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### The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time

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## THE LAWYER AS ABOLITIONIST: ENDING HOMELESSNESS AND POVERTY IN OUR TIME

FLORENCE WAGMAN ROISMAN\*

“We see dimly in the Present  
what is small and what is  
great,  
Slow of faith how weak an arm  
may turn the iron helm of  
fate,  
But the soul is still oracular; amid  
the market’s din. . . .”<sup>1</sup>

Homelessness and poverty are “formidable institutions which appear[] to be . . . invulnerable” and “could never be abolished.”<sup>2</sup> Ending homelessness and poverty are said to be “economically unfeasible.”<sup>3</sup> People who seek to end homelessness and poverty are “fringe figure[s],”<sup>4</sup> “very remote from the

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\* Professor of Law, Indiana University School of Law-Indianapolis. For stimulating presentations and responses to this and other contributions to this volume, I thank the participants in the symposium sponsored by *The Saint Louis University Public Law Review* and the ABA Commission on Homelessness and Poverty. This article is very much a preliminary work, unworthy even to be called “notes toward” an agenda for continued reform; I hope that it will stimulate further thought, discussion, and exchange of views. I am grateful to Professor Sidney Watson, editor of this collection, for encouraging me to participate in this symposium and begin this assessment; to Mary Ellen Hombs, for making me see the connection between the abolitionists and the campaign of which she has been a leader; to Jonathan D. Asher, for very thoughtful criticism; to Terri Murry-Whalen for excellent research assistance; to the ABA Commission on Homelessness and Poverty, which provided support for that assistance; and to Mary R. Deer, for outstanding secretarial and other aid. All errors and inadequacies are, of course, mine.

This article is dedicated to the memory of Gary Bellow, who enabled and inspired thousands of lawyers to battle effectively for justice for poor people and constantly admonished us to fight for fundamental change.

1. JAMES RUSSELL LOWELL, *THE PRESENT CRISIS* (1844), *reprinted in* 1 *AMERICAN POETRY: THE NINETEENTH CENTURY* 683-84 (Library of America 1993). This poem furnished the title for *The Crisis*, the Journal of the National Association for the Advancement of Colored People (NAACP). See MARY WHITE OVINGTON, *BLACK AND WHITE SAT DOWN TOGETHER: THE REMINISCENCES OF AN NAACP FOUNDER* 67 (1995).

2. See *infra* note 17.

3. See *id.*

4. See *id.*

mainstream,”<sup>5</sup> “a powerless and marginal handful”<sup>6</sup> of reformers, “without influence or position, poor and little known, strong only in their convictions and faith in the justice of their cause,”<sup>7</sup> “a very small minority”<sup>8</sup> that is “despised, scorned, and actively opposed.”<sup>9</sup> Their campaign seems “absurd.”<sup>10</sup>

Acknowledging this, I nonetheless urge that lawyers focus on abolishing homelessness and the cause of homelessness: poverty. I use the word “abolition” deliberately, to make the connection to the battles against slavery in the nineteenth century and for civil rights in the twentieth century.<sup>11</sup> I urge this focus not only to inspire those who battle against homelessness and

5. *See id.*

6. *See id.*

7. *See infra* note 17.

8. *See id.*

9. *See id.*

10. *See id.*

11. At its founding, the National Association for the Advancement of Colored People often was referred to as the “new abolitionist movement.” *See* CHARLES FLINT KELLOGG, *NAACP: A HISTORY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: 1909-1920*, at 90, 139 (1967) (referring to “the new abolition movement, which had as its goal the completion of emancipation”). There were in fact many connections between those who had advocated the immediate abolition of slavery and those involved in the early days of the NAACP. Among the principal founders and early leaders of the NAACP were Oswald Garrison Villard, grandson of William Lloyd Garrison, and Moorfield Storey, who had been secretary to abolitionist Senator Charles Sumner. *See id.* at 5-6 (regarding the Garrison and Villard families); WILLIAM B. HIXSON, JR., *MOORFIELD STOREY AND THE ABOLITIONIST TRADITION* 8-11, 99 (1972) (“Storey, as secretary to Sumner, absorbed the humanitarian concerns and the moralistic approach to politics that characterized the Conscience Whigs of Massachusetts.”). Others’ “lives embraced the two abolition movements.” *See* KELLOGG, *supra* at 91 (discussing Fanny Garrison Villard, the second William Lloyd Garrison, Francis Jackson Garrison, and Albert E. Pillsbury). Joel Springarn, a crucial leader of the new NAACP, deliberately “reached back in time to resurrect the spirit of nineteenth-century Abolitionism, the only major movement in American history which approximated the NAACP’s ideal of equal rights and fair treatment for black Americans. . . . Beginning with the first New Abolition campaign in 1913, Springarn embraced the courage and determination of the nineteenth-century Abolitionists with a fervor which rivaled that of Garrison and Phillips.” B. JOYCE ROSS, *J.E. SPRINGARN AND THE RISE OF THE NAACP, 1911-1931*, at 25-26 (1972). There were other, deliberate ties between the two movements. *See, e.g.*, KELLOGG, *supra* at 120 (“To further the tie between abolitionism and the new movement, the Boston. . . branch [of the NAACP] was organized with fifty-six members, including the majority of the sons and daughters of the most noted New England abolition leaders.”).

Later in the twentieth century, when students and others lent important new support to the civil rights movement in the 1960’s, they too were linked to the abolition movement. *See* HOWARD ZINN, *SNCC: THE NEW ABOLITIONISTS* (1965); Howard Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, in *THE ANTISLAVERY VANGUARD: NEW ESSAYS ON THE ABOLITIONISTS* 417, 446 (Martin Duberman ed., 1965) (“a successor to the abolitionist: the sit-in agitator, the boycotter, the Freedom Rider of the 1960’s”); *id.* at 450 (“The movement for desegregation today [before 1965] has all the elements of the abolition movement: its moral fervor and excitement, its small group of martyrs and mass of passive supporters, its occasional explosions in mob scenes and violence.”).

poverty with the prospect of ultimate victory, but also because defining the relief one seeks is critically important to determining what relief one will achieve.<sup>12</sup>

As “impregnable,”<sup>13</sup> ineradicable, and intractable<sup>14</sup> as homelessness and poverty seem today,<sup>15</sup> so impregnable, ineradicable, and intractable did slavery seem in the nineteenth century and segregation in the twentieth.<sup>16</sup> As marginalized, powerless, and quixotic as seem those who fight against homelessness and poverty today, so marginalized, powerless, and quixotic did the abolitionists appear in the nineteenth century and the civil rights workers in the twentieth. Indeed, each of the statements that begins this article was made, not of homelessness or poverty or segregation, but of human chattel slavery in the United States.<sup>17</sup> Just as the “powerless and marginal handful” of

12. See Daniel M. Cress & David A. Snow, *The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing*, 105 AM. J. SOC. 1063, 1100-01 (2000) (concluding that the success of organizations seeking relief for homeless people depends significantly upon “articulate and coherent diagnostic and prognostic framing”). “Diagnostic framing is important because it problematizes and focuses attention on an issue, helps shape how the issue is perceived, and identifies who or what is culpable, thereby identifying the targets or sources of the outcomes sought; prognostic framing is important because it stipulates specific remedies or goals for the [organization] to work toward and the means or tactics for achieving these objectives.” *Id.* at 1071.

13. See *infra* note 17.

14. See *id.*

15. See John O. Calmore, *A Call for Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1950 (1999) (“We cannot eliminate poverty; we cannot really move very many out of poverty.”).

16. See WILLIAM LEE MILLER, ARGUING ABOUT SLAVERY: THE GREAT BATTLE IN THE UNITED STATES CONGRESS 15 (1996) (“Thinkers and statesmen and leaders and realistic politicians of all stripes and attachments believed that American slavery could not be ended – not by deliberate human action.”); JOHN EGERTON, SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH 30-33 (1994) (describing the South’s “ironclad system of segregation” and the political power of those who maintained it).

17. See MILLER, *supra* note 16, at 9 (“Slavery had become, by the second quarter of the nineteenth century, an immense, rooted institution. American slavery, many believed. . . could never be abolished.”) (emphasis in original); *id.* at 502 (“formidable institution. . . never could be abolished”); *id.* at 454 (“impregnable”); *id.* at 9 (“apparently invincible,” “formidable. . . impossible to eliminate”); *id.* at 502 (“American slavery in 1835 was a formidable institution which appeared to be. . . invulnerable. It could never be abolished”); *id.* at 10 (“emancipation by government action was economically unfeasible”); *id.* at 36 (abolitionists were regarded as “fanatics”); *id.* at 352 (abolitionist leaders were “fringe figure[s]”); *id.* at 53 (“very remote from the mainstream”); *id.* at 65 (“powerless and marginal handful”); *id.* at 69 (“without influence or position,” their endeavor “seemed absurd”); *id.* at 76 (“very small minority that was despised, scorned, and actively opposed”).

