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Homelessness: A Historical Perspective on Modern Legislation

INTRODUCTION

Men always, but not always with good reason, praise bygone days and criticize the present.

— N. Machiavelli
THE DISCOURSES¹

The homelessness crisis in American cities has reached epic proportions. In New York, where some of the worst conditions exist, 28,000 people go to homeless shelters each day in search of a place to eat or sleep, as many as 40,000 more live on subway trains, in Penn Station, or simply on the streets.² Contrary to the popular image of the homeless, most are not mentally troubled individuals.³ In reality, most of the homeless are families with children: 4,600 families — including 11,000 children — constitute a substantial part of the 28,000 people receiving city shelter on any one night in New York.⁴ In fact, young children and their parents comprise the fastest growing segment of the homeless population.⁵

1. N. MACHIAVELLI, *THE DISCOURSES* 265 (B. Crick ed. 1970).

2. J. KOZOL, *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* 4 (1988); *A SHELTER IS NOT A HOME: REPORT OF THE MANHATTAN BOROUGH PRESIDENT'S TASK FORCE ON HOUSING FOR HOMELESS FAMILIES* 6 (1987) [hereinafter *BOROUGH PRESIDENT'S REPORT*]. Calculating the exact number of people living on the City's subways or in its streets is impossible. Whenever numbers are used, they represent the most reliable estimate available. Some of the imprecision of past calculations of the number of homeless was doubtless due to the fact that, in the past, the U.S. Census has failed to include the homeless within its population counts. P. ROSSI, *DOWN AND OUT IN AMERICA* 37 (1989). In the 1990 census, attempts were made to include the homeless. *See, e.g.,* Navarro, *Census Peers Into Corners to Count Homeless*, N.Y. Times, Mar. 21, 1990, at A1, col. 2 (natl. ed.). Even so, many associated with the effort to count the homeless in the 1990 census acknowledged that many homeless persons will not be counted. Barringer, *Despite Problems, the Census Bureau Hails Its First Count of the Homeless*, N.Y. Times, Mar. 22, 1990, at B12, col. 1 (stating that homeless advocates in large cities doubted the accuracy of the count).

3. Mentally ill and drug-addicted people represent no greater a share of the homeless population than of the nonhomeless population. *BOROUGH PRESIDENT'S REPORT*, *supra* note 2, at 6.

However, some studies have argued that mental illness among homeless people is more prevalent than among the population at large. Rossi, for example, in an exhaustive statistical study of Chicago's homeless, claims that 23.1% of the homeless have been in mental hospitals compared to less than 5% of the general population. P. ROSSI, *supra* note 2, at 146-47. Much of this discrepancy is due to differing definitions of homelessness. For example, Rossi defines the homeless as only those living directly on the street. He admits that among those living in welfare hotels and other forms of marginal shelter — people considered to be within the homeless population by many experts (*see infra* note 15) — the percentage who have been committed to mental institutions at some time in the past is only three percent, less than the population as a whole. P. ROSSI, *supra* note 2, at 146-47.

4. *BOROUGH PRESIDENT'S REPORT*, *supra* note 2, at 6; *see also* J. KOZOL, *supra* note 2, at 8 ("Three quarters of the newly homeless in America are families with children.").

5. J. KOZOL, *supra* note 2, at 8.

Statistics do not fully capture the magnitude of the problem. As one homeless mother described her situation:

[W]e lived for five years in a basement. Five years in a basement with no bathroom. One small room. You had to go upstairs two floors to use the toilet. No kitchen. It was fifteen people in five rooms. Sewer kept backing up into the place we slept . . . There were all my children sleepin' in the sewage.⁶

The government has only recently begun to address the epidemic of homelessness.⁷ Legislatures, rather than the courts, have been the primary forum. Although the courts have made some attempts at tackling homelessness, they have ultimately proved to be inadequate vehicles for reform. As the former director of the National Coalition for the Homeless explained, "litigation as a tool for accomplishing something for poor people is an abysmal tool. . . . [It] is the equivalent of a bull in a china shop . . ."⁸ Consequently, legislatures, with their broad powers, should be turned to for solutions.⁹

However, as this Note will demonstrate, current legislative responses to homelessness are bound and crippled by the social reform theories of the nineteenth and early twentieth centuries.¹⁰ Before leg-

6. *Id.* at 69.

7. See Reid, *Law, Politics and the Homeless*, 89 W. VA. L. REV. 115, 115-16 (1986) (stating that even during the 1960s, when Congress promulgated much anti-poverty legislation, the specific issue of homelessness went unaddressed, and that only recently have legislators turned to this problem); see also Collin & Barry, *Homelessness: A Post-Industrial Society Faces a Legislative Dilemma*, 20 AKRON L. REV. 409 (1987).

8. Hayes, *Homelessness and the Legal Profession*, 35 LOYOLA L. REV. 1 (1989). Robert Hayes, former director of the National Coalition for the Homeless, was one of the first homeless advocates to use the court system to push for the rights of the homeless. Hayes' assessment of the courts came after more than 10 years of such legal battles. See also *infra* note 145.

9. The inability of courts to grapple with this problem stems from several sources. In the first place, they do not have the staff support enjoyed by legislatures and administrative agencies. Most legislative staffs have expanded dramatically in recent years, and many administrative agencies have full-time experts to monitor problems. In addition, the courts must take their cases as they come to them, fashioning remedies which suit the individual facts of the case before them. Legislatures can be more freewheeling. For a statement of the ways in which administrative agencies may be able to deal more fully and adequately with complex social problems, see Peck, *Comments on Judicial Creativity*, 69 IOWA L. REV. 1, 10 (1983).

An agency's assignment to ongoing supervision of an industry or activity differs from that of a court which ordinarily issues only a money judgement or perhaps an injunction or similar order. Ongoing supervision permits a program of experimentation. Courts must wait until a complaining party brings a suit that will serve as the vehicle for further experiment.

Id.

A number of court cases do exist which uphold the civil rights of homeless people. For example, the recent "Billie Boggs Case," *In Re Billie Boggs*, 136 Misc.2d 1082, 522 N.Y.S.2d 407 (Sup. Ct. 1987), discussed the right of a homeless woman to sleep on the streets. However, such cases only tangentially touch on what this Note contends is absolutely essential to any effective solution: the proper provision of housing and other economic necessities. These cases, though important, did little to provide financial assistance to the poor; at best they prevented a terrible situation from growing yet worse. The court in the "Billie Boggs" case itself stated that "[the] predicament of [Billie Boggs] and the countless homeless raises questions of broad social, economic, political and moral implications not within the purview of this court." 136 Misc.2d at 1090, 522 N.Y.S.2d at 412.

10. See *infra* Parts III & IV.

islators can devise more efficient remedies to tackle current problems, they must identify and transcend earlier, ineffective thinking. This requires viewing the homelessness problem in historical perspective. Specifically, legislatures must (1) examine the origins of the legal system's underlying conceptions about homelessness, (2) understand how these conceptions undermined earlier legislation designed to deal with the crisis, and (3) isolate, and escape, the modern manifestations of these conceptions.

This Note examines the early twentieth century, a period when conceptions about homelessness first emerged and congealed. During that period these conceptions existed at the surface and were readily visible. Such an examination provides the detailed familiarity with these conceptions necessary to identify their modern counterparts.

This Note focuses on homelessness in one city: New York.¹¹ Part I describes homelessness and housing conditions in turn-of-the-century New York. Part II details the legislative response to these early problems. Part II first chronicles the calls for reform and the crystallization of views about the causes of homelessness. It focuses on three of these views: the tendency to see homelessness exclusively in its most visible manifestation — sanitation; the desire to treat homelessness in a vacuum; and the view that any housing relief is a privilege which recipients should gratefully accept without complaint or requests for more. This Part then describes the most relevant legislation passed during the period. Part III examines the effectiveness of this legislation and the ways in which the legal system's underlying conceptions about homelessness eroded the legislation's impact. Part IV highlights examples of earlier thinking in contemporary legislation and administrative policy, and thus demonstrates the continued existence and detrimental impact of earlier strains of thought.¹²

Before continuing, the word "homeless" needs explanation. Homeless and homelessness are extremely modern terms that do not appear in early twentieth-century literature. Instead, observers grouped the homeless within the larger category of those inhabiting the city's worst, most decrepit, housing.¹³ For the purposes of this

11. To chronicle the housing and homelessness problems of every major American city would prove unwieldy. New York serves as an excellent case study for several reasons: first, historically, New York has faced some of the worst housing and homelessness conditions in the country; second, New York was one of the first cities to attempt solutions to this crisis (see P. Rossi, *supra* note 2, at 97); third, the problem in New York has been widely chronicled and written about, making historical data readily available.

12. While this Note focuses on the historical roots of homeless policy, it does not intend to suggest that the problems of 100 years ago parallel entirely, or even significantly, those of today. Such parallels inevitably would be limited and not of much descriptive use. Rather, the point of this historical inquiry is to trace the evolution of current thinking — to demonstrate just how current ideas about homelessness developed and influenced the course of legislative programs. Only by doing this, and thereby recognizing current ideology for what it is, can legislatures avoid repetition of earlier mistakes.

13. This broader definition makes considerable sense: a hovel with no heat, no water, and no

Note, all those filling this larger category are considered "homeless."

Only this broad definition captures the extent of the current crisis.¹⁴ Many modern experts on homeless policy already include within the homeless population families living in single-room "temporary" hotels, where they cannot even cook and eat a meal together.¹⁵ Moreover, another subgroup of the homeless exists in families who, lacking shelter of their own, have illegally moved in — "doubled-up" — with friends or relatives, dangerously crushing too many bodies into too little space.¹⁶ Not only does this cause innumerable health and safety problems, but these "doubled-up" families are often the next to become dispossessed. Fully sixty-six percent of the families living on the street and in shelters were previously "doubled-up."¹⁷ It is dangerously inaccurate to consider as homeless only those living directly on the street and to wholly ignore those members of the population who will, absent intervention, likely end up there soon.

Finally, the word "homeless" is, itself, an unfortunate choice of terms. "Homelessness" suggests that the problem consists simply of a lack of shelter. This Note argues that homelessness is best understood as a severe form of poverty, one which has numerous causes beyond a simple lack of proper housing.¹⁸ Despite the misleading nature of the

privacy need not qualify as a "home" despite its four walls and ceiling. As the writer Theodore Dreiser explained when describing such housing conditions:

And the homes to which they are hurrying, the places which are dignified by that title, but which here should have another name! Thousands upon thousands of them are turning into entry ways, the gloom or dirtiness or poverty of which should bar them from the steps of any human being.

T. DREISER, *THE COLOR OF A GREAT CITY* 279 (1923) (describing housing conditions in 1914 and 1915).

14. The deplorable "housing" conditions described by Dreiser, *id.*, continue unabated. "As of 1984, there were fully 62,000 units of occupied dilapidated housing. These units *cannot be considered to be even marginally acceptable housing.*" BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 46 (emphasis added).

15. "Homeless advocates believe that all who ask for shelter during any extended period of time ought to be termed homeless." J. KOZOL, *supra* note 2, at 10 n.*. "The homeless families in emergency shelter are simply the tip of the iceberg . . ." BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 6.

As mentioned *supra* at note 3, Rossi defines the homeless as only those living on the streets. However, he uses this narrow definition in part for statistical convenience, and he admits that broader definitions have great merit: "[I]t is difficult to distinguish consistently between those with homes and the homeless among the extremely poor. There are many points at which the two groups are indistinguishable." P. ROSSI, *supra* note 2, at 8.

16. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 31-34 (noting that one hundred thousand families live doubled-up in New York City); *see also* J. KOZOL, *supra* note 2, at 10-11. ("If we include [within the population of homeless people] those people housing organizers call the 'hidden homeless' — families doubled up illegally with other families, with the consequent danger that both families may be arbitrarily evicted — we are speaking of much larger numbers.")

17. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 34; *see also* P. ROSSI, *supra* note 2, at 96 (finding similar conditions in Chicago).

18. *See infra* Part IV; *see also* P. ROSSI, *supra* note 2, at 8 ("[H]omelessness is more properly viewed as the last aggravated state of a more prevalent problem, *extreme poverty.*") (emphasis in original).

term, this Note uses “homeless” throughout, in part as a matter of convenience, and in part because the word currently embodies the problem more completely than any alternative phrase.

