

Housing and Hope: The Crisis in Homelessness, Discrimination in Housing, and An Agenda for Landlord/Tenant Reform[†]

Paula A. Franzese *

A few minutes into his Inaugural Address, on Jan. 20, 1989, George Bush — a Republican President often derided for his inattention to domestic problems — looked out at the crowd and declared, “My friends, we have work to do.” The first task: helping “the homeless, lost and roaming.” Ten years later, Bill Clinton — a Democratic President often praised for his acuity on social issues — delivered his seventh State of the Union address. In the course of 77 minutes and 99 proposals, Clinton didn’t offer any plans to combat homelessness. He never even brought it up.”¹

In the last fifteen years, the demand for emergency shelters has increased steadily.² While accurate estimates of the homeless population are elusive, authorities tell us that the numbers of displaced and homeless continue to rise.³ In any given year, the ranks of the homeless exceed two million, with millions more close to the brink.⁴ In its fourteenth annual 30-city report on hunger and homelessness, the United States Conference of Mayors found that the need for emergency shelter has grown each year since the survey was first published in 1985.⁵ Homeless women with children are reported to be “the

[†] Editor’s Note: This article is based upon a presentation given at the Housing and Hope Symposium at Seton Hall University School of Law.

* Professor of Law, Seton Hall University School of Law; B.A., Barnard College, Columbia University; J.D., Columbia University School of Law.

¹ Romesh Ratnesar, *Not Gone But Forgotten? Why Americans Have Stopped Talking About Homelessness*, TIME, Feb. 8, 1999, at 30. For a history of the activism of the 1980s, see generally Inez Smith Reid, *Law, Politics and the Homeless*, 89 W. VA. L. REV. 115 (1986).

² See Ratnesar, *supra* note 1, at 30.

³ See Maria Foscarinis & James Scheibel, *End Homelessness Now*, 1 GEO. J. ON FIGHTING POVERTY 44, 44 (1993) (“By conservative estimates, on any given night more than 700,000 Americans, including approximately 140,000 children, sleep on the streets or in shelters.”).

⁴ See *id.*

⁵ See Ratnesar, *supra* note 1, at 30.

largest, fastest growing subgroup of all homeless people today,"⁶ comprising up to 40% of the homeless population.⁷

What is happening in the nation's major cities? The Coalition for the Homeless estimates that at least 16,000 people are without shelter each night in San Francisco, double the figure reported in 1989.⁸ In New York City, a 1997 study found that 7,100 people were staying in shelters, up from 6,000 in 1994.⁹ In Boston, the number of homeless jumped 40% between 1988 and 1996.¹⁰

Yet, amidst the dire statistics, we as a nation have stopped talking very much about homelessness. The issue was all but ignored during the past two presidential campaigns.¹¹ In the popular press, the number of articles on the topic has declined sharply.¹² Less than 4% of Americans now view homelessness as "the main problem facing the country today," as compared to 8% of respondents just eight years ago.¹³ Part of the reason for this lapse in consciousness is the false impression that somehow the problem is getting better. In many municipalities, one simply does not see as many homeless on the streets, in parks, or on subways. Why not? At least fifty cities have anti-vagrancy laws in place, sweeping the homeless out of the public's view.¹⁴ "Increasingly, local governments are using criminal laws to

⁶ Lynne Soine & Mary Ann Burg, *Combining Class Action Litigation and Social Science Research: A Case Study in Helping Homeless Women with Children*, 3 AM. U. J. GENDER & L. 159, 159 (1995); see also Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J.L. & POL'Y 237, 237 (1994) ("Fifty percent of the homeless women and children in this country are fleeing domestic violence.")

⁷ See Pat Swift, *For Many, There's No Shelter from Housing Bias*, BUFF. NEWS, Mar. 14, 1998, at C7.

⁸ See Ratnesar, *supra* note 1, at 30.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See Foscarinis & Scheibel, *supra* note 3, at 44.

¹² See Ratnesar, *supra* note 1, at 30. *Time* magazine reports that "[i]n 1987 the number of articles on homelessness that appeared in the *New York Times*, *Washington Post*, *Chicago Tribune* and *Los Angeles Times* totaled 847; in 1986 those four dailies ran just 200 stories on the subject." *Id.*

¹³ See *id.*

¹⁴ See *id.* ("[I]ncreasingly, frustrated municipal governments are responding to the problem by cracking down on panhandling, sweeping homeless encampments out of parks and off streets and outlawing sleeping in public."); see also *Homeless Test Berkeley's Tolerance*, STAR-LEDGER (Newark, N.J.), Nov. 27, 1998, at 59 (reporting that Berkeley's city council bans sleeping along two popular downtown avenues); Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 632 (1992) ("The enforcement of laws against homeless individuals that prohibit sleeping on public and private land may constitute effective banishment, abridging the rights of the homeless to freedom of movement.")

