S. Kanter, a veteran attorney with the Washington-based Mental Health Law Project, offers a scathing indictment of the abandonment by government of the homeless mentally ill. She outlines the use of litigation to force state governments to provide community based care, including housing, to chronically

7. See Homeless Persons' Survival Act, S.2608, H.R. 5140, 99th Cong., 2d Sess. (1986) (Introduced into both houses of Congress on June 26, 1985 by Sen. Leland).

mentally ill homeless persons.

Professor Peter Margulies of New York Law School offers a precise analysis on how to avoid many of the legal pitfalls in providing these supportive living arrangements to the mentally ill.

Douglas Lasdon, the director of Harlem's Legal Action Center for the Homeless, reviews the competing considerations in applying constitutional standards in police searches of persons in shelters.

Finally, Lawrence Appleby and Prakash N. Desai, in the next volume of the *Human Rights Annual*, focus on what they call the "social disconnectedness" of the homeless mentally ill. They offer a somewhat provocative analysis of what homeless mentally ill people need, focusing on their therapeutic needs, rather than on their poverty. Drs. Appleby and Desai agree, though, that "the primary need not only for the homeless, but for the chronically mentally ill, as a whole, is a wide array of supportive living arrangements."

The articles here are unmistakably and unequivocally partisan. They are written by advocates for the homeless for advocates of the homeless. The guiding principle of this issue is that of the National Coalition for the Homeless: decent shelter, sufficient food and affordable housing are fundamental rights in any civilized society.

The *Human Rights Annual* of New York Law School is an appropriate forum to disseminate means of enforcing the legal rights of the homeless. For two years now, homeless children have slept night after night on the floors of a New York City welfare office because there was no room for them in either New York's housing market or in municipal shelters. That welfare office has been the scene of repeated official abuse of needy children by the New York City government. It's become a symbol of society's abandonment of children.

That office, where children cry, is directly across Church Street from New York Law School. May the readers of this volume use it as a tool in soothing the cries of some of those children.

Robert M. Hayes