I. THE HOMELESS PROBLEM

Up the dark stairways they are pouring into tier upon tier of human hives, in some instances not less than seven stories high and, of course, without an elevator, and by grimy landings they are sorted out and at last distributed each into his own cranny. Small, dark one-, two- and three-room apartments, where yet on this Christmas evening, one, and sometimes three, four and five are still at work . . . Miserable one- and two-room spaces where ignorance and poverty and sickness, rather than greed or immorality, have made veritable pens out of what would ordinarily be bad enough. . . . These are the homes. Let us enter.

— Theodore Dreiser

THE COLOR OF A GREAT CITY¹⁹

Any examination of turn-of-the-century housing and homelessness should begin with the influx of immigrants into this country.²⁰ In the last year of the nineteenth century, 356,715 “aliens” immigrated to the United States.²¹ By 1901, this annual figure had increased to 562,868, and by 1905 the number of arrivals topped one million. In total, from 1899 to 1908, 8,515,889 aliens entered the United States.²²

Many of these immigrants settled in New York City.²³ By 1905, Manhattan had 2,384,010 inhabitants of whom 583,718, or 24.5 percent, were aliens.²⁴ Of Brooklyn’s 1,358,686 inhabitants, 179,904, or 13.2 percent, were aliens.²⁵ By 1910, 40 percent of all New Yorkers were foreign born while another 38 percent had foreign born parents.²⁶

More significant than their sheer numbers, most of these newcom-

19. T. DREISER, *supra* note 13, at 279-80.

20. See generally H. CHUDACOFF, *THE EVOLUTION OF AMERICAN URBAN SOCIETY* (2d ed. 1981). The United States has seen two distinct waves of immigration: the first, smaller, influx lasted from 1840 to 1880; the second, and more massive, influx started in 1880, peaked in the first ten years of the century and continued until congressional action ended it in 1920. *Id.* at 104.

21. NEW YORK STATE COMMISSION OF IMMIGRATION, REPORT, (1909) 165 [hereinafter IMMIGRATION REPORT]. The Commission defined an “alien” as a “foreign-born unnaturalized resident of the United States who has been in this country less than five years.” This differs somewhat from census and other definitions which often do not include the five-year time limit. *Id.* at 161.

22. *Id.* at 165 (In 1910, the total combined population of America’s ten largest cities was only 12,401,272.). H. CHUDACOFF, *supra* note 20, at 102.

23. Most immigrants settled in their port of arrival; they were too poor to travel elsewhere. H. CHUDACOFF, *supra* note 20, at 104.

24. IMMIGRATION REPORT, *supra* note 21, at 162.

25. *Id.*

26. The City’s total population in 1910 was 4,766,883. 1,927,703 were foreign born and 1,820,141 were native born with mixed or foreign-born parents. H. CHUDACOFF, *supra* note 20, at 102.

ers entered the country destitute. Over eighty percent had less than \$50 upon entering the country,²⁷ this at a time when rents in New York City ranged from \$13 to \$20 per month.²⁸ As a result, many of the new New Yorkers could not afford adequate housing. Although private charitable organizations attempted to help, they could not begin to surmount the enormity of the problem.²⁹ By the end of the century's first decade, the city faced a massive housing and homelessness crisis.

Many observers of the day chronicled the conditions in which the homeless lived. One visitor to New York's lower east side, where ten to fourteen people often crammed into one room, found that he could not "endure the air . . . where the odor of ill-cared for bodies mingled with the odor of spoiled food."³⁰ William Dean Howells, in his book *Impressions and Experiences*, wrote, "[T]he putrid breath of the [outside] court [was] twice fouled by the passage through the living room into the black hole in the rear, where the whole family lay on the heap of rags that passed for a bed."³¹

Other equally vivid accounts exist. They chronicle "pale faced children" and high infant mortality rates; almost complete darkness and no ventilation; lack of hot water or indoor toilets; and appalling overcrowding and filth in the streets.³² Many children survived with-

27. IMMIGRATION REPORT, *supra* note 21, at 11.

28. NEW YORK STATE BOARD OF HOUSING, REPORT TO GOVERNOR, ALFRED E. SMITH AND TO THE LEGISLATURE OF THE STATE OF NEW YORK 50 (1927).

29. The Tammany Hall ward boss and political sage George Washington Plunkitt attacked these groups for their disorganization in dealing with the needs of the poor.

If a family is burned out [in a fire] I don't ask whether they are Republicans or Democrats, and I don't refer them to the Charity Organization Society, which would investigate their case in a month or two and decide they were worthy of help about the time they are dead from starvation. I just get quarters for them, buy clothes for them if their clothes were burned up, and fix them up till they get things runnin' again. It's philanthropy, but it's politics, too — mighty good politics. Who can tell how many votes one of these fires bring me?

W. RIORDON, PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS 28 (1963) (emphasis added) (quoting Plunkitt's remarks made in 1905).

30. B. STILL, MIRROR FOR GOTHAM 216 (1956).

31. B. STILL, *supra* note 30, at 211 (quoting W. HOWELLS, IMPRESSIONS AND EXPERIENCES 131, 134 (1896)).

32. Perhaps the best description can be found in J. RIIS, HOW THE OTHER HALF LIVES (S. Warner ed. 1970). Theodore Dreiser described the housing in this way:

There are narrow entrance-ways, dingy and unlighted, which lead up dark and often rickety stairs. . . . There are old pipes which lead upward and carry water. No such thing as sanitary plumbing exists. . . . Steam heat and hot and cold water tubs and sinks have never been installed in this area.

. . . There are families so poor, or so saving and unclean, that they huddle with other families, seven or eight persons in two rooms. Iron stands covered by plain boards make a bed which can be enlarged or reduced at will. When night comes, four, five, six sometimes seven such people stretch out on these beds.

T. DREISER, *supra* note 13, at 86. See also B. STILL, *supra* note 30, at 243 (quoting O'Brien, *The Emigrant in New York*, XVI THE NINETEENTH CENTURY, Oct. 1884 at 530-31).

In the typical tenement house the staircase passes up a well in the centre of the house. It has no light from the open air, no ventilation; it is absolutely dark at midday, except for such light as may find its way in from the open hall door or from the glasses over the doors of the

out even this semblance of shelter, actually living their entire lives on the street:

The city divides with the Sisters of Charity the task of gathering them in. The real foundlings, the children of the gutter that are picked up by the police, are the city's wards. . . . they are found, sometimes three and four in a night. . . . Few outcast babies survive their desertion long. . . . Of 508 babies received at the Randall's [Island] Hospital last year 333 died, 65.55 percent. . . . Often they come half dead from exposure.³³

Those who survived often joined groups of vagabonds known as "street Arabs." These juveniles became hardened criminals at an early age, living in outhouses, parked trucks, and even "a big iron pipe up by the Harlem Bridge"³⁴ From 1880 to 1890, the police allowed those with no other alternative, about 150,000 people annually, to escape the elements by sleeping in the station lock-ups.³⁵

Ample statistics support this dismal scenario. From 1880 to 1893, the density of New York's tenth ward (Manhattan's lower east side, a focal point for many immigrants) increased from 432 to 702 persons per acre.³⁶ Such extreme density created myriad problems. The New York State Board of Housing defined overcrowding as more than two inhabitants per room (excluding the first room, reserved as a kitchen/living room/dining room). Thus, a two-room apartment could have two people living in it, a three-room apartment could have four people living in it, etc. On the lower east side, overcrowding reached 35.8 percent of area housing by April of 1919.³⁷ Some of the new arrivals to this country could not even afford these overcrowded "homes." In 1903, immigrants comprised 59.6% of the paupers living in New York almshouses.³⁸

The lack of adequate housing led to severe health problems. Here, again, statistics demonstrate that the horrors chronicled by various reformers had reached epidemic proportions. A study of one Cleveland tenement district, from 1907 to 1914, found 908 cases of tuberculosis, or 52 cases per 1000 people. A sample nonslum district had only 450

flats, and possibly from a skylight at the top of the house. It is a well for all the noxious gases to accumulate in; it cannot be aired; the rays of the sun never penetrate to it; in the worst houses it is foul with the coming and going of the innumerable denizens of the tenements. On its steps play about the pale, unhealthy children who, even allowing for the enormous death rate, still swarm in these horrible dwellings. Can a more frightfully unwholesome system be imagined? Yet this is not the worst.

Id.

33. J. RIIS, *supra* note 32, at 124-25.

34. *Id.* at 132.

35. P. ROSSI, *supra* note 2, at 19.

36. H. CHUDACOFF, *supra* note 20, at 117. This should be compared with the density of New York City as a whole: 48.4 people per acre in 1880 and only 60 per acre in 1890. The numbers for all of Manhattan were 92.6 in 1880 and 114.5 in 1890. In 1890, population density in the tenth ward was 522 people per acre. J. RIIS, *supra* note 32, at 202.

37. NEW YORK STATE BOARD OF HOUSING, *supra* note 28, at 43.

38. IMMIGRATION REPORT, *supra* note 21, at 184.

cases, or 28 per 1000 people.³⁹ Thus, in Cleveland, a city whose slums did not even begin to reach the atrocities of New York's,⁴⁰ the rate of tuberculosis in the slums was double that in the rest of the city.

Perhaps the most striking statistics are those detailing the squalid nature of New York City's existing housing stock. Much of the city's low-income housing consisted of "dumbbell" tenements.⁴¹ The dumbbells, named for their shape, housed the maximum number of people within the minimum amount of space. While the "metropolitan" design tenement — built to meet later standards — occupied only 50.4 percent of the land it was built on, thereby leaving room for light and air to enter, the dumbbells used 87.6 percent.⁴² The New York State Tenement House Commission of 1900, which studied the dumbbells and recommended their abolition, described them in this manner:

Each floor above [ground level] is generally divided into four sets of apartments . . . [O]nly four [rooms] receive direct light and air from the street or from the small yard at the back of the building. . . . [E]ach family, besides having the foul air from its own rooms to breathe, is compelled to breathe the emanations from the rooms of some eleven other families; nor is this all, these [air shafts at the center of the building] act as conveyors of noise, odors, and disease⁴³

In 1901, the Tenement House Act⁴⁴ outlawed the dumbbell tenement and set some minimum standards for future housing construction. However, this law did not require that the dumbbells be torn down; rather, it simply provided that all future construction meet some basic standards. As a result, by 1920, 582,690 dumbbell apartments remained on the market; only 399,694 "new-law" — post-1901 — tenements existed. Nearly twenty years after being outlawed, dumbbells still comprised 43.7 percent of the city's total housing stock. As late as 1926 this figure had only dropped to 33.1 percent.⁴⁵

At the close of the first quarter of this century a homelessness crisis existed. Millions of immigrants entered the country during these years, and New York — as well as other cities — simply could not provide adequate housing for many of them. This situation forced

39. M. Chadsey, *The Old House as a Social Problem*, 51 ANNALS 82, 84 (1914).

40. See H. CHUDACOFF, *supra* note 20, at 114 ("New York City was unique in its acute crowding and degenerate housing."); see also THE TENEMENT HOUSE PROBLEM 141 (R. DeForest & L. Veiller eds. 1903, reprinted 1970) ("[P]robably not more than 5 per cent of all the houses in Cleveland are occupied by more than one family.") (Data from Cleveland is more specific on this problem and thus has been used here.).

41. See NEW YORK STATE BOARD OF HOUSING *supra* note 28, at 16.

42. NEW YORK STATE BOARD OF HOUSING, PRELIMINARY REPORT TO GOVERNOR ALFRED E. SMITH 9 (1926).

43. REPORT OF THE NEW YORK STATE TENEMENT HOUSE COMMISSION OF 1900 [hereinafter COMMISSION REPORT] reprinted in THE TENEMENT HOUSE PROBLEM, *supra* note 40, at 3, 8-9.

44. Tenement House Act, ch. 334, 1901 N.Y. Laws 889. See *infra* section II.B.

45. NEW YORK STATE BOARD OF HOUSING, *supra* note 28, at 16.

many newcomers into the street, while leaving countless others with housing that constituted only a marginal improvement. This problem did not go unnoticed. Reformers and members of the legal community began examining the problem and proposing a variety of solutions. By the 1920s, the New York legislature had enacted many of these proposals into law, testing their validity for the first time.