Of course, in some places some abolitionists were respected members of the community even in the early years. See, e.g., Richard L. Aynes, *The Antislavery and Abolitionist Background of John A. Bingham*, 37 CATH. U. L. REV. 881, 930 (1988) (In Cadiz, Ohio, “there were active antislavery and abolitionist advocates who were not outcasts, but rather prominent members of

abolitionists witnessed the immediate, unconditional end of slavery, and the quixotic, idealistic reformers of the twentieth century saw the end of de jure segregation,<sup>18</sup> so should success come to those who will battle now not simply to ameliorate but to eliminate homelessness and poverty in the United States.

I respect and honor any action taken by anyone to alleviate the suffering of a person who is homeless, hungry, or otherwise enduring the evil effects of poverty. Immense energy is devoted, by volunteers and paid workers, to feed, shelter, and clothe poor people, to provide health care and other essential services to them, to protect them from the ravages of the criminal “justice” system, and otherwise to succor them in various ways. All of this is admirable, but it is not enough. Time, thought, and energy also must be dedicated to reforming the economic, social, political, and cultural structures that allow homelessness and poverty to exist. And lawyers have skills that are especially useful for this work.<sup>19</sup>

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society.”). In general, however, it was not until “after the outbreak of the Civil War [that] abolitionists were transformed almost overnight from despised fanatics to influential and respected spokesmen for the radical wing of the Republican party.” JAMES M. MCPHERSON, *THE STRUGGLE FOR EQUALITY* vii (1964).

*See also* 1 JAMES FORD RHODES, *HISTORY OF THE UNITED STATES FROM THE COMPROMISE OF 1850 TO THE FINAL RESTORATION OF HOME RULE AT THE SOUTH IN 1877*, at 58 (1906) (“Good society turned the back upon the abolitionists. . . The churches were bitterly opposed to the movement”); Charles Sumner’s Eulogy for Thaddeus Stevens, delivered in the U.S. Senate (December 18, 1868), *in* EDWARD BELCHER CALLENDER, *THADDEUS STEVENS: COMMONER* 200, 201 (1882) (speaking of Josiah Quincy, Joshua Giddings, John Quincy Adams, and Stevens, Sumner said: “All of these hated slavery, and labored for its overthrow. On this account they were a mark for obloquy, and were generally in a minority.”).

18. *See, e.g.*, MILLER, *supra* note 16, at 29 (“the new abolitionists. . . were not powerful. . .”). In 1834, a mob attacked the home of abolitionist Lewis Tappan and gutted homes, churches, and businesses owned by blacks; in 1835, a “respectable” mob in Boston seized and bound William Lloyd Garrison “and paraded him through the streets,” and a mob in Utica, New York, prevented the “disgrace” of having an abolitionist meeting in that city; in 1837, abolitionist preacher-editor Elijah Lovejoy was killed by a mob in Alton, Illinois. *Id.* at 17, 77-78. In 1836, “the support for abolition was miniscule; the abolitionist orators were being stoned and mobbed even in the North; the poll results (if polls had existed in those days) would have shown very meager support for trying to abolish slavery even in the District of Columbia, and overwhelming detestation personally for those obnoxious abolitionists, who tried to force people to think about subjects they did not want to think about. They didn’t have any support.” *Id.* at 120-21. In 1836, “[a]lmost everybody denounced the abolitionists; it was a politically safe position.” *Id.* at 143. “Certainly the abolitionists after 1831 would be subjected to the most severe and insistent and constant derogation, of every kind, which to some extent continued into history-writing in the twentieth century.” *Id.* at 182.

With respect to the twentieth century civil rights workers, see, e.g., David Benjamin Oppenheimer, *Kennedy, King, Shutlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. Rev. 645 (1995).

19. I do not at all mean to suggest that lawyers should control such work, or that their contributions are the most important. I suggest only that lawyers have important roles to play in such efforts. For discussions of ways in which lawyers may participate in such movements, see

This article presents some thoughts about that effort. Part I outlines ways in which the battle against homelessness and poverty is like the battles against slavery and segregation. Part II shows that solutions to the problems of homelessness and poverty are not more radical than solutions to slavery and segregation. Part III considers what special contributions lawyers might make to the abolition of homelessness and poverty.

#### I. THE BATTLE TO ABOLISH HOMELESSNESS AND POVERTY IS LIKE THE BATTLES TO ABOLISH SLAVERY AND SEGREGATION

If I may do so without being disrespectful, I want to suggest that homelessness and poverty are, for our era, the equivalent of slavery and segregation: institutions that blight and stunt human life, causing misery, illness, and death.<sup>20</sup> Indeed, the battle against homelessness and poverty is in several ways a continuation of the movements to abolish slavery and de jure and de facto segregation.

First, homelessness and poverty disproportionately affect the same kinds of people for whom the nineteenth and twentieth century abolitionists fought: people of color, predominantly African-Americans and Latinos.<sup>21</sup> The

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Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988) [hereinafter *To Learn and Teach*]; Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994) [hereinafter *Collaborative Lawyering in the Field*]; GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1996) and material therein cited, particularly at 1100 n.3.

20. See, e.g., JONATHAN KOZOL, *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* (1988) (describing the lives of homeless families); ELLIOT LIEBOW, *TELL THEM WHO I AM: THE LIVES OF HOMELESS WOMEN* (1993) (describing the lives of homeless women). For the health implications, see J.R. Hibbs et al., *Mortality in a Cohort of Homeless Adults in Philadelphia*, 331 NEW. ENG. J. MED. 304, 306 (1994) (homeless people are sicker and have an age-adjusted mortality rate almost four times higher than that of the general population); S.W. Hwang et al., *Causes of Death in Homeless Adults in Boston*, 126 ANNALS INTERNAL MED. 625, 626 (1997) (average age at death among a cohort of homeless people in Boston was forty-seven years); Jon V. Martel et. al., *Hospitalization in an Urban Homeless Population: The Honolulu Urban Homeless Project*, 116 ANNALS INTERNAL MED. 299, 300 (1992) (homeless people utilize more health care resources and require more acute care than do non-homeless people); Thomas P. O'Toole et al., *Utilization of Health Care Services Among Subgroups of Urban Homeless and Housed Poor*, 24 J. HEALTH POL'Y & L. 91 (1999) (summarizing these studies); COMMITTEE ON HEALTH CARE FOR HOMELESS PEOPLE, INSTITUTE OF MEDICINE, *HOMELESSNESS, HEALTH, AND HUMAN NEEDS* 141 (1988) (concluding that "the fundamental problem encountered by homeless people—lack of a stable residence—has a direct and deleterious impact on health").

21. See INTERAGENCY COUNCIL ON THE HOMELESS, *HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE: Summary*, at 15 (1999) (40% of homeless clients are black, 11% "Hispanic," 8% Native American, 41% non-Hispanic whites). For variations in different studies, with percent non-Hispanic white ranging from 85% to 17%, see Martha R. Burt, *Demographics*

problems that beset African-Americans were most obviously problems of political freedom, but also were economic problems, and the economic problems were not addressed effectively. The original abolitionists knew that their battle was incomplete unless the freed slaves were accorded economic redress—hence, the famous “40 acres and a mule,” recognized as necessary but never provided.<sup>22</sup> The NAACP’s original “emphasis . . . on civil and political rights of Negroes to the exclusion of their economic problems was to set the tone of the new organization for many years to come.”<sup>23</sup> In 1966, Dr. King admonished that “America’s greatest problem and contradiction is that it harbors 35 million poor at a time when its resources are so vast that the existence of poverty is an anachronism.”<sup>24</sup> Dr. King’s movement for economic justice, symbolized by the Poor People’s March, was frustrated by his death in Memphis, where he had gone to support striking black sanitation workers.<sup>25</sup>

That the battle against homelessness and poverty is part of the earlier struggles was acknowledged by the National Council of Churches and other religious leaders recently when they issued a “covenant to overcome poverty.” The covenant declares that “just as some of our religious forebears decided no longer to accept slavery or segregation, we decide to no longer accept poverty and its disproportionate impact on people of color.”<sup>26</sup>

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*and Geography: Estimating Needs, in PRACTICAL LESSONS: THE 1998 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH 1-4, 1-5 (Linda B. Fusburg & Deborah L. Dennis eds., 1999) (concluding that “African-Americans are significantly overrepresented among homeless people compared to the general population”).*

*See also* Karl E. Klare, *Toward New Strategies For Low-Wage Workers*, 4 B.U. PUB. INT. L.J. 245, 259 (1995) (“The demographic composition of low-wage work is neither gender, nor race neutral. Women and minority group members of both sexes are considerably more likely to be low-wage earners than [are] white males.”).