address the presence of homeless people in public places.”¹⁵ Sadly, these initiatives do not provide solutions, only displacement. As recounted in *Time* magazine, “New York’s clampdown on vagrancy in Times Square, for instance, has merely pushed the encampments to the edges of the island of Manhattan.”¹⁶

Some advocates maintain that the middle-class is “fed-up” with the homeless and that mainstream Americans have decided that the homeless are responsible for their own fate.¹⁷ Others attribute the lack of fervor that now surrounds the issue not to public opinion but to politics:

In the '80s, liberal advocacy for the homeless was of a piece with Democratic outrage at Reagan administration policies toward the poor. But the homeless issue also splintered urban liberalism, sending some working and middle-class voters into the arms of Republicans who vowed to curtail entitlements and tighten the screws on vagrancy. To survive, Democrats revised their image as the party of the dispossessed by acceding to welfare reform, cutting aid to the homeless and courting the middle class. As liberals drifted toward the margins of the political landscape, so did the homeless.¹⁸

What is to be done? Over the past six years, the Clinton administration has devoted funds to “continuum of care” programs aimed at providing temporary housing, job training, and mental health care.¹⁹ A number of advocates for the homeless find this emphasis misplaced, however. Instead, they maintain that the most essential solution to the problem is to increase the supply of affordable housing.²⁰

¹⁵ Maria Foscarinis, *Downward Spiral: Homelessness and its Criminalization*, 14 YALE L. & POL'Y REV. 1, 2 (1996); see also Juliette Smith, *Arresting the Homeless for Sleeping in Public: A Paradigm for Expanding the Robinson Doctrine*, 29 COLUM. J.L. & SOC. PROBS. 293, 293 (1996) (“In recent years, at least thirty-nine American cities have initiated or continued policies that criminalize activities associated with homelessness When a city lacks sufficient shelter space, these ‘anti-sleeping ordinances’ force the homeless into a no-win situation.”); Robert C. McConkey III, “*Camping*” Ordinances and the Homeless: Constitutional and Moral Issues Raised by Ordinances Prohibiting Sleeping in Public Areas, 26 CUMB. L. REV. 633, 639 (1995-96) (passing on constitutionality of such ordinances).

¹⁶ Ratnesar, *supra* note 1, at 30-31.

¹⁷ See *id.* at 31. *Time* magazine quotes Ralph Nunez, president of Homes for the Homeless, as stating that, “People decided that homeless people were affecting their quality of life . . . and they got fed up.” *Id.*

¹⁸ *Id.* at 31.

¹⁹ See *id.*

²⁰ See Foscarinis & Scheibel, *supra* note 3, at 44. (“The national shortage of affordable housing is a leading cause of homelessness.”); see also Curtis J. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315, 321 (1991) (“The systemic housing issue of the 1990’s is affordability.”); Margarie Turner, *Home-*

In New York, for example, "80% of homeless families who have been provided with subsidized apartments have remained intact, out of shelters and off the streets, regardless of their other problems."²¹ The National Coalition for the Homeless concurs, finding that "the two factors most responsible for the rise in homelessness over the past 15 to 20 years are the growing number of people living in poverty and the shortage of affordable rental housing."²² If the answer is indeed "housing, housing, housing," how and when will the country take the idea seriously?

As academicians, scholars, lawyers, and law students, we need to be talking more about the issues,²³ citing the statistics, and coming to a consensus on an agenda for reform. Here are some sobering figures: According to the United States Census Bureau, by 1996, the number of desperately poor people living in the United States jumped to 36.5 million.²⁴ Of those 36.5 million, 40% were children.²⁵ For those in this income bracket, the choice each month often comes down to rent or food. Since it is estimated that even the most modest rental housing demands that the tenant earn at least eleven dollars per hour,²⁶ considerably more than the minimum wage, the cost of housing becomes not just prohibitive, but impossible. Indeed, one recent editorial noted that "[i]t is more than ironic that even in this period of unprecedented economic growth, many people are only a paycheck away from living on the street. It is tragic."²⁷

It seems beyond dispute that new public and private initiatives are needed to increase the availability of affordable housing:

Specific policies should depend on local needs. In areas where housing units exist but are not affordable to low-income people,

lessness and Affordable Housing in the United States, 34 *How. L.J.* 71, 71 (1991) ("In actuality, people are homeless because there are not enough inexpensive housing units.")

²¹ Ratnesar, *supra* note 1, at 31.

²² *Seeking a Home. Women, Children Comprise Majority of Homeless Here; Coordinated Help Needed*, INTELLIGENCER J. (Lancaster, Pa.), Dec. 16, 1998, at A16 [hereinafter *Seeking a Home*].