II. THE LEGISLATIVE REACTION

[The law] is like a single-bed blanket on a double bed and three folks in the bed and a cold night. There ain't never enough blanket to cover the case, no matter how much pulling and hauling and somebody is always going to nigh catch pneumonia. Hell, the law is like the pants you bought last year for a growing boy, but it is always this year and the seams are popped and the shankbones to the breeze. The law is always too short and too tight for growing humankind. The best you can do is do something and then make up some law to fit and by the time that law gets on the books you would have done something different.

— Robert Penn Warren
ALL THE KING'S MEN⁴⁶

This Part describes the political and legal system's response to the problems of homelessness at the turn of the century. Section A follows the evolution of the system's views about both homelessness and the proper way to attack the problem. Section B describes the legislation which grew out of these views.

A. *The Call for Reform*

The legal system of the early 1900s did not blindly ignore the homelessness crisis. Even before the turn of the century, members of the political and legal community began pushing for various reforms. Although this community contained a diversity of people and perspectives, their reform proposals tended to be strikingly similar.

This section describes the views of those within the political system on the topic of homelessness. Specifically, it discusses three major underlying conceptions about the problem: (1) that the problem could be solved through tackling its most obvious surface symptom — sanitation; (2) that the problem should be dealt with in a vacuum, without regard to the other causes of poverty; and (3) that housing relief constituted a privilege, and thus the recipients should be grateful for whatever they got. After describing these three views, this section then analyzes the way in which these views dictated the types of reforms attempted and, ultimately, their impact.

To understand fully the perspective from which a legislature addresses social problems, consideration must be given to those groups

46. R.P. WARREN, ALL THE KING'S MEN, 136 (1946).

that call for legal "reform" and play an active role in changing the law. In the case of early twentieth century housing legislation, these "reformers" played a dramatic role — ultimately becoming the guiding spirit behind much legislation. For example, some reformers served on the government commissions that developed solutions.⁴⁷ Others worked in the city agencies carrying out these plans,⁴⁸ while still more became advisors to the politicians who passed the needed legislation.⁴⁹ Although many of their solutions ultimately proved inadequate or misguided, these reformers represented an impressive wave of humane, progressive thinking. Their work should not be discounted simply because it did not achieve all that it set out to do.

The progressive reform movement of this era was not limited to housing. At the end of the nineteenth century, this country saw the rise of a widespread progressive movement, which pushed for reform in a variety of areas including housing, education, politics, women's suffrage and civil rights.⁵⁰ This movement, which in 1912 spawned two presidential candidates, was not led by the poor themselves, but by young "middle class" Americans.⁵¹

It is a mistake, however, to think of progressivism as a single movement. In fact, it was a series of different reform groups each pushing their own individual goal without regard to, and often with outright hostility toward, the goals of other reform groups. Thus, groups pushing for women's suffrage or political reform often had little concern for those trying to improve the living conditions of the poor. One of the leaders of the women's suffrage movement actually advocated: "Cut off the vote of the slums and give it to women. . . ."⁵²

47. The reformers drafted documents such as the *Report of the New York State Tenement House Commission* and the *New York State Board of Housing Report*. These reports were commissioned by the legislature and Governor and were used as preludes to legislative reform.

48. George Gove, the director of New York's Bureau of Housing and Regional Planning was one such reformer. See, e.g., Gove, *New York Housing Law to Aid Wage Earners*, 15 NATL. MUN. REV. 381 (1926).

49. New York's powerful Governor, Al Smith, who oversaw most of the reforms, had a close relationship with several of the reformers, and two of them, Belle Moskowitz and Robert Moses, belonged to his inner circle of advisors. For an excellent discussion of Smith's relationship with these reformers, see R. CARO, *THE POWER BROKER* 93-95 (1974).

50. "Progressivism meant a great many things to different people, but in large part represented an effort to clean up the most obvious causes of corruption, disease, and poverty." W. CHAFE, *THE AMERICAN WOMAN* 18 (1972); see also J. PATTERSON, *AMERICA IN THE TWENTIETH CENTURY* 46-59 (1983) (General textbook discussion of the various aspects of the progressive movement.).

51. J. PATTERSON, *supra* note 50, at 46. In 1912, both Teddy Roosevelt and Eugene V. Debs ran as progressive, third party candidates for president. Although Woodrow Wilson won the election, Roosevelt garnered more votes that year than did the Republican candidate, William Howard Taft. *Id.*

52. W. CHAFE, *supra* note 50, at 15 (quoting Carrie Chapman Catt, *reprinted in UP FROM THE PEDESTAL* 125 (A. Kraditor ed. 1969)). Leaders of political reform proved no more sensitive to the needs of the poor. One leader of this group advocated overthrowing boss rule because "[t]he city business should be carried on by trained experts selected upon some other principle than popular suffrage." J. PATTERSON, *supra* note 50, at 62 (quoting Abram Hewitt).

Given this attitude, the reformers seeking housing improvements often worked in isolation, concentrating and depending upon their own area of interest rather than merging to create a broader movement to help the poor.⁵³

Perhaps the most striking aspect of the reformers' developing theories about homelessness was their tendency to see tenement problems in their most visible manifestation: poor sanitation. For example, Robert DeForest and Lawrence Veiller, who headed up the famous Tenement House Commission,⁵⁴ framed the problem of tenement/slum life almost exclusively in terms of sanitation. At one point the Commission Report explained: "[T]he chief evil to be remedied is the tenement house itself. Adequate light and air, perfect sanitation, even passable home environment cannot be provided [in the tenements]."⁵⁵ Jacob Riis, whose 1890 book *How the Other Half Lives*⁵⁶ brought the tenement house problem to the public consciousness,⁵⁷ also saw the crisis in health terms. Throughout the introduction to his book he consistently linked sanitation to slums, calling tenements "the despair of the sanitarian."⁵⁸

Other theorists followed this lead. For example, the article "Housing Reform Through Legislation"⁵⁹ deals entirely with the need to clean up the various health problems of the slums. The author sees housing problems only in terms of visible sanitary dangers, blithely passing over the various other social forces that might also cause the misery of the tenements. In fact, the article goes on to suggest that tenement reform should be overseen either by an independent agency or by the Board of Health.⁶⁰

In a similar vein, another article, "Sanitary Inspection of the Tenements,"⁶¹ suggests sending inspectors to check on unsanitary conditions and to insist they be cleaned up. Although the author raises many of the problems associated with poor housing, his only recommendation to cure those ills is "sanitary inspection."⁶² Numerous other reformers held similar opinions, claiming that whitewashing ten-

53. Even among those reformers interested in helping the poor, there was little unity of purpose. For example, Jane Addams — leader of the settlement house movement to help the poor — distrusted labor unions and refused to work with them. J. PATTERSON, *supra* note 50, at 47.

54. The Tenement House Commission led to the century's first major legislative reform, the Tenement Act. *Supra* note 44. For a full discussion of the act, see *infra* section II.B.

55. COMMISSION REPORT, *supra* note 43, at 5.

56. J. RIIS, *supra* note 32.

57. Riis' book inspired the young Fiorello La Guardia and helped push him toward a career in politics, consummated by 12 years as Mayor of New York City. T. KESSNER, *FIORIELLO H. LA GUARDIA AND THE MAKING OF MODERN NEW YORK* 23 (1989).

58. J. RIIS, *supra* note 32, at 4.

59. Feiss, *Housing Reform Through Legislation*, 2 PROC. ACAD. POL. SCI. 253 (1912).

60. *Id.* at 255.

61. Hartman, *Sanitary Inspection of Tenements*, 2 PROC. ACAD. POL. SCI. 315 (1912).

62. *Id.*

ement walls and eliminating disease ridden privy vaults would cure most housing evils.⁶³

Ultimately, the reformers, and the lawmakers they influenced, saw the homelessness crisis only in terms of sanitation, the problem's most visible manifestation. This limited view of homelessness proved fateful because it prevented the legal system from seeking out the root causes of homelessness. Because the legislature fixated on this most immediate problem, it settled for solutions dealing solely with curing this surface ill, rather than attempting to uncover and remedy the underlying evils which caused this more visible problem. The symptom rather than the disease received intensive care.

This approach pervaded even the most extensive reports of the period, which overlooked the broader societal hurdles perpetuating homelessness. For example, the lack of available housing, combined with the insufficient wages of most immigrants, caused much of the overcrowding and unsanitary conditions which plagued the poor.⁶⁴ Still, the Tenement House Commission refused to recognize that New York City needed to build new housing units, to provide municipal housing at lower rents, or to increase the paltry incomes of the poor.⁶⁵

Broader social problems existed and also fueled the homeless crisis. Poor education, social ostracism, and ethnic prejudice also perpetuated the cycle of poverty that kept many immigrants in the slums. In turn-of-the-century newspapers, the classified section routinely advertised employment agencies full of workers for "all positions, all Protestants," making it quite clear that many New Yorkers quite simply refused to provide jobs to Catholics, Jews, or other religious minorities.⁶⁶ African Americans fared even worse. One sociologist observed

63. See e.g., B. STILL, *supra* note 30, at 243-44 (quoting O'Brien, *The Emigrant in New York*, XVI THE NINETEENTH CENTURY Oct. 1864, at 530-31); Friedman, *Good Housing, and What it Means*, 20 CASE & COM. 158 (1913) (discussing the horrors of tenements, including poverty, overcrowding, and disease, and concluding that the solution is to be found in an independent, publicly financed health department charged with cleaning up the tenements).

64. See H. CHUDACOFF, *supra* note 20, at 113-15 ("As native and foreign migrants streamed into the inner regions of northern cities, they pressed private housing markets beyond their capacities. . . . Increases in population and rising land values drove up rents and tempted landlords to squeeze every penny from their tenants. . . . New York City was unique in its acute crowding and degenerate housing."). Racial discrimination also played a role in creating homelessness. By the 1920s, African Americans in Harlem paid "'twice as much as white tenants for the same apartments.'" This led to tremendous overcrowding. T. KESSNER, *supra* note 57, at 204 (quoting Judge John Davies of Harlem's municipal court).

65. COMMISSION REPORT, *supra* note 43, at 44. In fact, DeForest, who headed up the Tenement House Commission, admits that the Tenement House Act — by condemning many buildings — displaced thousands and raised rents but cheerfully adds: "It would be a sorrowful comment on the intelligence of the working people if they were not willing to pay a little more for vastly improved living accommodations." THE TENEMENT HOUSE PROBLEM, *supra* note 40, at xvi. The problem, of course, was that the "working people" could not afford additional rent.

66. T. KESSNER, *supra* note 57, at 6; see also J. RIIS, *supra* note 32, at 118 ([C]hildren were "crowded out of the schools year by year for want of room," often ending up in jail or juvenile hall.). *Id.* at 118-25, provides a vivid description of the "social" obstacles which created a cycle of poverty. (Although Riis recognizes these problems, he fails to draw direct connections be-

that two types of employers existed in New York “those that employ Negroes in menial positions and those that employ no Negroes at all.”⁶⁷ These problems also were ignored by the reform programs that emerged.⁶⁸

Ultimately, then, legislators and others viewed the housing crisis in isolation — solely as the need to clean up health hazards — rather than as part of a larger problem: the combination of poverty among new immigrants with the lack of decent, low-cost housing.⁶⁹ This trend in thinking should be carefully understood because it tremendously influenced the direction ultimately taken by the legislature in confronting the crisis.

B. Legislative Solutions

The reformers' call to arms did not go unheeded. During the first quarter of the century, the New York State Legislature enacted several laws designed to solve the homelessness and housing crises. This section will examine some of the relevant legislation passed in this period, and demonstrate just how the conceptions about homelessness described in the last section affected these new laws. Specifically, this section will examine three pieces of legislation: the Tenement House Act of 1901,⁷⁰ the State Housing Law of 1926,⁷¹ and the Public Welfare Law of 1929.⁷²

Before beginning, one note of caution is in order. This section criticizes the various legislative reforms for not considering the broader factors — such as oppressive labor conditions, inadequate education, and ethnic prejudice — which contributed to homelessness. Clearly, reforms were taking place at this time in these other, nonhousing areas. However, because the housing reforms never incorporated the

tween them and homelessness.) Ethnic prejudice tended to force the immigrants into segregated ghettos. These ghettos provided much needed communal support, but also had the tendency to isolate the immigrants. This last effect especially brutalized African Americans. H. CHUDACOFF, *supra* note 20, at 122-30.