22. *See* ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877*, at 70-71 (1988) (In 1865, General Sherman issued Special Field Order No. 15, granting black families 40 acres of land in parts of South Carolina, and offering to lend Army mules); *id.* at 159-63 (lands restored to former owners); *id.* at 245-46 (legislative attempt to restore land to blacks rejected); *see also* CLAUDE F. OUBRE, *FORTY ACRES AND A MULE* (1968); and EDWARD L. JONES, *FORTY ACRES AND A MULE: THE RAPE OF COLORED AMERICANS 28-53* (1994).

23. KELLOGG, *supra* note 11, at 15; *but see id.* at 35 (“Throughout its existence the Association made repeated attempts. . .to secure admission of Negroes to unions on a basis of equality with white workers, but without much success.”); *id.* at 131 (members “were not so interested in legal disabilities as in economic opportunities.”); DAVID LEVERING LEWIS, *W.E.B. DUBOIS: BIOGRAPHY OF A RACE* 393, 419, 423 (1993) (regarding Dr. DuBois’ concern with “economic aspects of race prejudice”).

24. DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 533 (1986).

25. *Id.* at 536 (“King’s most pressing concern was how he and the movement could pursue the economic justice issues which increasingly preoccupied him.”).

26. Gustav Niebuhr, *Christians Ask Renewed Attack on Poverty*, N.Y. TIMES, Feb. 17, 2000, at A14; Call to Renewal, *Covenant to Overcome Poverty*, available at <http://www.calltorenewal.com/covenant.html> (last visited May 31, 2000).

A second similarity is that each struggle challenges widely-held views about private property. Those who urged an end to holding human beings in chattel slavery were confronted by the argument that the property rights of slaveholders had to be respected.<sup>27</sup> Part of the opposition to the civil rights movement was the argument that the owners of restaurants, hotels, department stores, and housing had the right to serve, house, accommodate, employ, and do business with whomever they chose.<sup>28</sup>

Efforts to ameliorate homelessness and poverty, too, often are met with arguments based on a broad conception of property rights. The arguments are that services for homeless people should not locate near homes and businesses whose owners fear reduced property values and, more generally, that money should not be redistributed from wealthier people to enable every human being to live decently. To challenge homelessness and poverty means to challenge a system of private property and distribution that makes many people, including many of those who read these words, quite comfortable.

A third element common to the three campaigns is that each is fundamentally a moral crusade. It may seem now that the immorality of slavery and segregation are evident, but there were powerful arguments when these issues were salient that slavery and de jure segregation were positive goods.<sup>29</sup> Even in this era of considerable indeterminacy about morality, a strong case can be made for the immorality of withholding available sustenance from at least children and other categories of people understood to

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27. See MILLER, *supra* note 16, at 10 (quoting Abraham Lincoln in 1854, referring to “two thousand million of dollars, invested in this species of property. . .this immense pecuniary interest”); *id.* at 11 (pointing out the financial interest in slavery of the northern textile industry as well as the south, and that slavery “had fundamental ties to other industries—cotton, rice, indigo, and tobacco,” among others).

28. See, e.g., MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, at 310 (1994) (stating that when the NAACP Legal Defense Fund “was first asked to defend the participants [in the 1960 sit-ins], [Thurgood] Marshall ‘stormed around the room proclaiming. . .[that] he was not going to represent. . .students who violated the sacred property rights of white folks. . .’”). One may infer a touch of irony here.

29. See, e.g., Paul Finkelman, *Thomas R.R. Cobb and the Law of Negro Slavery*, 5 *ROGER WILLIAMS U. L. REV.* 75 (1999) (discussing Thomas R.R. Cobb: Georgia attorney, law professor, scholar, and one-time reporter for the Georgia Supreme Court, who “insisted on the justice and morality—the essential rightness—of slavery”); *id.* at 76 (Cobb’s treatise, *THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA*, argued “that slavery was consistent with American law, good public policy, Christian morality, and the natural order of things.”); see also RHODES, *supra* note 17, at 81 (describing the argument of Secretary of State John Calhoun to the United States Senate “showing the wisdom and humanity of African slavery”).

With respect to defenders of segregation, see, e.g., JOHN DITTMER, *LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI 66-67* (1994) (discussing the “crusading” newspaper editor, Hodding Carter II, winner of a Pulitzer Prize in 1946 for “distinguished editorial writing against racial and religious intolerance,” who “publicly opposed the desegregation of Mississippi schools”). He was, Dittmer reports, a “fair play segregationist.” *Id.*



be unable to care for themselves.<sup>30</sup> There is some consensus that it is morally unacceptable that millions of men, women, and children in the United States go to sleep hungry at night, and have no real bed on which to sleep; that people who need treatment for mental or physical health problems or substance abuse, or relief from domestic violence, or subsidized housing—all are met not by the needed services but by waiting lists; that physical and mental illnesses that we know how to treat are allowed to ravage and kill people because the people cannot afford the treatments that are available; that we provide to the old, the blind, and the disabled, and to the needy parents of dependent children, stipends that are far below what the federal government has identified as a “poverty threshold”—stipends egregiously inadequate to enable the families to afford decent housing; that, in many parts of the United States, two people working full time at minimum wage jobs do not earn enough to afford what HUD says is a fair market rent for a two bedroom unit; that people who work full-time do not earn enough to take their families out of poverty.<sup>31</sup>

Today, we all condemn slavery and de jure segregation, and we are sure that we would have been among those fighting those obvious injustices. But in the nineteenth century, many lawyers and others defended slavery,<sup>32</sup> or urged that gradualism mark its elimination, and the twentieth century laws against segregation had many defenders.<sup>33</sup> I often hear students and young colleagues express nostalgia for the civil rights struggle of the early 1960’s, regretting that they are not able to make their mark in the crusade for justice as the 1960’s

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30. See Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L. J. 1860 (1987) (quoting Gloria Anzaldua, *La Prieta*, in THIS BRIDGE CALLED MY BACK 198, 208 (C. Moraga & G. Anzaldua eds., 1981) (“I can’t reconcile the sight of a battered child with the belief that we choose what happens to us, that we create our own world.”)).

31. See National Low Income Housing Coalition/Low Income Housing Information Service (NLIHC/LIHIS), *Out of Reach: The Growing Gap Between Housing Costs and Income of Poor People in the United States*, at <http://www.nlihc.org/oor2000/introduction.htm> (last visited Feb. 22, 2001); LAWRENCE MISHEL ET AL., THE STATE OF WORKING AMERICA 1998-99, at 309 (1999) (hourly wage required to bring a family of four to the 1997 poverty line was \$7.89 per hour).

32. See Finkleman, *supra* note 29, at 93 (Thomas R.R. Cobb was in what was regarded as good company: “Harvard Law School [was not] a hot-bed of antislavery. On the contrary, the faculty supported the enforcement of the Fugitive Slave Law of 1850, as did many of the students.”); Paul Finkelman, *Legal Ethics and Fugitive Slaves: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys*, 17 CARDOZO L. REV. 1793, 1838-1840 (1996) (Harvard “law school professors . . . cheered the passage of the Fugitive Slave Law of 1850 and defended it in their lectures.”).

33. See, e.g., Alfred Avins, *Freedom of Choice in Personal Service Occupations: Thirteenth Amendment Limitations on Antidiscrimination Legislation*, 49 CORNELL L. Q. 228 (1964) (arguing that the Civil Rights Act of 1964 violates the Thirteenth Amendment); Robert J. Kaczorowski, *Emancipation and the New Conception of Freedom: Comment on Nieman: Reflections on “From Slaves to Citizens,”* 17 CARDOZO L. REV. 2141, 2144 (1996) (discussing and citing some of this scholarship).

civil rights workers did. But what these students and colleagues need to see is that the current challenge is as urgent and life-defining as the 1960's civil rights battle was, and that the glory of those crusaders can be earned now by people who will make the same commitment to fighting the battle as it presents itself today—to conquer homelessness and poverty.<sup>34</sup>

## II. SOLUTIONS TO THE PROBLEMS OF HOMELESSNESS AND POVERTY ARE NOT MORE RADICAL THAN WERE SOLUTIONS TO THE PROBLEMS OF SLAVERY AND SEGREGATION

What must be done to end homelessness and poverty is not more dramatic or radical than what was required to end slavery and de jure segregation.

To end slavery required a civil war, a series of amendments to the federal constitution,<sup>35</sup> a succession of civil rights acts,<sup>36</sup> and a general reconstruction of the governance of the United States.<sup>37</sup> To end de jure segregation required extraordinary campaigns of direct action and great personal courage,<sup>38</sup> substantive new local, state, and federal legislation,<sup>39</sup> reinterpretation of the 1866 Civil Rights Act,<sup>40</sup> and countless law suits. The battle against de facto segregation still has not been concluded.

