The Homelessness Muddle Revisited

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Abstract

Nor did I think of myself as "homeless" after my abusive father expelled me from the family home at age fifteen (believe me, I was all to happy to leave), or during all those weeks that I slept on the tavern floor where I worked, or when I squatted in a vacant apartment a friend and I illegally occupied during one summer. Homeless people can fall into oftenoverlapping categories of substance abusers, "throwaway children" from broken homes, veterans, lazy people, women escaping domestic abuse, "voluntary homeless" such as I was when cross-country hitchhiking (no one forced me to do it), and people suffering from mental illness. City governments, nonprofit organizations, and various advocates for the homeless have experimented with numerous policy ideas that sometimes partially function at various nuanced levels, depending upon circumstances. The top ten states include New York, Florida, Massachusetts (the rest are all western states). All or most of these places tend to feature major destinations of internal migration, high costs of housing, or both. Thus, the homeless demographic in these places would seem to be skewed by these factors alone. Fortunately, there is some federal funding to offset the monetary costs to specific urban localities. Hidden monetary costs (such as loss of tourism), and other costs of a nonmonetary nature, are another matter. Following is an overview and recapitulation of homelessness in America, with the aim to illustrate a general state of affairs and offer some general conclusions of what has worked to mitigate or even...

Full Text

1. Introduction

I MUST CONFESS TO MY MANY PERSONAL INTERESTS REGARDING THE TOPIC OF homelessness. Literally decades after my cross-country hitchhiking adventures (about 9,000 miles' worth), I discovered that I myself had supposedly once been homeless. At the time, I never thought of it that way, regardless of sleeping under interstate highway overpasses or along roadsides safely out of view from passing traffic. Nor did I think of myself as "homeless" after my abusive father expelled me from the family home at age fifteen (believe me, I was all to happy to leave), or during all those weeks that I slept on the tavern floor where I worked, or when I squatted in a vacant apartment a friend and I illegally occupied during one summer. Nor did I consider myself homeless during the odd night here and there I spent sleeping under shrubbery in the town park, or in a car, or wherever. But according to some definitions, for an eight-year period on and off, I was supposedly homeless. Still, I was never what I regard as a true street person, pushing a stolen shopping cart filled with my worldly possessions. Except for one occasion of panhandling for rock concert ticket money outside of an arena, I never begged for money on the street. While hitchhiking, I felt I had my home on my back, and more importantly, I was on the move. As Depression-era rail rider John Fawcett commented, young homeless men such as we were, generally wanted to be in motion rather than stew in stationary misery.1 From a rambler's point of view, to some extent, life has defeated stationary street people, inadvertently or not. That would have been too depressing for me to tolerate for long.

Sometime during the early 1980s I saw a homeless man in Washington, D.C., who inspired the first short story I ever wrote as an adult. I called it "Pigeons" for no reason that I can remember, other than many of the birds being there on the Washington Mall looking for food. The homeless man was hovering near one of those grates that expelled warm air during the wintertime. Vaguely, I remember his shopping cart filled with personal property, his ragged coat, his dejected demeanor. I expressed dismay at this sight, but the woman I was with (a harden northern Virginian) expressed indifference and resignation. I never made peace with that scene, and not much has changed in that regard, all these years later. I have noticed, however, that America at large has also made little headway regarding homelessness.

In 1990, Robert C. Ellickson wrote an article called "The Homelessness Muddle," in which he described the complex homeless demographic, contradictions in perception of homelessness and policy, and how certain policies were unsuited to specific realities of homelessness.2 The muddle definitely continues, and if anything, it has grown more complex. To begin, the homeless demographic has always been fluid and multifaceted. Homeless people can fall into oftenoverlapping categories of substance abusers, "throwaway children" from broken homes, veterans, lazy people, women escaping domestic abuse, "voluntary homeless" such as I was when cross-country hitchhiking (no one forced me to do it), and people suffering from mental illness. The recent recession saw a surge in homeless people who had suffered from financial devastation, both self-inflicted and not. There is also a differentiation of the homeless from what I'll call "street people." Some of the street people are not homeless. Among street people are panhandlers, but again, only some of them are homeless.
As you might imagine, such a complex demographic in itself tends to defy simple policy solutions. City governments, nonprofit organizations, and various advocates for the homeless have experimented with numerous policy ideas that sometimes partially function at various nuanced levels, depending upon circumstances. Partly arising from policy choices and partly inspiring policy, now we have a history of legal decisions that clarify some points while contradicting others. Considering all of the above, we are still very much amid a homelessness "muddle." Ellickson chose the right word.