67. T. KESSNER, *supra* note 57, at 204 (quoting E. Franklin Frazier, a pioneering African American sociologist).

68. In fact, many members of the legal system perpetuated such ethnic stereotypes. *See, e.g., id.* at 6 (The *New York Times* claimed that Protestant clergyman and noted reformer Charles Loring Brace's book *Christianity and Progress* would help protect the world from “Roman Corruption.”). *But see* H. CHUDACOFF, *supra* note 20, at 181-84 (stating that reformers did recognize some of the problems of lack of education and did take some steps to correct the school system abuses).

69. One final example of this isolationist view can be seen in Paul Feiss' article *Housing Reform Through Legislation*. Here, rather than suggesting that the problem be dealt with as part of the more general crisis of poverty, Feiss went out of his way to recommend the opposite. In fact, he specifically recommended that housing problems be dealt with by a separate agency not associated with any other social service departments. Feiss, *supra* note 59, at 254.

70. Tenement House Act, ch. 334, 1901 N.Y. Laws 889.

71. State Housing Law, ch. 823, 1926 N.Y. Laws 1507.

72. Public Welfare Law, ch. 565, 1929 N.Y. Laws 1149.

nonhousing reforms, improvements in education, health care, and labor conditions did not reach the homeless. For example, at the same time that the New York legislature passed the Tenement House Act, great improvements were made in public education.⁷³ Unfortunately, those living in the worst slums often could not benefit from these improvements because they could not afford to lose a wage earner by sending a child to school.⁷⁴

1. *The Tenement House Act of 1901*

The legislature's first major attempt to solve the homeless problem came in 1901 when it passed the Tenement House Act of 1901.⁷⁵ For its time, the bill represented a radical attack on the housing crisis. Even thirty-six years later, one author described the measure as "the most significant regulatory act in America's history of housing . . . progress[ing] far beyond preceding legislation in its detail, its scope and the high character of its standards."⁷⁶

The Tenement House Act set out minimum health and safety standards for all new tenements. The Tenement House Act divided these standards into three groups: fire protection;⁷⁷ light and ventilation;⁷⁸ and sanitation.⁷⁹ The fire safety requirements included mandatory fire escapes on the outside of the building.⁸⁰ The light and ventilation section limited the proportion of available space a tenement could occupy on its lot to seventy percent, requiring that the rest of the land be used for a yard in back and an additional courtyard.⁸¹ Moreover, the Act set out a minimum size for all rooms and required windows of a certain size.⁸² Finally, the chapter covering sanitary provisions required such basics as running water and water closets in each apartment, and

73. See H. CHUDACOFF, *supra* note 20, at 181-84.

74. *Id.* at 181. ("In many cities seldom did more than two thirds of the school-age children attend classes — often because families could not afford to withhold their children from the labor market.")

75. Tenement House Act, ch. 334, 1901 N.Y. Laws 889.

76. Foley, *Legal Aspects of Low-Rent Housing in New York*, 6 FORDHAM L. REV. 1, 2 (1937). For anyone forced to read the entire law, the observation about detail and scope is especially well taken. The final version of the bill details the various housing requirements in excruciating detail. See *infra* note 82 for an example of this exactitude.

77. Tenement House Act, ch. 334, §§ 11-42, 1901 N.Y. Laws 889, 891-900.

78. Tenement House Act, ch. 334, §§ 51-85, 1901 N.Y. Laws 889, 901-09.

79. Tenement House Act, ch. 334, §§ 91-113, 1901 N.Y. Laws 889, 909-15.

80. Tenement House Act, ch. 334, § 12, 1901 N.Y. Laws 889, 891-94.

81. Tenement House Act, ch. 334, §§ 53-64, 1901 N.Y. Laws 889, 901-04.

82. Tenement House Act, ch. 334, §§ 67-70, 1901 N.Y. Laws 889, 905. The text of the act spelled out the requirements for windows, lighting and ventilation in extreme detail. For example, section 68 reads in part: "the total window area in each room . . . shall be at least one tenth of the superficial area of the room, and the top at least of one window shall not be less than seven feet six inches above the floor, and the upper half of it shall be made so as to open the full width. No such window shall be less than twelve square feet in area between the stop beads." The one exception to these window requirements was bathrooms.

outlawed the use of cellars and basements as living quarters.⁸³

The Tenement House Act perfectly embodied the reformer's conceptions about homelessness. This should not be surprising since the Tenement House Act was enacted in response to the previously described Tenement House Commission⁸⁴ — a commission which shaped the legal system's belief that housing and sanitation went hand in hand.⁸⁵ For example, while the Tenement House Act attempted to eliminate the obviously unhealthy conditions of the tenements, it failed to consider any of the underlying problems which spawned these conditions. The Tenement House Act set out health standards for new construction, yet it did nothing to encourage the building of additional housing or to limit the rent charged in the tenements⁸⁶ — two factors which led to the worst problems of overcrowding.⁸⁷ Broader concerns — such as the more general causes of immigrant poverty — go entirely unaddressed. As will be seen, failure to tackle these broader concerns would ultimately render the act ineffective.⁸⁸

2. *The State Housing Law of 1926*⁸⁹

At the end of World War I, New York was confronted by one of the most severe housing shortages it had faced to that date.⁹⁰ After several years of inaction, the state finally responded with the State Housing Law of 1926. Just as with the Tenement House Act, the State Housing Law in some ways represented an important advance in methods of dealing with the crisis.⁹¹ However the Law continued to

83. Tenement House Act, ch. 334, §§ 91, 94, 95, 1901 N.Y. Laws 889, 909-11. The Act, however, did permit people to live in basements and cellars under highly regulated conditions.

84. See *supra* text accompanying notes 54-55; Foley, *supra* note 76, at 2 (The Tenement Act was "adopted after the expos[ure] of the shocking tenement conditions in New York City by the Tenement House Commission of 1900 . . .") (footnote omitted).

85. See *supra* text accompanying notes 54-55.

86. Tenement House Act, ch. 334, §§ 121-51, 1901 N.Y. Laws 889, 915-22.

87. See *supra* text accompanying notes 37-39.

88. See *infra* text accompanying notes 120-129.

89. State Housing Law, ch. 823, 1926 N.Y. Laws 889.

90. See NEW YORK STATE BOARD OF HOUSING, *supra* note 28, at 11: There were practically no vacancies at any price. From a normal vacancy percentage of 5.60 in 1916 the vacancy percentage in February 1921, had fallen to 0.12. Confronted with demands of landlords for higher rentals tenants were without recourse except for the protection afforded them by the rent laws.

But in spite of the relief which the rent laws were designed to give, the average level of rents was moving continually upward. Increasing rents were directly responsible for room overcrowding and increasing congestion. Everywhere families were doubling up and at all times there was great public stress and apprehension.

Id.

91. George Gove, the director of the New York Bureau of Housing and Regional Planning, wrote of the bill soon after its passage: "After more than half a century of agitation against the evils of the slum, New York is taking its first practical step toward their abolition." Gove, *supra* note 48, at 381. Foley described the bill as "the first legislation to have a really constructive effect on the quality of urban housing . . ." Foley, *supra* note 76, at 7.

operate within the legal and political system's general constraints on appropriate tactics for dealing with homelessness.

The State Housing Law went beyond regulating conditions and attempted to increase the State's housing stock. The State Housing Law provided for the creation of "Public Limited Dividend Housing Corporations," which would build housing to be rented for no more than twelve-and-one-half dollars per month. These corporations would need to receive state approval and would be subject to state regulation; however, their funding was to come from private investment and mortgage bonds.⁹² Although the state did not provide direct public funding to these corporations, it did grant lavish tax exemptions in the hopes of making the venture both profitable and attractive.⁹³ Moreover — and this was the Law's most radical concept — the state would use its power of eminent domain to provide the corporations with needed land.⁹⁴

By going beyond regulation and actively aiding the construction of new housing, the State Housing Law was an admission that previous attempts at solving the problem (all in the tenor of the Tenement House Act) had failed. As George Gove, director of the New York Bureau of Housing and Regional Planning, explained:

The underlying population in cities always has been and is now, inadequately housed. . . . Through all these years succeeding legislatures have attempted to deal with the problem by placing added restrictions on commercial builders in an attempt to improve housing standards. But restrictive legislation has failed to discover a remedy. . . . They have established minimum standards for housing, but they have not produced new houses.⁹⁵

Unfortunately, while the legislature went well beyond earlier reforms with the State Housing Law, it still continued to see the problem within the traditional framework of nineteenth century conceptions about homelessness.⁹⁶ For example, the State Housing

92. State Housing Law, ch. 823, §§ 13-15, 1926 N.Y. Laws 1507, 1509-10.

93. State Housing Law, ch. 823, § 39, 1926 N.Y. Laws 1507, 1518 (exempting corporations from all state taxes).

94. State Housing Law, ch. 823, § 20, 1926 N.Y. Laws 1507, 1512-13; see also Chamberlain, *A Legislative Attack on Slums*, 12 A.B.A. J. 849 (1926).

95. Gove, *supra* note 48, at 381.

96. This should not be surprising. The Housing Act sprang directly from the thinking of the reform movement detailed in section II.A of this Note. The most obvious connection of the legal system's reform movement to this legislation is through Governor Al Smith. See Fisher, *Housing Legislation and Housing Policy in the United States*, 31 MICH. L. REV. 320, 332 (1933) (noting that Smith, a driving force behind the Housing Act, had many ties to the various reformers). As described by Robert Caro:

[Then leading reformer Robert] Moses was one of the little group which, in the late afternoon, would be swept by [Governor Al] Smith out of the Executive Chamber and over to the home of his daughter Emily and her husband John A. Warner, to chat with him . . .

It was a mixed circle: Tammany men like George B. Graves, in his thirty-second year of service to Democrats in Albany, John F. Gilchrist, one of Smith's boyhood friends, and George V. (the Fifth) McLaughlin, a bluff, red-faced banker; and three tall, slim reformers

Law's legislative finding expounds: "It is hereby declared that *congested and unsanitary* housing conditions which exist in certain areas of the state in low priced dwellings are a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state."⁹⁷ Like the Tenement House Act, the State Housing Law deals only with one of the symptoms of homelessness, and fails to search for the more general conditions which lead to the problem of homelessness.⁹⁸ Instead, the State Housing Law deals exclusively with getting people off the streets, out of overcrowded tenements, and into less crowded apartments.

Admittedly, the State Housing Law does go farther than the Tenement House Act. The legislature did confront the immediate causes of a lack of affordable housing. However, even in this area, the State Housing Law's scope is limited. The Law does not call for direct government action to build more affordable housing. Rather, the Law simply creates a favorable environment for private investors to improve the state's housing stock. In fact, should the incentives in the Law not prove adequate, the Law then calls for a raise in the maximum allowable rent rather than any form of direct state subsidy.⁹⁹ This increase in rents helped to gut the Law's impact by pricing the new housing out of the reach of those for whom it was intended.¹⁰⁰

3. *The Public Welfare Law of 1929*¹⁰¹

A final law worth considering is the Public Welfare Law of 1929 or "Poor Law." Unlike the State Housing Law and Tenement House Act, the Public Welfare Law did not represent a new attempt to solve the problem of homelessness, nor did it spring from the recent wave of reform.¹⁰² Instead, the Public Welfare Law simply represented a car-

— Moses, Proskauer, and the stentorian, Roman-nosed journalistic genius with a thatch of bright red hair and a big, swinging stride, Herbert Bayard Swope. All three were master talkers. Pacing around the room, circling, interrupting, outshouting one another, they made proposals, discussed them, refined them. And interrupting and outshouting them, the Governor, the voice of experience in the quartet of reform

R. CARO, *supra* note 49, at 137.

97. State Housing Law, ch. 823, § 2, 1926 N.Y. Laws 1507, 1507-08 (emphasis added).

98. Obviously, lack of available housing provided a major cause of homelessness. However, other factors — lack of resources to pay for housing, ethnic and social prejudice — exacerbated the problem. See *supra* text accompanying notes 64-67.