Ending homelessness and poverty could be accomplished much more easily.

Homelessness and poverty do not need to exist; we understand their nature and have the tools to prevent them. Homelessness, after all, was not a major

34. See MILLER, *supra* note 16, at 513 (“For slavery to be ended there had to be some individual human beings who did what they did. . .there were some people—a very small number, on the margin of society, condemned and harassed—who nevertheless made it the first order of their life’s business to oppose American slavery, and to insist that it was a grotesque evil that should be eliminated, and. . .in a little over thirty years, it was.”).

35. U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; and U.S. CONST. amend. XV.

36. Civil Rights Act of 1866, 42 U.S.C. §1981 et seq.; Civil Rights Act of 1870, 42 U.S.C. §1981; Civil Rights Act of 1875, 42 U.S.C. §1984.

37. See, e.g., FONER, *supra* note 22; W.E.B. DUBOIS, BLACK RECONSTRUCTION IN AMERICA (1935).

38. See, e.g., Egerton, *supra* note 16; JOANN GIBSON ROBINSON, THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT (1987); CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960’S (1981); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 (1988); TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65 (1998); WILLIAM BRADFORD HUIE, THREE LIVES FOR MISSISSIPPI (1965); JOHN LEWIS WITH MICHAEL D’ORSO, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT (1998); ERIC R. BURNER, AND GENTLY HE SHALL LEAD THEM: ROBERT PARRIS MOSES AND CIVIL RIGHTS IN MISSISSIPPI (1994).

39. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

40. See *Jones v. Mayer*, 392 U.S. 409 (1968); see also *Runyon v. McCrary*, 427 U.S. 160 (1976).

problem in the United States until about 1980.<sup>41</sup> As we were able to assure housing to most people before 1980, we could do so now.

Similarly, poverty can be substantially reduced, if not eliminated, and its effects can be greatly alleviated, by changes in laws and social policies.<sup>42</sup> There is no lack of knowledge of how to do this—it has been done in other countries.<sup>43</sup> The need is to develop the political will to make this happen. This requires changing social understanding—making homelessness and poverty unacceptable, as slavery and de jure segregation were made unacceptable. It requires attention to the issues of race and gender that distort perceptions of homelessness and poverty.<sup>44</sup> There must be a “paradigm shift,” an “abnormal discourse that puts homelessness and poverty beyond the pale.”<sup>45</sup>

We know that the two keys to ending homelessness and poverty are housing and income. “Every study that has looked has found that affordable, usually subsidized housing, prevents homelessness more effectively than anything else. This is true for all groups of poor people, including those with

41. See MARTHA R. BURT, *OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980's*, at viii (1992); Lucie E. White, *Representing “The Real Deal,”* 45 U. MIAMI L. REV. 271, 271-72 (1990).

42. But see White, *supra* note 41, at 279 n.25. The Biblical statement is not about the future; it is: “ye have the poor always with you. . .” *Matthew* 26:11 (emphasis added).

43. See Robert M. Solow, *Welfare: The Cheapest Country*, N.Y. REV. BOOKS, Mar. 23, 2000, at 20 (reviewing ROBERT E. GOODIN ET AL., *THE REAL WORLDS OF CAPITALISM* (1999)); Klare, *supra* note 21, at 259 (“When other countries have made significant progress in ameliorating poverty, reducing wage inequality, and lifting the wage floor, low-wage employment has been perpetuated in the United States by our laws and social policies.”).

44. See Calmore, *supra* note 15, at 1955 (“When race and space are synergistically involved with poverty, race-neutral or color-blind poverty practice is naively wrong-headed.”).

45. See White, *To Learn and Teach*, *supra* note 19, at 750 n.185 (citing THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962) (regarding paradigm shifts); and RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979) (regarding “abnormal discourse”)). See also *id.* at 755 n.199 (NAACP/LDF campaign against school segregation required “expanding the legal norm of equality. . .”).

Michael Harrington’s 1962 book, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES*, often is credited with “rekindl[ing], spark[ing]” this kind of new debate. See John Charles Boger, *Race and the American City: The Kerner Commission in Retrospect—An Introduction*, 71 N.C. L. REV. 1289 (1993); MICHAEL B. KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* 20 (1989) (saying that Harrington’s was “a pivotal book” designed “to arouse the conscience of the nation”); Victor Navasky, *The Left Wing of the Possible*, N.Y. TIMES BOOK REV., May 28, 2000, at 9 (reviewing MAURICE ISSERMAN, *THE OTHER AMERICAN: THE LIFE OF MICHAEL HARRINGTON* (2000), and stating that “Harrington’s book supplied the organizing concept, the target, the word, and thus was the idea for the War on Poverty born. It can indeed be argued that what Betty Friedan’s ‘Feminist Mystique’ did for feminism, Rachel Carson’s ‘Silent Spring’ for the environment, and Ralph Nader’s ‘Unsafe at any Speed’ for the public interest movement, *The Other America* did for the poor.”).

persistent and severe mental illness and/or substance abuse.”<sup>46</sup> We must establish that governments have an obligation to provide housing or subsidies for housing for very low income people. Just as we need universal health insurance, we need universal housing assurance. In the short term, we must prevent demolition without adequate replacement housing; restore the one-for-one replacement requirement;<sup>47</sup> and lobby for increased federal, state, and local subsidies for very low income people, subsidies to match those provided for people who are rich.<sup>48</sup>

With respect to income, there are at least “five branches of law [that] determine the social minimum wage and benefits package: employer mandates, government contracting and purchasing standards, government benefits programs, immigration and international trade rules,” and “the background regime of legal entitlements and prohibitions that structure power relations between employers and employees . . . .”<sup>49</sup> Workers’ pay should be keyed to living costs, so that one who works full-time earns enough to support a family decently. We need to increase the minimum wage<sup>50</sup> and mandated benefits. The Earned Income Tax Credit should be increased. Working conditions must be improved.<sup>51</sup> Government agencies all should be required to pay a housing wage—that is, a wage that enables a full-time worker to afford appropriate housing, with not more than 30% of her or his income.<sup>52</sup> Income maintenance programs must be improved so that they provide more money and reach more

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46. Marybeth Shinn & Jim Baumohl, U.S. Department of Housing and Urban Development & U.S. Department of Health and Human Services, *Rethinking the Prevention of Homelessness*, in PRACTICAL LESSONS, *supra* note 21, at 13-1. See also White, *Collaborative Lawyering in the Field*, *supra* note 19, at 280-91. Homelessness is caused by poverty, not by “substance abuse” or mental illness. Many people who abuse alcohol or drugs or suffer from mental illness nonetheless are perfectly well-housed.

47. See Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PENN. L. REV. 1351, 1369-72 (1995) (discussing the “one for one replacement” requirement); Michael S. Fitzpatrick, *Note: A Disaster in Every Generation: An Analysis of HOPE VI: HUD’s Newest Big Budget Development Plan*, 7 GEO. J. POVERTY LAW & POL’Y 421, 444 (2000) (the requirement was repealed in 1997).

48. The largest federal housing subsidy by far is the homeowner deduction for mortgage interest and real estate taxes. See John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573, 1608 (1993).

49. Klare, *supra* note 21, at 260 n.53 (identifying these five branches of law).

50. See MISHEL ET AL., *supra* note 31, at 189-95 (documenting the fall of the real value of the minimum wage since the 1960’s and the impact on non-teenage, full-time workers, of whom most are women and a disproportionate percentage minorities. The current minimum wage is less than the federal poverty level).

51. For a powerful, personal indictment of working conditions, see Lucie E. White, *No Exit: Rethinking “Welfare Dependency” from a Different Ground*, 81 GEO. L.J. 1961, 1979-85 (1993).