Ironically, or not, since 2002 I have lived in one of America's epicenters of homelessness: Eugene, Oregon. Oregon maintains one of the highest homeless rates in the nation. In recent years, it has been neck and neck with Hawaii as having the most homeless people per capita of any state in the union. California and Nevada are in the top five. The top ten states include New York, Florida, Massachusetts (the rest are all western states). All or most of these places tend to feature major destinations of internal migration, high costs of housing, or both. Thus, the homeless demographic in these places would seem to be skewed by these factors alone. No doubt, many have gone to Hawaii or the West Coast states and become homeless thereafter, just like me hitchhiking from Virginia to California back in the 1970s. But people going to these states migrate to specific places, and almost always cities. Los Angeles and San Francisco have massive homeless populations, as do Honolulu, Portland, Eugene, and Seattle. Sub-regions like northeastern California, eastern Oregon and Washington, have comparatively few homeless. Critics argue that generous homeless services tend to attract more and more people, in a snowball effect that hinders care for the needy. Fortunately, there is some federal funding to offset the monetary costs to specific urban localities. Hidden monetary costs (such as loss of tourism), and other costs of a nonmonetary nature, are another matter.

Following is an overview and recapitulation of homelessness in America, with the aim to illustrate a general state of affairs and offer some general conclusions on what has worked to mitigate or even solve homelessness and homelessness, and what does not. No policy fits every local locality, and no homeless situation stays the same in any place.

By the way, one more personal note. We who have been technically homeless are bound to snicker at people like consultant Robert Marbut, who voluntarily "experienced" homelessness to get a feel for it. I have met another person who did this for academic sociological purposes. I understand the admirable motive, but the differences between reality and simulation are so great I am not sure the simulation is worth it. The simulation might be a little like handling a garden hose to get a feel for a rattlesnake. The genuinely homeless do all sorts of things an enactor would never do, especially in the way of criminal activity. But perhaps most obviously, knowing full well you have retreat rights at any time provides a psychological comfort that is starkly missing for someone who is actually homeless. To be out in the wide world without friends or shelter, thousands of miles away from anyone who is even acquainted with you-vulnerable to weather, poverty, hunger and thirst, violent criminals, and sometimes unethical police-well, that can be a frightening experience that no simulation can recreate.

II. Historically Diverse Homeless Demographic

Media stories often feature a "human interest" angle that evokes natural sympathy, but tend to detail the personal woes of individuals without addressing cause and effect issues, such as past personal financial choices, or the validity of self-proclaimed mental health issues. These stories make for good reading, but barely skim the surface of demographic complexity or historical trends.

Homelessness in America entered an entirely new period during the 1980s. The popular impression among liberals came to associate the rise in 1980s homelessness with the depopulation of mental institutions during the Reagan administration. However, deinstitutionalization of mental health facilities actually began during the Kennedy administration with the Community Mental Health Act and continued thereafter. Originally it was not really a simple partisan issue, but rather reflected a combination of support from liberal social reformers, civil libertarians, and fiscal conservatives. Unforeseen problems arose when subsequent funding of community mental health care centers failed to materialize, but even that began with Nixon, not Reagan. Some communities never had care centers in the first place. Predictably, some of these former patients ended up incarcerated or homeless.

But there were other contributing factors to the 1980s' surge in homelessness, such as gentrification of certain neighborhoods, increased housing costs in various cities, and the Baby Boomer demographic reaching the common age spectrum of homelessness. Everyone agreed that the numbers increased, but many disagreed about almost everything else, from defining the very term "homeless;" to identifying and differentiating the characteristics of homeless people; to policies of unconditional or conditional shelter; and to legal arguments regarding judicial, legislative, and even constitutional remedies or modifications of housing policy. So an obvious first step in studying homelessness would be distinguishing various homeless groups, but some advocates for the homeless have had a terrible tendency to avoid making even these basic distinctions. Other complications arise when those counting the homeless include among their numbers people living with relatives and friends. The U.S. Department of Education itself classifies children staying with friends and relatives as not homeless. Some may disagree with such an inclusion. The problem arises with such a broad and vague term as "homeless," which does not always mean "shelterless."

True scientific categorization of homeless people will always be impossible, for the usual reasons of human social and complex reality that defy neat and clean classifications. Having said that, the bulk of the homeless population in America consists of mentally ill persons, impoverished nomads passing through a locality, domestic abuse escapees, substance abusers, maladjusted military veterans, economic victims of their own making, economic victims of larger forces, and (it must be noted) some people suffering from laziness and personal irresponsibility. The categories often overlap, and behavioral issues involving substance abuse and a sense of entitlement sometimes exacerbate a bad situation, helping to perpetuate a vicious cycle of homelessness. A majority of informed people would probably agree that some homeless people are in genuine need of permanent societal assistance. Others are capable of helping themselves with some initial temporary assistance. Unfortunately, the rise of Big Pharma and the psychology industry has complicated all of this even further.

III. The Mentally Ill Homeless

Some homeless people are mentally ill, but how do we define mental illness? It is far less scientific than many want to admit, whether they are working in the psychology and counseling fields or just average members of the general public. This has become especially true since the 1990s with the rise of "corporate psychology," the "trauma industry" and gargantuan Big Pharma profits. For example, what we used to call an undisciplined failure to attempt to concentrate, we are now quick to label "attention deficit disorder," as if mental concentration came to everyone naturally, without effort or will power. What some of us used to think of as a spirited attempt to cope with life, now falls under the vague label of "post-traumatic stress disorder." Since there is no end of trauma in life, at least for those not living a privileged life, the definition (taken to its logical end) can become nearly meaningless.