99. State Housing Law, ch. 823, § 21, 1926 N.Y. Laws 1507, 1513-14.

100. See *infra* text accompanying notes 128-31.

101. Public Welfare Law, ch. 565, 1929 N.Y. Laws 1149.

102. See Act for the Settlement and Relief of the Poor (Poor Law), ch. 35., 1784 N.Y. Laws 651. New York State has had "poor laws" since colonial times. H. CHUDACOFF, *supra* note 20, at 13. Subsequent poor laws, including the Public Welfare Law, differ only in bureaucratic form, not in substance or goals, from this colonial ancestor. See Act for the Settlement and Relief of the Poor (Poor Law), ch. 35., 1784 N.Y. Laws 651; Act in Relation to the Poor (Poor Law), ch. 46, N.Y. POOR LAW (Consol. 1909); Public Welfare Law, ch. 565, 1929 N.Y. Laws 1149; see also *infra* text accompanying notes 108-11 (further discussing the similarity between these laws).

ryover from earlier attempts to deal with homelessness.¹⁰³ Nevertheless, this law and its antecedents are worth considering for two reasons: first, they do represent a significant legal reaction to homelessness during this period; and second, this older approach provides an illuminating contrast to the State Housing Law and Tenement House Act. By contrast with this older attempt to deal with the problem, the efforts of the new reformers represent a genuinely new approach to the problems of poverty and homelessness.

The Public Welfare Law of 1929 regulated the state system for taking care of indigents who proved incapable of supporting themselves.¹⁰⁴ More specifically, it provided for the creation and maintenance of almshouses to shelter these people.¹⁰⁵ The Law did this through a system of county "Public Welfare Districts" responsible for the running of such shelters. Each indigent person was deemed to have a "settlement" in one particular town or city. This settlement determined which counties had responsibility for which people.¹⁰⁶

Ultimately, the system of almshouses set out by the Public Welfare Law represented little more than the continuation of the system of "Poor Laws"¹⁰⁷ which had existed since at least 1784.¹⁰⁸ In fact, most of the Poor Law of 1784 remained on the books until 1909, when a new codification¹⁰⁹ updated it. The 1909 version continued until the Public Welfare Law repealed it in 1929. The structure of the various enactments remained much the same, with similar topics being addressed in a similar order. All three codes — of 1784, 1909, and 1929 — spend considerable time on the issue of "settlement"¹¹⁰ and all tackle the problem by dividing the state into "Public Welfare Districts," leaving to each locality the problem of establishing and paying

103. This, of course, provides a convenient analogy. Just as the modern legislature unthinkingly accepts turn-of-the-century legislative imperatives, turn-of-the-century legislators simply accepted and carried over much of *their* predecessors work.

104. Public Welfare Law, ch. 565, 1929 N.Y. Laws 1149. Such support went beyond housing to include other such necessities as medical care.

105. Public Welfare Law, ch. 565, §§ 17-25, 1929 N.Y. Laws 1149, 1154-56.

106. Public Welfare Law, ch. 565, §§ 53-55, 1929 N.Y. Laws 1149, 1164. The problem of determining in which town or city a poor person had his or her "settlement" proved more difficult than it might appear. The Public Welfare Law based settlement on residency of one year, yet many of the indigent drifted from area to area. As a result, each separate county attempted to pawn off responsibility (and costs) to a different locale.

107. Precursors of the Public Welfare Law were entitled "Poor Laws." In fact, section 1 of the Public Welfare Law explicitly changes the name of this type of legislation from "Poor Law" to "Public Welfare Law," and adds that all earlier references to poor laws should be applied, now, to public welfare laws. Public Welfare Law, ch. 565, § 1, 1929 N.Y. Laws 1149, 1150.

108. Act for the Settlement and Relief of the Poor (Poor Law), ch. 35, 1784 N.Y. Laws 651. Even earlier poor laws existed in pre-revolution colonial New York. However the New York Law seems to be the earliest codified version. See *supra* note 102.

109. Poor Law of 1909, ch. 46, N.Y. POOR LAW (Consol. 1909).

110. Poor Law of 1784, ch. 35, 1784 N.Y. Laws 651 *passim* (this code did not have section numbers for each paragraph); Poor Law of 1909, ch. 46, N.Y. POOR LAW § 40 (Consol. 1909); Public Welfare Law, ch. 565, §§ 53-55, 1929 N.Y. Laws 1149, 1154-56.

for the requisite almshouses.¹¹¹ Even the language of the Public Welfare Law hearkens back to its post-colonial predecessor.

Conditions in this time honored system of almshouses (or, in more rural settings, work farms) proved to be truly brutal — more like prisons than homes for the poor.¹¹² In fact, the Poor Law of 1909 referred to the denizens of the almshouses as “inmates” to be thrown in jail if they left the almshouse without being “duly discharged” and again turned to begging on the streets.¹¹³ This harsh climate was often deliberate — motivated by the fear that if relief became too comfortable it would encourage pauperism.¹¹⁴

Obviously, the calls for reform did not go unheeded. Rather, the reaction to the homelessness problem led directly to the passage of several important measures, all of which incorporated the ideas generated during the first part of this century. By comparing these measures to earlier tactics for dealing with the problem (as represented by the Public Welfare Law), it becomes obvious that these new laws, while not perfect, represented a substantial departure from earlier methods of dealing with homelessness.

Unfortunately, these new laws continued to be dominated by several unproductive strains of reformist thought. The Tenement House Act attacked only the most visible problems of sanitation. Both the Tenement House Act and State Housing Law dealt with the crisis in isolation, failing to recognize its nonhousing causes. Finally, none of the legislation studied in this section treated housing as a basic right, to be provided directly by the state when all else failed.

III. THE SUCCESS AND FAILURE OF THE EARLY SOLUTIONS

Here is one-third of a Nation ill-nourished, ill-clad, ill-housed

Here are thousands upon thousands of men and women laboring for long hours in factories for inadequate pay

Here are thousands upon thousands of children who should be at school, working in mines and mills. . . .

111. Poor Law of 1784 *passim*; Poor Law of 1909 §§ 3, 4, 10, 11; Public Welfare Law §§ 17, 22-25. The Public Welfare Law was marginally more flexible in this regard. It stated that where possible, the indigent should be placed in private homes rather than public almshouses and shelters. However, despite this comment, no provisions were added to effectuate this.

112. See H. CHUDACOFF, *supra* note 20, at 135 (“The public was more anxious to remove undesirables from society than it was to help such people become productive citizens. Rehabilitation, costly and demanding, lapsed into the confining and isolating of social undesirables from the outside world.”).

113. Poor Law of 1909, ch. 46, N.Y. POOR LAW § 93 (Consol. 1909).

114. See H. CHUDACOFF, *supra* note 20, at 135. Interestingly, this theory lingers today in the form of deterrence policy. See *infra* section IV.B.

If we would keep faith with those who had faith in us, if we would make democracy succeed, I say we must act — NOW!

— Franklin Delano Roosevelt¹¹⁵

The housing legislation of the early century pursued two different goals: eliminating unsanitary and unsightly slums;¹¹⁶ and building new housing for those without.¹¹⁷ Section A of this Part will evaluate the legislation's success in achieving each of these goals. This section will show that while the legislation did, at least in the short run, manage to eliminate some of the most unsanitary conditions of pre-1901 housing, it failed utterly in its attempts to provide new housing on any significant scale. Section B of this Part will then analyze the causes of this failure, and show that much of the blame can be traced to the underlying conceptions about homelessness identified in Part II.

A. *Evaluating the Success of the Tenement House Act and State Housing Law*

The safety provisions of the 1901 Tenement House Act reduced the number of deaths caused by fire and disease. New York City Tenement House Commissioner Langdon Post praised the act for substantially protecting tenement residents and reducing the number of deaths by fire.¹¹⁸ The rate of disease also dropped. From 1919 to 1934 New York possessed 518,000 old-law units (units built before the 1901 code and not meeting its specifications) and 592,000 new-law units. 22,900 disease-related deaths (including 4,600 from tuberculosis) occurred in the old-law tenements while only 13,900 such deaths (2,000 from tuberculosis) occurred in the new-law dwellings.¹¹⁹

Although the Tenement House Act set standards for better housing in the future, it failed to eliminate many of the already existent, substandard units.¹²⁰ Thirty-six years after the Act's passage, 64,000 old-law tenements — each with many housing units — continued to stand. Housing agents had eliminated only 24,000 buildings.¹²¹ In 1927, a report to New York City Mayor Jimmy Walker stated: "A third of the city's population — over two million people . . . [are living] in unsatisfactory conditions, many under distressful conditions, some under disgraceful conditions. . . . an inferno of torture to little

115. Address by Franklin D. Roosevelt, Mar. 4, 1937, reprinted in J. BURNS, ROOSEVELT: THE LION AND THE FOX 299-300 (1956).

116. See, e.g., State Housing Law, ch. 823, § 2, 1926 N.Y. Laws 1507, 1507-08.

117. See, e.g., State Housing Law, ch. 823, § 2, 1926 N.Y. Laws 1507, 1507-08.

118. L. POST, THE CHALLENGE OF NEW YORK HOUSING 109 (1938).

119. *Id.* at 38. (These statistics are based on deaths per apartment.)

120. In evaluating the success of the Tenement Act and the Housing Act, this Note will often evaluate them by their own very narrow terms. In part this is the result of a lack of research and statistics from this period on more broad-ranging issues. See, e.g., P. ROSSI, *supra* note 2, at 22.

121. L. POST, *supra* note 118, at 116; see also Foley, *supra* note 76, at 2 (lamenting that even in 1937, many old-law tenements continued to exist).

children, the sick, and the weak."¹²²

Applications for Federal New Deal Housing at the end of the 1930s show the persistent and lingering effects of old-law tenements. In 1938, 7,652 of the applicants for housing in these federal projects still lived in old-law tenements.¹²³ This comprised almost one quarter of the total applicants.¹²⁴ In one federal project, Red Hook Housing, 1,730 tenants arrived from old-law homes, of which 52.6 percent had no hot water and 36.5 percent had no private indoor toilet. All this, almost forty years after the Tenement House Act's passage.¹²⁵

The final indictment of the Tenement House Act comes from a special report of the City's Housing Authority issued in 1936 which stated:

If it were possible to carry on this elimination [of old-law tenements] at the present rate it would take nearly 65 years to rid the city of them. But where will the people go who are now forced to live in them? We are already reaching the point where a severe housing shortage is facing us.¹²⁶

The report continued with the prediction that the authorities must either stop enforcing the law (by ceasing their shutdown of unsafe houses) or face the prospect of people once again sleeping on the streets.¹²⁷

This final argument foreshadows the failure of the second prong of these early attacks on homelessness: the attempt to create new housing. Not only did the system fail to eliminate much of the unsanitary housing which plagued the populace, it also failed to provide new, safe dwellings to help keep people "off the streets."

Twelve years after the passage of the State Housing Law, Tenement House Commissioner Landgon Post delivered a gloomy assessment of the Law's failure. He claimed that of the fourteen developments built under the State Housing Law, none had rental rates low enough for the "slum dweller to meet."¹²⁸ Other experts agreed, explaining that the Law's failure to provide direct public financing left insufficient private capital to build the needed units. Worse, those units which were built often rented at rates beyond the reach of the city's poor.¹²⁹

122. T. KESSNER, *supra* note 57, at 208 (quoting from an unnamed report).

123. NEW YORK HOUSING AUTHORITY, FIFTH ANNUAL REPORT—1938, at 23 (1939).

124. *Id.*

125. NEW YORK HOUSING AUTHORITY, SIXTH ANNUAL REPORT—1939, at 18 (1940).

126. NEW YORK CITY HOUSING AUTHORITY, THE FAILURE OF HOUSING REGULATION 16 (1936) (emphasis omitted).

127. *Id.*

128. L. POST, *supra* note 118, at 123.

129. *See, e.g.,* Fisher, *supra* note 96, at 336. One observer wrote:

Low-rent housing for persons in the lowest income brackets, however, was not achieved on any effective scale by the "private" limited-dividend companies. High land values and in-

To compound the problem, the State Housing Law did not regulate to whom these new private limited-dividend corporations could rent. Although the legislature placed a ceiling on rents which could be charged in buildings constructed under the Law, it did not place a ceiling on the income of the renters. As a result, the limited-dividend corporations tended to shun the poor, choosing better off New Yorkers who were less likely to have trouble meeting the rent and keeping up the property.¹³⁰ In one study, thirty percent of the inhabitants of these buildings had incomes of over \$3,000.¹³¹

It is difficult to gauge the long-range success of the State Housing Law. A decade after the Law's passage, the New Deal swept in and provided massive federal housing construction in its wake. Although this later federal construction dwarfed the state's plans, as late as 1959, 281,988 substandard dwellings had yet to be replaced. In that year, 49.1 percent of the city's housing units had been constructed before 1919 and thus were not the result of either state or federal construction programs. Perhaps more disturbing, 19 percent of the dwelling units dated back before the enactment of the 1901 Tenement House Act.¹³²

Even the federal projects provided too few homes at too high rents.¹³³ In 1971, a report of the New York State Legislature warned that rents in government housing, while lower than elsewhere, "are in excess of the rent levels appropriate to the needs of moderate income families."¹³⁴

The State Housing Law did provide some housing, and it might have provided more had it not been superseded by superior federal plans. However, the Act's mixture of private capital and tax breaks proved unable to ameliorate significantly the problem of housing shortages and high rents. Half-a-century after its passage, many continued to live in squalid housing while others were unable to find any housing at all.

ability to condemn, lack of tax exemption on land and ineligibility for direct subsidies coupled with the incentive for profit, even though restricted, make it virtually impossible for private limited-dividend companies to bring rents within the reach of families in the lowest income brackets.