52. See Call to Renewal, *supra* note 26 (a summary of those goals).

eligible people.<sup>53</sup> Increasing income is important not only so that homeless people themselves have more income, but also so that low-income families have enough to help to care for others who are destitute.<sup>54</sup>

### III. WHAT THEN SHOULD WE LAWYERS DO?

I do not think one ever knows with certainty what act will produce what result: one cannot predict with confidence which actions will make the greatest contribution to ending homelessness and poverty. Lawyers play many different roles, personally and professionally. We can function as counselors or as advocates, in judicial, administrative, legislative, or other forums, at the local, state, and federal levels. In some cases, effective attention to the discrete problems of an individual may lead to extensive societal consequences.<sup>55</sup> In other situations, working with or supporting a charismatic leader may have

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53. Federal benefit programs do not provide enough in stipends to enable people to afford what HUD says are fair market rents. See NLIHC/LIHIS, *supra* note 31, at <http://www.nlihc.org/oor2000/introduction.htm>. A recent study reports that only 37% of the people who use homeless assistance programs receive food stamps; only 52% of homeless households with children receive Aid to Families with Dependant Children (AFDC); and only 6% of homeless veterans receive veteran-related disability payments and 2% receive veteran-related pensions. INTERAGENCY COUNCIL ON THE HOMELESS, HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE: FINDINGS OF THE NATIONAL SURVEY OF HOMELESS ASSISTANCE PROVIDERS AND CLIENTS, Summary, at xix-xx (1999). See also Shinn & Baumohl, *supra* note 46, at 13-1 ("Income supports are also related to housing stability, probably because the affordability of housing is a joint function of income and housing costs. Advocacy for entitlement income may be a key ingredient in case management."). The replacement of AFDC by TANF (Temporary Assistance to Needy Families) with its time limit on benefits may well increase dramatically the number of homeless people. See Martin Guggenheim, *Somebody's Children: Sustaining the Family's Place in Child Welfare Policy*, 113 HARV. L. REV. 1716, 1740 (2000) (book review) (reporting that in one Wisconsin county, the number of homeless children increased by 50% after the implementation of welfare reform).

54. See PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* 188-90 (1989) (discussing the extent and burden of poor families' caring for others).

55. I think here of the defenses of individual landlord-tenant cases, which led to the widespread adoption of the doctrines of implied warranty of habitability and retaliatory eviction. See, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970); *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); *Brown v. Southall Realty Co.*, 237 A.2d 834 (D.C. 1968). *Javins* was part of a building-wide rent strike and tenant organization, but *Brown* and *Edwards* were defenses of discrete landlord-tenant cases, as were other seminal cases. See also, *Marini v. Ireland*, 265 A.2d 526 (N.J. 1970); *Green v. Superior Court*, 517 P.2d 1168 (Cal. 1974). See also *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (individual consumer case); see generally, JOHN A. DOOLEY & ALAN W. HOUSEMAN, *LEGAL SERVICES HISTORY* (1984); Alan W. Houseman, *Political Lessons, Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669 (1995); EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* (1974).

immense impact.<sup>56</sup> In yet other circumstances, lawyers may have the greatest impact by supporting groups of people who take direct action of various forms.<sup>57</sup>

Part of what determines what we will do is each individual's particular combination of temperament, inclination, and skill. Part is the mystery of chance or providence: being in a particular place at a particular time and having the courage to say "yes" to the unusual.<sup>58</sup> This requires creativity, flexibility,<sup>59</sup> perseverance, and communication with others.<sup>60</sup> We must be ready to support people and movements when they arise.<sup>61</sup>

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56. The legal assistance provided to Dr. Martin Luther King, Jr. is an example of this kind of legal work, as is the legal support for Cesar Chavez and Mitch Snyder. *See, e.g.*, Oppenheimer, *supra* note 18; Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 309 n.3 (1996) (describing legal work for Cesar Chavez); VICTORIA RADER, SIGNAL THROUGH THE FLAMES: MITCH SNYDER AND AMERICA'S HOMELESS 235-36 (1986) (regarding the events addressed in *Robbins v. Reagan*, 780 F.2d 37 (D.C. Cir. 1985)). Other litigation supporting Snyder's activities includes: *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989) (copyright issue regarding statue of homeless family); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (sleeping in Lafayette Park to protest homelessness); *Community for Creative Non-Violence v. Kerrigan*, 865 F.2d 382 (D.C. Cir. 1989) (vigil on the grounds of the United States Capitol); *Community for Creative Non-Violence v. Pierce*, 814 F.2d 663 (D.C. Cir. 1987) (challenge to HUD report on homelessness); *Williams v. Barry*, 708 F.2d 789 (D.C. Cir. 1983) (closing shelters for homeless men); *Caton v. Barry*, 500 F. Supp. 45 (D.D.C. 1980) (shelters for families); *Atchison v. District of Columbia*, 585 A.2d 150 (D.C. 1991) (provision of overnight shelter).

57. The legal support for the Montgomery Bus Boycott is a good illustration. *See* BRANCH, PARTING THE WATERS, *supra* note 38, at 158-59 (1988) (describing the lawyers' initial efforts); TUSHNET, *supra* note 28, at 302-06 (describing the role of the NAACP/LDF). *See also* Francesca Polletta, *The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961-1966*, 34 LAW & SOCIETY REV. 367 (2000) (discussing the relationship between political organizing and "rights claims").

58. *See* MARK V. TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950, at xii (1987) ("Sensitivity to the actual events requires attention to the roles of chance – unexpected events or decisions by individuals outside of the movement – and choice – decisions by insiders to pursue one path rather than another . . .") [hereinafter NAACP'S LEGAL STRATEGY]. My own experience has been that when a moment of decision presents itself, taking the risk is worthwhile.

59. *See* TUSHNET, NAACP'S LEGAL STRATEGY, *supra* note 58, at 144-45 (emphasizing that "the NAACP's efforts were not systematic or strategic. Instead, the organization attacked . . . targets of opportunity.").

60. *See* AILEEN S. KRADITOR, MEANS AND ENDS IN AMERICAN ABOLITIONISM: GARRISON AND HIS CRITICS ON STRATEGY AND TACTICS, 1834-1850, at 236 (1967) ("The frequent meetings and intragroup journals of any movement for change serve an indispensable function even when they repeatedly pass the same resolutions and proclaim familiar truths to the already committed. These activities help to assure members that they are part of a group with a historic mission, are not fighting alone, and have somewhere to go and others to turn to when public opprobrium weakens their dedication."); TUSHNET, *supra* note 28, at 124-25 (importance of NAACP meetings of lawyers to discuss segregation in education); Bellow, *supra* note 56, at 308 (deploring "the lack of funds for meetings, conferences, and other forms of networking that

While we cannot know with certainty what will have the greatest impact, we ought to be thinking about what will do so, and we ought to choose our activities, taking into account temperament and circumstance, based on our best judgments about what will do the most not only to treat symptoms of inequality and deprivation but to eliminate inequality and deprivation. We must be prepared to make hard choices. We have limited resources, and cannot do everything; we must be strategic, and focus our attention on advocacy that is likely to create the greatest improvement.<sup>62</sup> Whatever we may choose to do, in all that we do we must keep in mind and work toward the ultimate objective of radically changing a system that tolerates (or requires) the existence of extreme deprivation and inequality with respect to the essentials of human existence.

We do well to ponder the relative values of reform and radicalism. Reformist measures may bring comfort to particular individuals, both needy beneficiaries and people who want to do good without undermining a system

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formerly enabled political lawyers to recruit and teach those who might follow.”); Michael H. Shuman, *Why Do Progressive Foundations Give Too Little to Too Many?*, 266 THE NATION, Jan. 12, 1998, at 11-12 (describing the effectiveness of conservative foundations and the relative ineffectiveness of progressive foundations); Klare, *supra* note 21, at 267 (“revitalizing labor/poor peoples’ alliances today requires hard work: establishing connections, fostering dialogue, promoting education and mutual concern, and learning creative ways to engage in joint action around common issues.”); White, *To Learn and Teach*, *supra* note 19, at 725 n.110 (“the technique of ‘brainstorming,’ or generating ideas through a process of group discussion, is an essential step in developing innovative sources of leverage and solutions to problems.”).

A hopeful sign was the establishment of the Task Force on Legal Strategies for Low-Wage Workers. See Klare, *supra* note 22, at 248-9. As Professor Klare indicates, “low-wage workers” is a category that includes public assistance recipients, immigrants, and people who are elderly or disabled. See *id.* at 250; and, as to public assistance recipients, KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK 220 (1997) (“Welfare- and work-reliant mothers should be seen as two overlapping populations on a single continuum.”). Similarly, people who are homeless—often dehumanized as “the homeless”—are workers. A recent study shows that 44% of homeless clients worked for pay. See HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE, *supra* note 21, at 52-54.

61. See, e.g., New Party, *The New Party Living Wage Campaign*, at <http://www.newparty.org/livwag/livwag.html>; National Jobs for All Coalition, *Living Wage Campaign*, at <http://www.njfac.org/resources/html>; Justice for Janitors, *Janitors are Fighting for the American Dream*, at <http://seiu.org/j4j/j4j2000.cfm>. (last visited on Feb. 22, 2001).