²³ See, e.g., S. Lynn Martinez, *An American Vision: The Right to Shelter*, 12 IN PUB. INTEREST 1, 2 ("Notwithstanding the issue of whether a right to housing exists, a constitutional right to shelter — to temporary emergency shelter — needs to be recognized in order to begin to repair the dilemma of the homeless.")

²⁴ See *Seeking a Home*, *supra* note 22, at A16.

²⁵ See *id.*

²⁶ See *id.*

²⁷ *Id.* Forty percent of those living below the poverty line "spend seventy percent or more of their income on housing. This means that for growing millions of Americans, a missed paycheck, a health crisis, or a high utility bill could bring the threat of homelessness." Foscarinis & Scheibel, *supra* note 3, at 44.

subsidies such as housing vouchers should be provided to make those units affordable. In areas of the country where there is a shortage of decent housing, new units should be developed through a combination of federal incentives such as tax credits and direct federal funding. Federal subsidies should be coupled with measures to control costs, such as limiting rents to actual landlord expenses plus a reasonable rate of profit. New units created through direct federal aid should be held by public or private nonprofit entities.²⁸

Homeless advocates add that “[u]sing vacant property should be a top priority.”²⁹ Significantly, the federal Homeless Housing Assistance Act³⁰ mandates that unused federal buildings and land be used to help the homeless. Proactive, multi-faceted governmental responses to homelessness now being launched in some cities offer cause for hope. For example, in 1993, Dade County, Florida, imposed a 1% meal tax on restaurants grossing more than \$400,000 per year.³¹ The millions raised annually provide assistance to the county’s homeless, affording shelter, housing, support services, and job training.³² Closer to home, in Bergen County, New Jersey, officials are seeking to build a “one-stop center” for the homeless in Hackensack. The center would provide meals, job-placement services, medical referrals for treatment of substance addiction and mental illness, as well as shelter.³³

As members of academia, and particularly for those of us who teach Property, it is important that we remain mindful of the “terrible human, social and economic costs”³⁴ of homelessness and cultivate in our students an awareness of the same. We should be examining critically the various initiatives proposed by advocacy groups, challenging efforts aimed at neatly sweeping the problem away (both figuratively and, sadly, literally), and encouraging pro bono efforts in this arena.³⁵ As educators, we must be concerned with facilitating and

²⁸ Foscarinis & Scheibel, *supra* note 3, at 44-45.

²⁹ *Id.* at 45.

³⁰ 42 U.S.C. § 11431 (Supp. IV 1992).

³¹ See Foscarinis, *supra* note 15, at 61.

³² See *id.*

³³ See Paul Rogers, *Helping the Hard-Core Homeless, Bergen Officials, Advocates Seek New Center*, THE RECORD (Hackensack, N.J.), Sept. 27, 1998, at NO1. See generally Craig M. Fullen, Note, *A Home Away from Home: An Analysis of a State's Duty to Provide Services to Nonresident Homeless*, 23 RUTGERS L.J. 117, 132-36 (1991) (citing the need for an integrative approach to homelessness.)

³⁴ Foscarinis & Scheibel, *supra* note 3, at 46.

³⁵ See generally Linda S. Dakin, *Homelessness: The Role of the Legal Profession in Finding Solutions Through Litigation*, 21 FAM. L.Q. 93 (1987); Robert Hayes, *Litigating on*

nurturing the development of integrated practitioners, whose commitment to success is linked inextricably to the commitment to serving communities and constituencies in crisis. Today's symposium presents just such an opportunity. We will hear from leaders in the fields of housing discrimination, lending discrimination, landlord/tenant reform, and homelessness.

Our program is aptly titled "*Housing and Hope*" because, notwithstanding all that remains to be done, there is cause for optimism. The fact that this auditorium is filled to capacity is a good sign. Our willingness to learn of the issues and then find ways to serve suggests that at the least we are asking the right questions, mindful that there is no such thing as living a neutral life. As attorneys and lawyers-in-training, each of us is in a position to work on behalf of those without a voice — the disenfranchised, the powerless, the desperately poor. Let us proceed then to define our mission carefully as well as mightily.

Karl Llewellyn observed that "[c]ompassion without technique is a mess; and technique without compassion is a menace."³⁶ Wisdom and compassion are indivisible. The integration of both virtues is a reminder that we are the custodians of the larger community's ethical sense and its greatest hope for the attainment of equal access to justice. It is up to us to serve that community, and to devise incentives and systems to help others to follow suit.

Behalf of Shelter for the Poor, 22 HARV. C.R.-C.L. L. REV. 79 (1987); K. Scott Mathews, *Rights of the Homeless in the 1990s: What Role Will the Courts Play?*, 60 UMKC L. REV. 343 (1991); Deborah M. Thompson, *Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth*, 31 CREIGHTON L. REV. 1209 (1998).

³⁶ Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509, 509 (1987) (quoting Karl N. Llewellyn).