Foley, *supra* note 76, at 7 (footnotes omitted).

130. Fisher, *supra* note 96, at 336 ("These are best able to afford higher rents and are, consequently, the most desirable tenants for new structures. So long as the landlord has any control whatever, he will always tend to choose the tenant who is best able to pay his rent.")

131. *Id.* At the time the State Housing Law was passed, more than two thirds of families in New York had incomes of less than \$2500 per year. Only one fourth of New York families had incomes between \$2500 and \$5000. Gove, *supra* note 48, at 383.

132. O. HANDLIN, THE NEWCOMERS: NEGROES AND PUERTO RICANS IN A CHANGING METROPOLIS 84 (1959).

133. *Id.* at 87.

134. JOINT LEGISLATIVE COMMITTEE ON HOUSING AND URBAN DEVELOPMENT 1971 REPORT TO THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK 52 (1971).

B. *The Impact of the Reformers' Ideology on the Success and Failure of Their Legislative Reforms*

As discussed above, many different ideologies ran together at the turn of the century to spawn the system's response to homelessness. Most prominently, the system tended to address the entire crisis in terms of sanitation.¹³⁵ The solution, the reformers believed, was to get people off the streets and into visibly clean housing. Beyond this, the reformers viewed the problem in a vacuum, giving little thought to the problems which caused homelessness: insufficient income, poor education, racism, and social ostracism. As this Note has demonstrated, the Tenement House Act and the State Housing Law were the fruits of these views.

The failure of these two acts shows the crippling effects of such thinking. By simply requiring that existing housing be cleaned up and that new housing meet higher standards, enacted legislation did little to meet the needs of the city's poor. As the 1936 Report of the New York City Housing Commission explained, imposition of such health standards did little for those who could not afford housing in the first place.¹³⁶ In fact, by not increasing the income of the city's poor and not opening up areas from which social ostracism had previously banned them, much of the new "clean and vice free" housing remained out of reach to those who needed it.¹³⁷

Even the State Housing Law fell victim to a similar form of tunnel vision. Concerned only about building clean housing, the legislators did not take into account the fact that limited income would keep many out of this new housing. Nor did the legislature count on the prejudice which barred others from these buildings.¹³⁸ The failure to see the problem as part of a larger crisis prevented the legislators from effectively tackling those problems. Almost twenty years after the State Housing Law's passage, one embittered reformer complained:

Once upon a time . . . we thought that if we could only get our problem families out of those dreadful slums, then papa would stop taking dope, mama would stop chasing around, and Junior would stop carrying a knife. Well, we've got them in nice apartments with modern kitchens and a recreation center. And they're the same bunch of bastards they always were.¹³⁹

Not only did the legislative responses tend to see these problems in a vacuum, they also tended to avoid comprehensive solutions even as problems became increasingly severe. For this reason, the system did

135. See *supra* notes 54-63 and accompanying text.

136. NEW YORK CITY HOUSING AUTHORITY, *supra* note 126, at 16.

137. Fisher, *supra* note 96, at 336. This continued to be a problem as late as the 1960s and 1970s, especially for African Americans and Hispanics. O. HANDLIN, *supra* note 132, at 84-87.

138. See *supra* text accompanying notes 64-68.

139. T. KESSNER, *supra* note 57, at 432 (quoting unidentified reformer).

not consider housing aid as an absolute necessity, to be supplied to every needy citizen; but as a privilege given only to those with the greatest need and which such recipients should be grateful for. As one legal commentator complained about state housing problems: "[Housing aid] comes to be looked upon as a right, not a privilege. Those who are fortunate enough to receive the benefits of the exemption come to feel that the privilege . . . is one which *must* be provided . . . [when in fact, it should be considered] a temporary measure."¹⁴⁰ This attitude helped defeat a section of the State Housing Law which would have created a State Housing Bank to infuse the housing program with much-needed public funds. The failure to provide public funding kept the 1926 bill from effectively dealing with the housing shortage.¹⁴¹

IV. APPLYING THE LESSONS OF THE FIRST BATTLE WITH HOMELESSNESS TO THE MODERN PROBLEM

In this great future, you can't forget your past.
— Bob Marley¹⁴²

This Note has demonstrated how the legal system's early thinking about homelessness influenced, and ultimately crippled, late-nineteenth- and early-twentieth-century attempts to tackle the problem. This Part of the Note concludes that these early conceptions about homelessness linger on today; that they continue to shape current legislation; and that such legislation, because it is based on this earlier thinking, cannot meet the current homelessness crisis.

Section A of this Part traces the current state of New York homeless law, demonstrating that modern legislation is still the captive of early, underlying conceptions about homelessness. Section B analyzes the failure of this legislation. The section concludes that those laws based on turn-of-the-century conceptions about homelessness are flawed and unable to deal with the modern challenge.

Throughout this discussion of modern legislation, it is important to keep in mind the historical lessons of the first three parts of this Note. Current conceptions about homelessness are thoroughly embedded in our culture and laws. This "camouflage" often makes them undetectable unless, by studying the past, the lawmaker already knows for what he or she is looking.¹⁴³

140. Fisher, *supra* note 96, at 335 (emphasis in original).

141. See L. POST, *supra* note 118, at 123. As explained throughout, even sufficient housing, though desperately needed, would not have fully solved the problem. See, e.g., *supra* text accompanying notes 128-31.

142. Bob Marley and the Wailers, *No Woman, No Cry*, LEGEND (Island Records 1984).

143. The Pulitzer Prize-winning historian Oscar Handlin observed:

[T]he problems of the marginal wage earner, of substandard housing, or of juvenile delinquency are by no means novel in the history of New York. There are enough precedents for

A. Current Legislation

The first attempts at solving the homelessness problem were made through the court system.¹⁴⁴ In 1979, advocates for the homeless began to seek a court order that would require the City to provide aid to the homeless.¹⁴⁵ In 1981, the city settled the case with a consent decree recognizing the right of the homeless to shelter. To comply with this decree, the city opened part of a former psychiatric hospital on an island in the East River. Conditions at the shelter were so bad that lawyers for the homeless had to return to court to force the city to make the shelters livable by adding facilities such as toilets.¹⁴⁶ Even with these improvements, the issue never advanced beyond efforts to get the homeless off the streets.¹⁴⁷

This satisfaction with simply curing the most visible signs of homelessness, by getting the homeless "off the streets," is analogous to the efforts of earlier reformers to combat only the most visible manifestation of the housing crisis — poor sanitation.¹⁴⁸ Such an approach to homelessness influences numerous city policies.¹⁴⁹ For example, in response to the rising number of homeless "panhandlers" on New York's subways, the city simply directed the police to enforce rules prohibiting begging and lying down on subway seats. The order was intended to ensure "a subway *environment that is more orderly*, fostering a greater share of passenger comfort and security."¹⁵⁰ This lan-

them in the early experience of the city and the more recent development of the region so that an *understanding of the past may offer a useful guide to the expectations of the future*.

To that end it is necessary to recall rather than push away the recollection of that past.

O. HANDLIN, *supra* note 132, at 3 (emphasis added).

144. As noted earlier, the courts are a particularly inefficient way of attacking the problem. See *supra* note 8 and accompanying text.

145. Callahan v. Carey, Index No. 42582/79 (N.Y. Sup. Ct. Dec. 5, 1979). For a detailed description of this court battle, see Hayes, *supra* note 8, at 5-7 (Hayes was the lead attorney for the homeless in this and subsequent cases).

146. See Hayes, *supra* note 8, at 5-7. ("It does not take too much imagination by government bureaucrats to manage to make shelters even less inviting than the subway system.")

147. *Id.*

148. See *supra* section II.A.

149. BOROUGH PRESIDENT'S REPORT, *supra* note 2, *passim*. This report complains of the city's emphasis on temporary shelter not designed to help the homeless back to a self-supporting life but rather to solve the immediate crisis of keeping the homeless off the streets and out of sight.

Even some experts studying the problem of homelessness slip into this pattern of thinking. See, e.g., P. ROSSI, *supra* note 2, at 181-85. Rossi suggests that if more housing — of even the "meanest" kind — existed, it would represent a solution to the problem. He cites the demolition of the old skid row flophouses as part of the problem — flophouses which he admits were worse than the current welfare hotels.

150. Albert, *Riders want Subway Rules of Conduct Enforced*, Letter to the Editor, from the Chairman of the New York City Transit Authority Advisory Council, N.Y. Times, Nov. 27, 1989, at A18, col. 4 (natl. ed.) (emphasis added). A federal district court recently held that this policy violated the first amendment. Young v. New York Transit Auth., 1990 U.S. Dist. LEXIS 819 (S.D.N.Y.). However, the city has already appealed the injunction and has suggested drafting a more narrow regulation which would meet constitutional standards.

guage would not seem out of place within the sanitation-conscious Tenement House Commission Report.¹⁵¹

In 1983, the New York State Legislature enacted the first comprehensive legislative package aimed at confronting the problem of modern homelessness head-on.¹⁵² Unfortunately, this law carried the burden of rigid nineteenth-century-based thinking, and attempted to deal with homelessness in a vacuum. While the memorandum of support for this bill stressed the legislature's desire to achieve "long-term solutions,"¹⁵³ these solutions simply entail a switch from temporary shelter to permanent residences.¹⁵⁴ Nothing in either the legislation or its accompanying memorandum ever mentions the need for adequate health care, education, income supplements, or job training — all services vitally needed by many homeless persons.¹⁵⁵ Moreover, even this desired transition from temporary to permanent shelter has never come to pass.¹⁵⁶

By 1987 the problem had grown steadily worse.¹⁵⁷ In response, the legislature created the Homeless Rehousing Assistance Program.¹⁵⁸ Again however, the legislature failed to see beyond nineteenth-century solutions. The act simply provides for additional state assistance in finding housing. Interestingly, the provisions do contain a brief sign of breaking out of the earlier mold. One brief paragraph suggests providing "support services . . . including . . . health, education, day care . . ." ¹⁵⁹ Unfortunately, the state regulations designed to carry out the state's homeless legislation — regulations which contain a long list of requirements — never mention health, education, or

151. COMMISSION REPORT, *supra* note 43.

152. N.Y. SOC. SERV. LAW, §§ 41-44 (McKinney 1983 & Supp. 1990). "No existing statute [prior to this law] deals exclusively with the problems of the homeless population, nor is there authority under existing law to fund alternative housing programs for the homeless." Memorandum of the State Executive Department to Social Services Law §§ 41-44, 1983 N.Y. Laws 2403, 24204 (McKinney 1983).

153. Memorandum of the State Executive Department to Social Services Law §§ 41-44, 1983 N.Y. Laws 2403, 2404 (McKinney 1983).

154. *Id.*

155. Nearly half of all new jobs created between 1979 and 1985 pay poverty-level wages. Seventy percent of homeless families have seen vacancies which they could not move into because they could not afford the rent or because the landlord would not admit children or welfare families. J. KOZOL, *supra* note 2, at 13, 28. Obviously, services such as education, health care, and day care are needed by more than just the homeless; however, the homeless are often the least able to pay for such services themselves.

156. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 9-10. The report found that four years after the passage of this first piece of homeless legislation, most shelter still consisted of emergency, temporary shelter rather than long-term, permanent residences.