62. See, e.g., TUSHNET, NAACP’S LEGAL STRATEGY, *supra* note 58 (describing the NAACP’s campaign against segregated public schools, when Thurgood Marshall, Spottswood Robinson, Louis Redding, and other lawyers responded to requests for assistance with other kinds of lawsuits by insisting that they would support only comprehensive desegregation cases). See also, ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS 56 (1975) (explaining that “advocacy in these [anti-slavery] cases was highly ideological. It was undertaken for purposes of the movement – to dramatize the inconsistency of slavery with underlying principles of a democratic state”).

that has treated them well.<sup>63</sup> There always is a danger “that *ad hoc* alliances for partial ends may under certain circumstances strengthen the hegemony of the enemy by legitimizing the institutions, and the ideological justifications of those institutions, by means of which the enemy exercises his hegemony.”<sup>64</sup>

In deciding how to abolish homelessness and poverty, we can take lessons from the abolitionists, original and new. We can be educated by their techniques, energized by their moral fervor, and encouraged by their successes. For the twentieth century abolitionists, as for those of the nineteenth century, “the aim . . . was to fight the ‘new slavery’ by means which were then considered radical—non-violent agitation, well-publicized protest, propaganda, and legal action.”<sup>65</sup>

Now, as in those eras, public education is a critical element of the campaign.<sup>66</sup> Lawyers are trained as wordsmiths: our skills at description and persuasion are well-employed with media and the public as well as with judges, administrators, and legislators.<sup>67</sup>

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63. See Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, *supra* note 11, at 424 (“it is easy and comfortable – especially for intellectuals who do not share the piercing problems of the hungry or helplessly diseased of the world (who, in other words, face no *extreme* problems) – to presume always that the ‘moderate’ solution is the best.); Rev. Dr. Martin Luther King, Jr., *Letter from Birmingham City Jail* (1963), reprinted in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.*, at 289 (James Melvin Washington ed., 1986).

64. KRADITOR, *supra* note 60, at 165.

65. KELLOGG, *supra* note 11, at x, 42 (mass meetings, investigations, publicity, and legal aid). A petition drive, like that undertaken to end slavery and the slave trade in the District of Columbia, might be particularly effective in this internet age. Petitions might address such subjects as increases in housing subsidies, the minimum wage, and the Earned Income Tax Credit.

66. See MILLER, *supra* note 16, at 304 (The mantra of the nineteenth century abolitionists was “Explain, discuss, argue, persuade.”). See also Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 *FORDHAM URB. L.J.* 1159 (1995); White, *To Learn and Teach*, *supra* note 19, at 763 (Oppressed people “learn how to design context-specific acts of public resistance, which work, not by overpowering the oppressor, but by revealing the wrongness and vulnerability of its positions to itself and to a wider public.”); MILLER, *supra* note 16, at 507-08 (“if there is a constant drumbeat of moral argument, Calhoun said, eventually it begins to have its effect, even upon those who initially reject the argument . . . . A group of people, a culture, certainly has many ideas on the same topic, diverse and contradictory, simultaneously present. Argument and persuasion, and the changing of the cultural atmosphere, can elevate one idea and subordinate another.”).

67. See Bellow, *supra* note 56, at 297 (describing efforts “to educate the appellate judges of the D.C. Circuit about the widespread lawlessness that pervaded the administration of criminal justice”); Martha Minow, *Political Lawyering: An Introduction*, 31 *HARV. C.R.-C.L. L. REV.* 287, 294 (1996) (“Because lawyers work with words, they can tell stories not only to courts and legislatures, but also to broader publics. . . . Preserving and strengthening settings for face-to-face telling of stories, demanding justifications, and negotiating constructively . . . remain crucial lawyering tasks”); Gary Bellow & Martha Minow, *Afterword: Constancies and Commonalities in*



Lawyers also, of course, can do conventional lawyer tasks, creating and creatively applying legislation,<sup>68</sup> the domestic use of international legal standards,<sup>69</sup> and reinterpretation of federal and state constitutions.

A variety of legislative actions would contribute to improving the housing and income situations. Housing subsidies should be increased and focused on those most in need; housing aid should be an entitlement for the poor as well as the rich; the minimum wage and Earned Income Tax Credit should be increased so that they bring workers above poverty – above *real* poverty, which is about twice the current “poverty level.”<sup>70</sup>

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*This Volume's Law Stories*, in LAW STORIES: LAW, MEANING AND VIOLENCE 219, 224-25 (Gary Bellow & Martha Minow, eds. 1996) (“Lawyers’ tools are words”; “law talk works to define both speaker and audience, altering and creating identities and self-understanding”).

One of the most effective weapons against human slavery was Theodore Weld’s book, *AMERICAN SLAVERY AS IT IS*, a compilation of descriptions of slavery. Weld’s book had immense impact on people generally, and a particularly fruitful impact on what Lincoln is said to have called the book that started the Civil War. “While she was writing [Uncle Tom’s Cabin], [Harriet Beecher Stowe] kept Weld’s *AMERICAN SLAVERY AS IT IS*, with her, carrying it in her purse and even sleeping with it under her pillow.” MILLER, *supra* note 16, at 334. Movies may be at least as effective as books. D.W. Griffith’s film, *The Birth of a Nation*, had a great impact, leading the NAACP to attempt to make a counter-movie. See KELLOGG, *supra* note 11, at 142-145.

68. A Legal Services Homelessness Task Force was created by a group of legal services back-up centers in the early 1980’s. It produced a Litigation Memorandum which ultimately was published. See HOMELESSNESS IN AMERICA: A LITIGATION MEMORANDUM FOR LEGAL SERVICES ADVOCATES (July 1986) (National Clearinghouse for Legal Services, CN 49,999). This built on the National Housing Law Project’s Annotated Case Docket re: Homelessness Litigation (Sept. 1989) (CN 45,055). See also National Housing Law Project, Annotated Docket of Selected Cases and Other Material Involving Homelessness (Draft No. 7, Sept. 1992). The Legal Services Homelessness Task Force also was instrumental in developing the legislation that became the Homeless Persons Survival Act of 1986. See 132 CONG. REC. E2 363-01,99<sup>th</sup> Cong., 2d Sess. (June 26, 1986) (introduction of the legislation by Hon. Mickey Leland on behalf of himself and more than 30 co-sponsors); 133 CONG. REC. E82-03, 100<sup>th</sup> Cong., 182 Sess. (June 7, 1987) (Mr. Leland’s introduction of the Homeless Person’s Survival Act of 1987, noting that five portions of the 1986 act had been enacted). The National Coalition for the Homeless was a participant in this effort. *But see*, White, *supra* note 41, at 294 (referring to “its” – the Coalition’s – Homeless Person’s Survival Act). See also Florence Wagman Roisman, *Establishing a Right to Housing: A General Guide*, 25 CLEARINGHOUSE REV. 203 (1991) (discussing statutory claims); FLORENCE WAGMAN ROISMAN, *ESTABLISHING A RIGHT TO HOUSING: AN ADVOCATE’S GUIDE* 25 (1991) (same); and *supra* notes 55-57 and accompanying text.

69. See Maria Foscarinis, *Homelessness and Human Rights: Towards an Integrated Strategy*, 20 ST. LOUIS PUB. L. REV. 327 (2000); Martha F. Davis, *International Human Rights and United States Law: Predictions of a Courtwatcher*, ALB. L. REV. 417 (2000); Bert B. Lockwood, Jr., *The United Nations Charter and United States Civil Rights Litigation: 1946-1955*, 69 IOWA L. REV. 901 (1984); Marc-Olivier Herman, *Fighting Homelessness: Can International Human Rights Law Make a Difference?* 2 GEO. J. ON POVERTY L. & POL’Y 59 (1994).

70. With regard to housing, see Chester Hartman, *The Case for a Right to Housing*, 9 HOUSING POL’Y DEBATE 223 (1998); Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315, 326 (1996) (urging a four-pronged statutory strategy,

With respect to international standards, the critical documents are the Universal Declaration of Human Rights, which provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,”<sup>71</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes “the right of everyone to an adequate standard of living . . . , including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>72</sup> Abolition of homelessness and poverty would be advanced by United States ratification of the ICESCR and by application of the international law norms in domestic litigation.<sup>73</sup>

We should not despair of reinterpreting the federal constitution.<sup>74</sup> We have absorbed some damaging legal norms: that poverty is not a suspect classification;<sup>75</sup> that housing is not a fundamental right;<sup>76</sup> that the federal constitution does not impose affirmative duties.<sup>77</sup> But we must challenge those legal principles; we must make fundamental, systemic, radical changes in constitutional interpretation.<sup>78</sup>

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involving preserving and increasing the supply of subsidized units, strengthening effective demand, and attending to the specialized needs of particular groups); NATIONAL HOUSING LAW PROJECT, HOUSING FOR ALL: KEEPING THE PROMISE (1995). With regard to income, see *supra* notes 49 to 54 and accompanying text.