157. "The legislature finds that the number of homeless families living in unsafe and unsanitary conditions in hotels and congregate shelters in this state is increasing at an alarming rate." Legislative Intent of the Homeless Rehousing Assistance Program, N.Y. SOC. SERV. LAW § 48 (McKinney 1983 & Supp. 1990) (passed in 1987).

158. N.Y. SOC. SERV. LAW §§ 48-52 (McKinney 1983 & Supp. 1990).

159. N.Y. SOC. SERV. LAW § 49(4)(f) (McKinney 1983 & Supp. 1990).

day care. Instead, the regulations merely suggest that in accepting future housing projects, the state would prefer, though not require, projects providing nonhousing services from "other funding sources." The regulations do not detail just what nonhousing services ought to be included, nor do they anticipate funding for them.¹⁶⁰

Most recently, New York's highest court, the Court of Appeals, has ruled that in determining the amount of financial need for families on AFDC, the state's Commissioner of Social Services may not continue to set housing benefits at levels insufficient to actually provide shelter.¹⁶¹ However, this opinion will have little impact because it also declares that the legislature is not obligated to provide funds to pay these heightened needs levels.¹⁶²

B. *The Failure of Modern Legislation*

Modern legislation's failure to confront homelessness effectively can be tied directly to this legislation's basis in nineteenth-century thinking. An examination of several modern manifestations of the three underlying conceptions set out in section II.A shows quite clearly just how reliance on outdated homeless and housing theories sabotages current attempts to help the homeless.

The first underlying conception about the homeless that has been carried over to modern times is the nineteenth century's compulsion to see homelessness in its most visible form.¹⁶³ This "out-of-sight-out-of-mind" policy proves disastrous. It has focused city policy *not* on providing the dispossessed with new homes — a base from which to rebuild their lives. Instead, city policy strives to stick the homeless somewhere — anywhere that is off the streets and out of sight.¹⁶⁴ Thus, homeless families are shuttled from shelter to shelter while parents must spend much of each day dealing with the government bureaucracy. As one dispossessed mother explained:

You do spend a lot of time in line. You spend a whole day at the washer. You spend another whole day at the welfare. You go there at 9:00 A.M. You wait sometimes until 5:00 in the afternoon. Then you get this check and then, of course, you know you won't receive a dime. It's written out to you and the hotel. When you have been living here two years, wouldn't you think that they could have that check all ready when you

160. NEW YORK CODES, R. & REGS., TIT. 18, §§ 800-800.10 (1988).

161. *Jiggets v. Grinker*, 1990 N.Y. LEXIS 713 (N.Y.). As of 1988, no more than 45 percent of AFDC families in New York receive adequate housing payments. 1990 N.Y. LEXIS 713. In addition, many homeless families do not receive AFDC. One requirement of AFDC is that a qualifying child live with a parent or other relative "in a place of residence" which is their "own home." 42 U.S.C. 606a (1988). Clearly this definition can exclude many of the literally homeless.

162. 1990 N.Y. LEXIS 713. Thus, while the state must accurately list the needs of such families, it is not required to provide the funds to help meet these needs.

163. See *supra* text accompanying notes 54-59.

164. See *supra* note 149.

come?¹⁶⁵

To add to these time-consuming burdens, the government insists that residents devote a considerable portion of each week to looking for permanent housing.¹⁶⁶

This time-consuming process can devastate a family by forcing the family head to give up her job, shattering any chance of working her way out of poverty. Two case studies vividly portray the cycle in which the various time demands exacerbate an already desperate situation.¹⁶⁷

CASE ONE: Kim, a pre-school teacher, lived in substandard housing which she was trying to restore. One December, the heating broke, and without funds to repair it immediately, Kim was forced to seek temporary quarters at a city shelter. "In a matter of weeks she was reduced from working woman and householder to a client of the welfare system. Like many others, she was forced to sit and wait for hours with her children at the EAU." Unable to hold a job while living in city shelter, Kim cannot begin to scrape together the \$15,000 required to fix the heating.¹⁶⁸

CASE TWO: "These, as Mr. Allesandro tells me, are the facts: He was one of several maintenance workers in a high-rise building in Manhattan owned by one of the well-known developers." He was "cut back to a half-time job. Half-time work was not enough to pay the rent. He was evicted. In the subsequent emergency he had to take leave from his job." Unable to work while living in city run "temporary" shelter, Mr. Allesandro's job was assigned to another. "Although he's worked for many years, he hasn't been on *this* job long enough to have accumulated pension benefits. Dispossession from his home has left him unemployed; unemployment now will render permanent his homelessness."¹⁶⁹

These situations result from the legal system's view of homelessness as merely a problem of surface appearance and sanitation. A system which seeks to keep the unkempt from sleeping on the subways easily accepts the creation of temporary and shifting shelters, which keep the homeless off the street and out of sight. Such day-to-day accommodations provide minimal comfort and frustrate a family's attempts to get back on its feet.

A second carryover from earlier days is the legal system's tendency to view the problem of homelessness in a vacuum.¹⁷⁰ Providing hous-

165. J. KOZOL, *supra* note 2, at 33.

166. *Id.*

167. Both studies come from *id.*. The people are real, although Kozol gave them false names to protect their identity.

168. *Id.* at 92-93.

169. *Id.* at 55-56.

170. See *supra* text accompanying note 69.

ing has become the final goal, rather than the first step in a comprehensive solution. Considerations of nonhousing causes of homelessness should not undercut the vital need to provide housing for the homeless. Nor should it obscure the almost total failure of society to provide for this need. Over the past ten years, the total supply of housing for the poorest in society has gone down — a prime factor in the recent surge of homeless people sleeping on the streets.¹⁷¹

This tendency to see housing in a vacuum rather than as part of a greater problem — a vision which began before the turn of the century¹⁷² — is perhaps the most destructive to modern attempts at solving the homeless crisis. Two concrete examples — the failure to provide education and health care to homeless children — should make this point clear.

Before beginning, it should be understood that the point here is *not* that legislative responses have failed to address the problems of education and health care for the poor; rather, it is that education, health care, and housing systems are not coordinated. Metaphorically, there are various isolated, vertical systems — the Board of Education, the Human Resources Administration, and the Department of Housing Preservation and Development, for example — between which the homeless (often homeless children) must shuttle.¹⁷³ To stretch the metaphor: while jumping from one vertical system to another, too many of the homeless fall fatally into the gulf separating these departments.

Another warning is in order. Simply accepting the fact that the legislature has “addressed” the problems of education and health care does not mean it has solved the problems. As with housing itself, government attempts to provide education and health care have proved inadequate. The *First Report from a Study of High Schools*¹⁷⁴ noted:

171. Hayes, *supra* note 8, at 3. In 1983, the legislature noted that New York City alone “has housed and cared for the largest number of homeless in its history since the Great Depression.” Memorandum of the State Executive Department to Social Services Law §§ 41-44, 1983 N.Y. Laws 2403, 2404 (McKinney 1983).

172. See *supra* section II.B.

173. The Department of Housing Preservation and Development (HPD) rehabilitates apartments for the homeless and finds homes for those New Yorkers who lose their homes through fire or orders to vacate. The rest of the homeless (roughly 85%) are housed by the Human Resources Administration (HRA). Education is in the purview of the Board of Education. See BOROUGH PRESIDENT’S REPORT, *supra* note 2, at 18-22; *McCain v. Koch*, 117 A.D.2d 198, 502 N.Y.S.2d 720 (1986).

McCain sets out one example of the “gaps” into which homeless children fall. Until recently, HRA and HPD provided shelter and food money to homeless children, but did not provide the children with money to pay for transportation to school. Instead, the children had to wait until the Board of Education issued transportation passes. When the board was late in issuing such passes the homeless families were forced to “make an impossible choice between adequate nourishment and education.” 117 A.D.2d at 220, 502 N.Y.S.2d at 733-34 (the *McCain* court required the City to make proper transportation available.); See also *Fulton v. Krauskopf*, 127 A.D.2d 20, 484 N.Y.S. 982 (1984).

174. T. SIZER, HORACE’S COMPROMISE: THE DILEMMA OF THE AMERICAN HIGH SCHOOL

Among schools there was one important difference, which followed from a single variable only: the social class of the student body. If the school principally served poor adolescents, its character, if not its structure, varied from sister schools for the more affluent. It got so that [the report's author] could say with some justification to school principals, tell me about the incomes of your students' families and I'll describe to you your school.¹⁷⁵

1. Education

Until recently, many homeless children were not permitted to attend school. School officials refused admittance to children because they lived in "temporary shelters" and so were not permanent residents in the school district.¹⁷⁶ The crisis grew so acute that last year New York State finally took action, ordering school districts to accept all children living in the district.¹⁷⁷

Because the state and city do not coordinate housing programs,¹⁷⁸ many homeless children never attend school despite this new state order.¹⁷⁹

The poor attendance, evident every day by the numbers of children roaming around the [low income residence] hotels in midtown Manhattan, is caused largely by confusion at the Board of Education about how to register and place the students. . . .¹⁸⁰

In 1987 the Board of Education and the Human Resources Administration attempted to match each department's records to see which and how many children were currently slipping through the system's cracks. Such a system is often "the most reliable way to keep track of the children as they move into hotels."¹⁸¹ If the Board of Education does not know the whereabouts of students who are moved

(1984). The *First Report*, written by Theodore Sizer, was co-sponsored by the National Association of Secondary School Principals and the Commission on Educational Issues of the National Association of Independent Schools. It was published as *id.*

175. *Id.* at 6. A *Second Report from a Study of High Schools* appeared the following year, published as A. POWEL, E. FARRAR & D. COHEN, *THE SHOPPING MALL HIGH SCHOOL: WINNERS AND LOSERS IN THE EDUCATIONAL MARKETPLACE* (1985). This report further details the failure of the school system to educate the poor.

On health care inadequacies, see Munding, *infra* note 193.

176. *Massachusetts Homeless Backed on Right to Attend Local Schools*, N.Y. Times, Sept. 18, 1988, at A26, col. 5 (natl. ed.); Sanchez *For Homeless, School No Shelter from Shame*, Washington Post, Dec. 19, 1988, at A1, col. 3.

177. N.Y. EDUCATION LAW § 3202(8) (McKinney 1983 & Supp. 1990).

178. In New York City, "no long term plan or *comprehensive policy* approach toward homeless families yet exists." BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 9 (emphasis added). Only a few cities — such as Salt Lake City and San Diego — have incorporated education into homeless programs, creating special education programs for homeless children catering to their needs. Sanchez, *supra* note 176.

179. In 1987, only half of all homeless children attended school. Perez, *Thousands of Pupils Living in Hotels Skip School in New York*, N.Y. Times, Nov. 12, 1987, at A1, col. 1 (natl. ed.).

180. *Id.*

181. *Id.*

from shelter to shelter, it cannot take steps to ensure that they attend school. "We have children who just disappear from the face of the earth," explained one principal.¹⁸² One week before the start of school in September 1987, the computer match was abandoned.¹⁸³ The failure to carry through this "reliable way to keep track of the children" compounded an already mounting truancy problem.¹⁸⁴

The failure of housing legislation to take account of educational concerns raises further problems. For example, homeless families are often shuttled from shelter to shelter; from neighborhood to neighborhood. This leaves parents with the untenable choice: either have their children commute long distances to their old schools, or start them all over in a new one. Neither choice is acceptable. Commuting allows children to stay with friends and teachers they know; however it forces the children to travel great distances alone on the subway or bus system. For the parent to accompany the child, however, may be virtually impossible for a single mother with several children, some of whom are infants.¹⁸⁵

One mother explained her decision not to send her children to school as follows:

They didn't have clean clothes. Why? Because the welfare messed my check. It's supposed to come a week ago. It didn't come. I get my check today. I want my kids to go to school. They shouldn't miss a day. How they gonna go to school if they don't got some clothes?¹⁸⁶

For those children who do actually attend school, their homelessness continues to thwart education. Many such children are labeled "hotel kids" and discriminated against by teachers and students.¹⁸⁷ Moreover, living at a shelter may not leave homeless children in condition to concentrate on school: "Teachers at Public School 64 are used to seeing children fall into a deep sleep, their heads on their desks, because the hotel rooms they live in are so noisy and crowded that they get little rest at night."¹⁸⁸

Several studies forcefully support his view of the destructive effects of poverty on classroom performance. "In their gut, these students think they're losers.' The formation of 'self-respect' had to precede academic engagement. This was no easy task, because the source of the problem was at home, beyond significant reach."¹⁸⁹ As a result, of

182. J. KOZOL, *supra* note 2, at 87.

183. Perez, *supra* note 179.

184. *Id.*

185. Daley, *New York's Homeless Children: In the System's Clutches*, N.Y. Times, Feb. 3, 1987, at B1, col. 1 (natl. ed.).