71. Universal Declaration of Human Rights, G.A. Res. 71, U.N. GABOR, 3d Sess., U.N. Doc. A/810 (1948), art. 25.

72. International Covenant on Economic, Social and Cultural Rights, U.N. G.A. Res. 2200(A) (1966), Jan. 3, 1976, 993 U.N.T.S. 3. Art. 11(1) also provides that “The States Parties will take appropriate steps to ensure the realization of this right. . . .” The United States has signed but not ratified this Covenant. See also UNITED NATIONS, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES 57 (1997) (calling on member states “to realize progressively the full range of economic, social and cultural rights). I would not have known of the reference to the General Comments but for the citation in Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1142 n.55 (1999).

73. See Foscarinis, *supra* note 69; Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward An “Entirely New Strategy,”* 44 HASTINGS L.J. (1992); Herman, *supra* note 69.

74. For a contrary view, see Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547, 549 (1998) (“Going to court and invoking the Constitution to bring about basic change for the poor is a nonstarter.”). Professor Edelman does offer a wealth of suggestions for legislative activity.

75. See *San Antonio Pub. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

76. See *Lindsey v. Normet*, 405 U.S. 56 (1972); but see Roisman, 25 CLEARINGHOUSE REV., *supra* note 68, at 209 (arguing that the case does not so hold).

77. See *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189 (1989).

78. See Mark A. Graber, *The Clintonification of American Law: Abortion, Welfare, and Liberal Constitutional Theory*, 58 OHIO ST. L.J. 731, 801 et seq. (1997) (urging refocus on

These ideas are not more fixed than were the “separate but equal” and “state action” doctrines that had to be abandoned with slavery.<sup>79</sup> There is a rich legal literature pointing to theories of constitutional analysis that would support the recognition of affirmative obligations, as a matter of either minimum rights or equal rights.<sup>80</sup> Professor Black argues “that there is, ‘and of Right ought to be,’ a constitutional justice of livelihood.”<sup>81</sup> He advocates “the derivation of a constitutional right to a decent material basis for life [] from the Declaration [of Independence], from the preamble, and from certain parts of the Constitution proper.”<sup>82</sup>

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rooting welfare rights in the Constitution); Edward A. Hartnett, *Review Essay: The Akhil Reed Amar Bill of Rights*, 16 CONSTITUTIONAL COMMENTARY 373, 400-01 (1999) (reviewing AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* (1998), and characterizing Professor Amar’s discussion of “Barron contrarians and Reconstruction Republicans”) (“Through legal imagination, political organizing, and personal courage, they changed the constitution and gave us a new birth of freedom. If they could do it, Amar seems to be saying, so can we.”).

79. See Hixson, *supra* note 11, at 135.

80. See *e.g.*, CHARLES L. BLACK JR., *A NEW BIRTH OF FREEDOM: HUMAN RIGHTS, NAMED AND UNNAMED* 131-39 (1997) [hereinafter *A NEW BIRTH OF FREEDOM*]; Charles L. Black, Jr., *Further Reflections on the Constitutional Justice of Livelihood*, 86 COLUM. L. REV. 1103 (1986) (hereinafter *Further Reflections*); Frank I. Michelman, *The Supreme Court 1968 Term—Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7, 33 (1969) (drawing the minimum protection/equal protection distinction); Frank I. Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 WASH. U. L.Q. 659 (1979); William E. Forbath, *Class, Caste, and Equal Citizenship*, 98 MICH. L. REV. 1 (1999); Akhil Reed Amar, *Forty Acres and a Mule: A Republican Theory of Minimal Entitlements*, 13 HARV. J.L. & PUB. POL’Y 37 (1996); Sarah Ramsey & Daan Braveman, “*Let Them Starve*”: *Government’s Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607 (1995) (considering government obligation to provide a minimum level of benefits to children); Stephen R. Munzer, *Ellickson on “Chronic Misconduct” in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 HARV. C.R.-C.L. L. REV. 1, 38-45 (1997); Peter B. Edelman, *The Next Century of our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987); Frank E.L. Deale, *The Unhappy History of Economic Rights in the United States and Prospects for Their Creation and Renewal*, 43 HOW. L.J. 281 (2000); Amy L. Wax, *The Constitution Under Clinton: A Critical Assessment: Rethinking Welfare Rights: Reciprocity Norms, Reactive Attitudes, and the Political Economy of Welfare Reform*, 63 LAW & CONTEMP. PROB. 257 (2000). For a list of articles and books advocating the recognition of affirmative “welfare” rights under the federal constitution, see Hershkoff, *supra* note 72, at 1133 n.9.

81. BLACK, *A NEW BIRTH OF FREEDOM*, *supra* note 80, at 133.

82. Black, *Further Reflections*, *supra* note 80, at 1105. Professor Black is not alone in treating the Declaration of Independence as a discrete source of legal authority: “[f]rom the adoption of the Pennsylvania Gradual Emancipation statute, until the eve of the Civil War, opponents of slavery would turn to the Declaration of Independence to support their cause.” Finkelman, *supra* note 29, at 82; see also WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* 18 (1988) (“The favorite document of these antislavery advocates was the Declaration of Independence. . .”).

There was a point when the Supreme Court seemed to be imposing special constraints on classifications that burdened poor people.<sup>83</sup> And the recent decision in *Saenz v. Roe*<sup>84</sup> indicates that such claims can be successful with the current court, at least if they are presented in structural terms.<sup>85</sup> The principle that underlies strict scrutiny is that a “more searching judicial inquiry” is appropriate when “prejudice” has “curtailed the operation of those political processes ordinarily to be relied upon to protect” people.<sup>86</sup> This principle classically is applied to “prejudice against discrete and insular minorities,”<sup>87</sup> but it applies with equal force to prejudice against poor people, for whom the operations of ordinary political processes also are curtailed.<sup>88</sup>

83. See Laurence H. Tribe, *Comment: Saenz Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future—or Reveal the Structure of the Present?*, 113 HARV. L. REV. 110, 121 n.53 (1999) (discussing *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois* 351 U.S. 12 (1956)); see also *Shapiro v. Thompson*, 394 U.S. 618 (1968); and *Little v. Streater*, 452 U.S. 1 (1981) (Due Process Clause requires that state pay for blood testing for determining paternity).

84. 526 U.S. 489 (1999).

85. See Tribe, *supra* note 83, at 140 (arguing that “claims of individual rights are most likely to have power and ultimately to prevail if they can be convincingly expressed through the language, and clearly understood through the logic, of such concretely architectural features of the Constitution as the separation of powers or . . . the federal system of separate, equal, and semi-autonomous states”). The more usual view of *Saenz* is that it “might be the harbinger of a revival of the privileges and immunities clause.” See Hartnett, *supra* note 78, at 393 n.29. See also *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (appeal of termination of parental rights cannot be conditioned on payment for preparation of record). Professor Tribe considers that *Little v. Streater* and *M.L.B. v. S.L.J.* “are best understood” as based not on concerns about poverty but on “special solicitude for rights related to marriage, parenting or reproduction.” Tribe, *supra* note 83, at 118.

86. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

87. *Id.*

88. There is a substantial literature about the influence of money on political processes. See e.g., Jamin B. Raskin & Burton D. Wechsler, *Constitutional Implications of Campaign Finance Reform*, 8 ADMIN. L.J. 161 (1994); Jamin B. Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994); Jamin B. Raskin & John Bonifaz, *Focus on: Restoring Faith in Government: Equal Protection and the Wealth Primary*, 11 YALE L. & POL’Y REV. 273 (1993). Prejudice against people because of the amount or source of their income is substantial. The history of the Fourteenth Amendment provides some support for devoting special concern to discrimination on the basis of poverty. See NELSON, *supra* note 82, at 117 (quoting language to this effect from the ratification debates); see *id.* at 129 (quoting such language used by the floor manager of the amendment in the Senate).

Similarly, Professor Tribe emphasizes the significance of Justice Kennedy’s having begun his opinion in *Romer v. Evans* with a quotation from Justice Harlan’s dissent in *Plessy v. Ferguson*. See Tribe, *supra* note 83, at 179 (citing *Romer v. Evans*, 517 U.S. 620, 623 (1996) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896))). Professor Tribe sees in this “a strong signal that, to Justice Kennedy, Amendment 2 was of a piece with government classification of persons in terms of race, national ancestry, or whatever other criteria have long struck the Justice

State constitutional provisions hold great promise for attacking homelessness and poverty. The New York Court of Appeals extended a right to shelter to homeless women under equal protection principles after a lower court had entered a preliminary injunction requiring that overnight shelter be provided for homeless men under other standards.<sup>89</sup> Equal protection principles were applied to benefit homeless women and families in Indiana.<sup>90</sup> The intermediate appellate court in New York has held that the New York constitution includes a right to overnight shelter.<sup>91</sup> The Connecticut Supreme Court has come very close to recognizing a state constitutional right to minimal subsistence. In *Moore v. Ganim*,<sup>92</sup> a four judge majority held that there was no such right; Chief Justice Ellen Peters concurred in the result, but filed a separate opinion explaining that she was “persuaded that the Connecticut constitution includes a governmental obligation to provide a minimal safety net to our poorest residents.”<sup>93</sup> Two other members of the court dissented, holding that such a right was embodied in the state constitution.<sup>94</sup>

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as despicable precisely because they reflect and reinforce the deepest and most destabilizing divisions that have marked our nation's history.” It cannot be impossible to convince five justices that the distinction of wealth from poverty is one of “the deepest and most destabilizing. . .that have marked our nation's history.” See also Tribe, *supra* note 83, at 168-69 (describing a structural argument for rights of “life-shaping autonomy,” an argument that would apply as well to rights to subsistence. The argument is that a nation cannot have effective self-government when its citizens lack food, shelter, and other basic necessities). See also Edelman, *supra* note 80, at 61 (“Anyone who argues that the poor are now fully heard in Congress and the state legislatures has not examined the history of their situation since 1978.”).

89. See *Callahan v. Carey*, N.Y. L.J. Dec. 11, 1979, at 10 (N.Y. Sup. Ct., Dec. 5, 1979) (preliminary injunction requiring City of New York to develop a plan to provide shelter for homeless men); *Eldredge v. Koch*, 98 A.D.2d 675 (N.Y. App. Div. 1983) (right to shelter extended to homeless women under equal protection standard).

90. See *Center Township of Marion County, Indiana v. Coe*, 572 N.E.2d 1350, 1361-62 (Ind. Ct.App. 1991) (“We agree with the courts of New York that unequal treatment of homeless women and families denies those women and families the equal protection guarantees of the State and Federal Constitutions.”). See also Roisman, *Establishing a Right to Housing: A General Guide*, *supra* note 68, at 209-10 (discussing a similar case in Maryland and theories under which state equal protection claims might prevail).

91. *McCain v. Koch*, 117 A.D.2d 198 (N.Y. App. Div. 1986), *rev'd on other grounds*, 70 N.Y.2d 109 (N.Y. 1987) (Appellate Division holds that the state constitution extends a right to shelter to homeless families; the state constitutional argument is not presented to the Court of Appeals). The state courts continue to enforce this right. See *McCain v. Giuliani*, 236 A.D.2d 256 (N.Y. App. Div. 1997), *appeal denied*, 1997 N.Y. App. Div. LEXIS 4993 (N.Y. App. Div. 1997) (enforcing trial court orders).

92. *Moore v. Ganim*, 660 A.2d 742 (Conn. 1995); see also *Hilton v. City of New Haven*, 661 A.2d 973 (Conn. 1995) (companion case involving the right to shelter; relying on *Moore v. Ganim*, the judges divide as they did in that case).

93. *Moore*, 660 A.2d at 771 (Peters, J., concurring).

94. *Id.* at 783 (Berdon, J., dissenting, with whom Katz, J. joined).

Similar claims have been presented to the New Jersey courts.<sup>95</sup> While those claims have not been ruled on by the New Jersey Supreme Court (or accepted by the intermediate appellate court), the New Jersey Supreme Court has held, in the famous Mount Laurel cases,<sup>96</sup> that the state constitution forbids zoning decisions that “favor rich over poor,”<sup>97</sup> and Professor John Payne has recently outlined an argument that Mount Laurel actually rests on a state constitutional right to have housing provided—a right that is affirmative though conditional.<sup>98</sup>

These state constitutional arguments can be extended to other states. “[E]very state constitution in the United States addresses social and economic concerns, and provides the basis for a variety of positive claims against the government”<sup>99</sup>; “more than a dozen state constitutions provide explicit protections for the poor.”<sup>100</sup> Those who seek to abolish homelessness and

95. See *Franklin v. Dep’t of Human Servs.*, 543 A.2d 56 (N.J. Super. Ct. App. Div. 1988), *aff’d on other grounds*, 543 A.2d 1 (1988) (N.J. 1988). The constitutional and statutory claims were being developed in a concerted campaign in New Jersey, but the campaign essentially ended with the dismantling of the New Jersey Office of Public Advocate and the imposition of restrictions on the federally-funded legal services program. See Roisman, *ESTABLISHING A RIGHT TO HOUSING: AN ADVOCATE’S GUIDE*, *supra* note 68, at 32-33, 42 (discussing the New Jersey campaign); Roisman, *Establishing a Right to Housing: A General Guide*, *supra* note 68, at 221-22 (same). The New Jersey Office of Public Advocate was created in 1974 and eliminated in 1994. See Department of the Public Advocate Act of 1974, ch. 27, 2, 1974 N.J. Laws 67, 67 (N.J. STAT. ANN. §52:27E-51); Mark Green & Laurel W. Eisner, *The Public Advocate for New York City: An Analysis of the Country’s Only Elected Ombudsman*, 42 N.Y.L. SCH. L. REV. 1093, 1153 (1998) (The Office of the New Jersey Public Advocate “was eliminated entirely in January 1994, when the Republicans won control of both the statehouse and the legislature.”); Geoffrey R. Scott, *The Expanding Public Trust Doctrine: A Warning to Environmentalists and Policy Makers*, 10 FORDHAM ENVTL. L.J. 1, 45 n.129 (1998) (The Office was dismantled in 1994 by Governor Whitman “as a cost-saving measure.”). With respect to the restrictions on the legal services program, see Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, §504, 110 Stat. 1321, 1321-53-56 (reenacted in the Omnibus Consolidated Rescissions and Appropriations Act of 1997, Pub. L. No. 104-208, §502, 110 Stat. 3009 (1997)); and *Velazquez v. Legal Services Corp.*, 531 U.S. 533 (2001) (invalidating only a restriction on challenging welfare laws).

96. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (1975), *cert. denied and app. dis.*, 423 U.S. 808 [Mt. Laurel I]; *Southern Burlington County NAACP v. Township of Mt. Laurel*, 456 A.2d 390 (1983) [Mt. Laurel II].

97. *Mt. Laurel II*, 456 A.2d at 415 (because “the State controls the use of land, all of the land . . . it cannot favor rich over poor”).

98. See John M. Payne, *Reconstructing the Constitutional Theory of Mount Laurel II*, 3 WASH. U. J.L. & POL’Y 555 (2000).

99. Hershkoff, *supra* note 72, at 1135.

100. *Id.* at 1135, 1140 n.44 (identifying some such states). See also Adam S. Cohen, *After the War: Poverty Law in the 1980s: More Myths of Parity: State Court Forums and Constitutional Actions for the Right to Shelter*, 38 EMORY L.J. 615 (1989).

poverty may work to amend state constitutions to add such provisions<sup>101</sup> or to implement such provisions as already exist.<sup>102</sup>

What I urge is that antihomelessness advocates always keep our eyes “on the prize.” To produce major social change requires that individuals strive with determination to achieve that goal. Heeding the naysayers will produce nothing useful.<sup>103</sup> Professor Don Fehrenbacher explained that the 18th century anti-slavery movement “failed, . . . not because its supporters lacked *sincerity*, but rather because they lacked the *intensity* of conviction that inspires concentrated effort and carries revolutions through to success.”<sup>104</sup> “For slavery to be ended there had to be some individual human beings who did what they did. . . . there were some people—a very small number, on the margin of society, condemned and harassed—who nevertheless made it the first order of their life’s business to oppose American slavery, and to insist that it was a grotesque evil that should be eliminated, and . . . in a little over thirty years, it was.”<sup>105</sup> I urge that we do the same to end homelessness and poverty.

The battle is long, and requires constant vigilance, but not to fight would be unpardonable.

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101. See, e.g., Frank M. Smizik & Michael Stone, *Single Parent Families and a Right to Housing*, in *WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN THE COURTS, THE WORKPLACE, AND THE HOUSING MARKET* 227-66 (Elizabeth A. Mulroy ed., 1988) (discussing an effort to amend the Massachusetts constitution to add a right to shelter).

102. See Roisman, *Establishing a Right to Housing: A General Guide*, *supra* note 68, at 209-10 (discussing constitutional claims). These advocates will find substantial assistance in Professor Hershkoff’s “project about state courts and state constitutions.” Hershkoff, *supra* note 72, at 1137; see also Helen Hershkoff, *Welfare Devolution and State Constitutions*, 67 *FORDHAM L. REV.* 1403 (1999); Helen Hershkoff, *State Courts and the “Passive Virtues”*: Rethinking the Judicial Function (unpublished manuscript, on file with Professor Hershkoff).

103. See Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, *supra* note 11, at 432 (quoting Wendell Phillips, “speaking affectionately of the abolitionist leader Angelina Grimke: ‘Were I to single out the moral and intellectual trait which won me, it was her serene indifference to the judgement of those about her.’”).

104. DON E. FEHRENBACHER, *SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE* 9 (1981) (emphasis in original).

105. MILLER, *supra* note 16, at 513.