186. J. KOZOL, *supra* note 2, at 68.

187. Daley, *supra* note 185.

188. *Id.*

189. A. POWEL, E. FARRAR & O. COHEN, *supra* note 173, at 110.

those children who actually do attend school, twenty-five percent are two to three grades behind their peers. At least half have been kept back once.¹⁹⁰

Despite these education problems, modern legislative responses have seen the homelessness crisis only in nineteenth-century terms of housing. As a result, few programs attempt to bridge the gap between educating the homeless and finding them shelter. Instead, the two are generally treated as separate and severable problems. Without legislative direction, even the few makeshift attempts — such as the Board of Education/Human Resources Administration computer match — are subject to abandonment and underfunding.

2. Health Services

Because of the legislature's failure to coordinate health care services with housing programs, many children also go without adequate health care. The constant transfer of children from one shelter to another makes it virtually impossible for health officials to keep track of and care for homeless children.¹⁹¹ This problem is exponentially compounded by the Human Resources Administration's frequent refusal to provide health care officials with information on where it has transferred the children.¹⁹²

Starvation represents another serious health problem. Currently, the number of infants and pregnant women suffering from lack of nutrition is on the rise.¹⁹³ In great part, this is due to the Reagan administration's drastic cuts in programs supplying nutritional aid to women, infants, and children (WIC).¹⁹⁴ However, lack of program coordination exacerbates this situation. As one expert explained, the food stamp program "assumes that those receiving food stamps have cooking facilities which simply is not true for the homeless."¹⁹⁵

Finally, the shelters in which the city places children are, themselves, frequent health hazards. Chipping lead paint falls from the ceiling of many welfare hotels. According to the *New England Journal of Medicine*, between 1982 and 1983, there was a fifty-nine percent increase in the number of children with elevated lead levels in their

190. J. KOZOL, *supra* note 2, at 87; BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 17.

191. Cf. Comments of Dr. Irwin Redlener, Director of N.Y. Children's Health Project; United Press International, Dec. 22, 1988 (available on NEXIS) (expressing concern about medical care received by children who move from shelters to apartments).

192. Mayor Koch criticized officials for this practice, *see id.*

193. Munding, *Health Service Funding Cuts and the Declining Health of the Poor*, 313 *NEW ENG. J. MED.* 44, 45 (1985).

194. Between 1982 and 1984, the Reagan administration cut one million poor children from WIC. This despite studies showing that the program can decrease the incidence of low birth weight by 75 percent. *Id.* at 45.

195. P. ROSSI, *supra* note 2, at 197-98 (food stamps can, of course, be used to purchase pre-cooked foods, but this is far less economical).

blood.¹⁹⁶ The infant mortality rate in welfare hotels is 24.9-per-thousand as compared to 10.8-per-thousand for the country as a whole.¹⁹⁷

While legislative responses have succeeded in getting families off the street, by denying the children any chance at an education or proper health care they ensure that future generations will have little or no chance of self-support. Thus, by following nineteenth-century preconceptions — and continuing to attack the problem in a vacuum — these responses have virtually assured that the homeless crisis will be around for another generation.

Part of the reluctance to attack the homeless problem with more inventive, comprehensive solutions stems from a third lingering belief: that housing is a privilege — and a privilege granted as much for the safety of the city as a whole as for the homeless — which must be given out only to the very needy, who in turn must accept whatever they get with gratitude rather than complaints.¹⁹⁸ This thinking may help explain the otherwise illogical result in *Jiggets* where the Court of Appeals scuttled the impact of its opinion by holding that the state legislature need not fully fund the newly defined housing benefits.¹⁹⁹

Another modern manifestation of this thinking is the legal system's policy of "deterrence," which was described by a New York City Council Report as the theory "that if homelessness is made 'too comfortable,' the homeless 'will want to remain homeless.'"²⁰⁰ As a result of this policy, one survey found that New York's homeless rated prisons as superior to shelters in safety, cleanliness, and food quality.²⁰¹

Beyond the cruelty of this theory, evidence suggests that the less "comfortable" the shelter, the harder it is for families to get back on their feet. The average stay in a city run deterrence shelter is 17.7 months, while the average stay in a nonprofit (Tier II) shelter, designed to make family life as easy as possible, is only from 4.2 to 6.0 months.²⁰² Ironically, deterrence operates in reverse: the harsher the

196. Munding, *supra* note 193, at 46.

197. J. KOZOL, *supra* note 2, at 30.

198. See, e.g., Reid, *supra* note 7, at 115-16. The Supreme Court has refused to make the poor or homeless a "suspect class" for fourteenth amendment purposes. The Court has also declared housing not to be a fundamental right. See *Dandridge v. Williams*, 397 U.S. 471, 484 & n.16 (1970); see also the legislative findings of the Homeless Housing and Assistance Program, N.Y. SOC. SERV. LAW § 41 (McKinney Supp. 1990): ". . . the present condition [of homelessness] is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of the state . . ."

199. *Jiggets*, *supra* note 161.

200. J. KOZOL, *supra* note 2, at 96 (quoting REPORT OF THE NEW YORK CITY COUNCIL (1986)).

201. P. ROSSI, *supra* note 2, at 35.

202. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 28. ("Length of stay can be correlated with the type of temporary housing facility. The average length of stay is generally shorter for families in family centers and Tier II shelters operated by non-profit organizations than it is for hotels. Interestingly, these are the facilities that provide the most intensive social services and housing relocation assistance, as well as a more comfortable type of shelter accommodation." *Id.*

conditions, the harder it is to get out.

V. SOME GENERAL PROPOSALS FOR LEGISLATION

For it is the ability to draw analogies between parallel circumstances of the past and of our own times which enables us to make forecasts as to what is to happen: thus in some cases where a given course of action has failed, we are impelled to take precautions so as to avoid a recurrence. . . .

POLYBIUS

THE RISE OF THE ROMAN EMPIRE²⁰³

This section outlines the overall direction and structure which future homeless legislation ought to take. Drafting a detailed statute far exceeds the scope of this Note. However, an examination of the failings of past and present legislation should provide general guidance for avoiding these pitfalls in the future.

A. *The State Must Provide Permanent Housing for Those Without.*

Permanent housing differs from temporary shelter, and the latter cannot be substituted for the former. Helping the homeless requires much more than simply "getting them off the street." Permanent housing helps free the family head from daily chores, such as waiting in line at government agencies, looking for a place to live, and other "administrivia" associated with homelessness. This allows the family head to resume working, to look for employment, or to finish an education or job training program. For homeless children, permanent housing means settling down in one, local, school district.

Currently, there is an eighteen-year wait for this type of housing.²⁰⁴ At the same time, the city owns 60,000 abandoned apartments that could be rehabilitated for between \$12,300 and \$65,000 per unit.²⁰⁵ Considering that the city spends approximately \$20,000 per year to house a family in a squalid, "temporary," single room welfare hotel, and spends between \$70,000 and \$100,000 per family to build transitional temporary shelters, the cost of rehabilitating proper homes seems a bargain.²⁰⁶

at 27.) It should be noted that part of this difference may be due to the selection process of people for the shelters. To the extent that private shelters can select their clients, they are likely to choose those who are most presentable — people who may also have the greatest chance of climbing out of their homeless state. For a discussion of this self-selection process in Chicago's private shelters, see P. ROSSI, *supra* note 2, at 99.

203. POLYBIUS, *THE RISE OF THE ROMAN EMPIRE*, Bk. XII, *25b. at 440 (I. Scott-Kilvest trans. 1979) (circa 118 B.C.).

204. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 40.

205. *Id.* at 50-54, 64. Vacant apartments in nonabandoned buildings cost between \$12,300 and \$15,000 to rehabilitate. Apartments in buildings which have been entirely abandoned cost closer to \$65,000 to rehabilitate. The city gains control of these buildings through forfeiture.

206. *Id.* at 26, 100-01. To a great extent, the city spends money on temporary rather than permanent housing because federal funds are only available for the former. Obviously, a crucial

B. *Housing, Education and Other Vital Support Services Must Be Coordinated Under One Authority.*

Homelessness is not only a problem of shelter, and should not be treated in a vacuum.²⁰⁷ Thus, one coordinating authority must make housing decisions which can take into account the educational needs of homeless children. Housing should be provided that avoids shuttling children from school to school, or forcing them to travel hours each day just to attend classes. Moreover, the schools must know where children are living at all times. Education officials need to be constantly aware of the status of homeless children, so that additional educational and other help can be provided when needed.

Government agencies which provide aid to adults must also be coordinated with this system. Half of all children in emergency housing are under the age of five,²⁰⁸ making the provision of day care essential for many families in order to allow parents to work. Other health, psychological, and social services necessary to help a family adjust after dislocation should also be provided. For those without employable skills, job training is essential.²⁰⁹

C. *"Deterrence" and Other Policies Designed To Discourage People From Accepting Public Assistance Must Be Ended.*

Most jurisdictions continue to attack the problem of homelessness through a policy of deterrence. For New York City, this means dilapidated shelters which make it harder still for the homeless to rebuild their lives.²¹⁰ Other jurisdictions treat the problem still more cruelly: employing police sweeps to drive the homeless from their sleeping places,²¹¹ and spraying chlorine upon edible garbage which the homeless might otherwise eat.²¹²

step in fighting homelessness is a change in the federal law to allow municipalities to spend money on permanent rather than temporary housing. *Id.* at 10.

207. Homelessness is a problem of poverty. Future generations cannot escape such poverty without a proper education. "[T]he trends in the city's labor market since 1969 have not enhanced employment opportunities for the city's less educated . . ." BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 38-39 (quoting E. TOBIER, *THE CHANGING FACE OF POVERTY — TRENDS IN NEW YORK CITY'S POPULATION IN POVERTY: 1960-1990*, at 75 (1984).

208. BOROUGH PRESIDENT'S REPORT, *supra* note 2, at 112.

209. The United States Congress explicitly recognized the importance of job training when it created the Job Corps as part of the Job Training Partnership Act, 29 U.S.C. § 1691. In passing the bill, the Senate Report explained: "This nation needs a new job training program for the drop-out youth who are not prepared for employment, for welfare recipients who need training to escape from dependency, for the economically disadvantaged who cannot compete in the labor market without help." S. REP. NO. 469, 97th Cong., 2d Sess. 1, *reprinted in* 1982 U.S. CODE CONG. & ADMIN. NEWS 2636.

210. *Cf.* Comment, *The Unconstitutionality of "Antihomesless" Laws*, 77 CALIF. L. REV. 595, 602 (1989) (discussing shelters generally, and relying on descriptions of shelters in New York City).

211. *Id.* at 595.

212. *Id.* at 603-04.

Punishing those who are homeless only makes the situation worse. Such policies reinforce the thinking that most of the homeless are to blame for their condition — and, those who are not, just temporarily down on their luck.²¹³ This type of thinking focuses legislation on temporary, emergency solutions, rather than on the creation of long-term programs which grapple with the full effects and causes of poverty.

CONCLUSION

*Sing in me, Muse, and through me tell the story
of that man skilled in all ways of contending,
the wanderer, harried for years on end. . . .*

— Homer

THE ODYSSEY²¹⁴

Homelessness is devastating America's cities. The damage done to the homeless is obvious: generations of children left physically and mentally stunted. Homelessness also bleeds our cities as a whole: draining limited municipal resources; leading to higher taxes; and lowering the quality of urban life.

Shackled by the nineteenth-century thinking, legislators continue to approach the problem piecemeal. Generations of legislators have only attempted cosmetic solutions, from whitewashing tenements to removing the homeless from subways. This narrow and outdated thinking has failed and now must be replaced. New policies must be created which confront the crisis as it really exists. This multi-headed problem will yield only to comprehensive structural changes and not to simple patchwork repairs.

— Mark Peters

213. Perhaps the most destructive example of this view is the federal government's targeting of most federal housing funds to temporary shelters rather than the construction of permanent residences. See *supra* note 206.

214. HOMER, THE ODYSSEY 13 (R. Fitzgerald trans. 1961).