One of the greatest marketing coups in world history has been Big Pharma transforming usual and inescapable aspects of the human condition into an array of "mental illnesses." Much of it is artificial, and all of it detracts from those who really need help, who cannot help themselves; not just those seeking...
sympathy, excuses, or attention. Charles Barber worked with the mentally ill homeless in Manhattan for fourteen years. He observed that the increase of pharmaceutical treatment did not help the homeless, and in some cases worsened their mental well-being.22

There are also problems inherent in psychology involving selfreportage. This is obvious from a common sense perspective, but Stanford psychologist David Rosenhan also made this famous in 1973 with the so-called Rosenhan Experiment,23 in which he and others lied about having psychological disorders, thereby successfully gaining admission to a dozen psychiatric hospitals. Even "hard" sciences are susceptible to manipulation and undue influence,24 but the "social" sciences (including psychology) even more so.25 Anyone can describe "symptoms" and find a psychologist to diagnose them with a syndrome or disorder, but that does not make the diagnosis accurate, even if you believe the syndrome or disorder exists. But let's move on. Safely we can say that, regardless of definition details, there are the genuinely mentally ill and the "fake" mentally ill among homeless populations. Some of those in genuine mental distress are escaping domestic abuse.

The mentally ill, in particular, need much more than mere shelter, but so too does the socially-isolated individual.26 I have a colleague, Gene Obersinner, who worked as a crisis intervention therapist in the field of human services for ten years. Among the homeless clients he saw, Obersinner felt that 80% was a low estimate for the rate of past physical and sexual abuse, and that was not even counting the admittedly damaging emotional and psychological abuse. The thing was, Obersinner pointed out, technically all these people were or appeared to be "able-bodied."27 At the very least, this would seem to obscure-if not render false-the dichotomy between those who are able-bodied and not. How does one gauge past trauma that has contributed to substance abuse and behavioral problems, thereby making it difficult to function in society? Of course, this opens another can of worms involving the relativity of suffering, fake disability and manufactured disorders, all the more difficult to distinguish from the genuine article because of shifts in societal and cultural norms.

Importantly, Obersinner described himself as skeptical. He was respectful of stories of abuse that clients told him, but always responded (in his own mind) by telling himself to seek further verification. Ironically, what he discovered, was that the most common dishonesty among the homeless he counseled was a denial of past abuse and a great reluctance if not outright refusal to discuss it. Obersinner's job, of course, was to coax them into discussing past abuse as an early step toward rehabilitation. Obersinner concluded his career with two main observations: (1) never give money directly to the homeless, and (2) be aware that many homeless you encounter have experienced significant abuse.28 The reason for the first observation is fairly obvious. The vast majority of panhandled money goes to buy things not available for free: drugs, alcohol, and tobacco. Or, as Obersinner more diplomatically puts it, the homeless tended to make "very poor decisions" as to how to spend their cash. Homeless advocates and activists with any insight at all are almost universal in their condemnation of panhandling.29 Instead, they advocate giving money to shelters and other services who help the homeless.

A former student of mine continues to contact me every few years. I'll call her Amy. She attended only one of my classes, but she wrote the most outstanding term paper of the entire academic year. Excellent students, and particularly those who articulate their intelligence, are easy to remember. Most amazing of all, Amy was homeless and lived at the Eugene Mission. She described prostitutes trying to kick their drug addictions. Sometimes she found blood all over the toilet. She reluctantly submitted to the requirements of Christian indoctrination in order to receive food and shelter.30 Amy put the spoiled students to shame; those who were happy to settle for a C, and who skipped too many classes despite the cars and computers their parents had bought for them.

Amy had much deeper problems than living at the Eugene Mission, however. She was alienated from her working class family, who scorned her for attending college. I think there was more than a bit of the jealousy factor at play. Strange how the drowning try to pull others down with them. Einstein was spot on when he wrote, "great spirits have always encountered violent opposition from mediocre minds."31 Amy's family members had constantly told her she was too stupid to pass any classes, much less earn a degree. I try to keep professional boundaries between myself and students, but in this case I could not help but implore her to believe me when I described her as belonging to the top five percent of students among the many hundreds (thousands?) I had taught by then. I am not sure if she ever believed me.

Amy reminded me a little bit of myself, though she came from a more damaged background. It took me ten years to earn my BA; more than a decade after she was in my class, I begin to fear Amy may never advance in higher education. I heard from her as recently as last year, 2016, and I continue to serve as a job reference for her. These are some of the people I root for people who are struggling to help themselves. They are found among the wide array of homeless people. Another example would be James Bergen, a middle-aged resident of San Francisco's Mission Hotel. In the summer of 2013, he was struggling to regain his autonomy and independence. "I want to move ahead. I could use a little more help maybe, but it's hard and it's up to you."32 The depressing atmosphere at the Mission Hotel was a motivator for Bergen. He acknowledged the shortage of counselors, but still saw personal responsibility and self-motivation as the key to escaping.33 But we cannot expect all homeless people capable of selfhelp to have Bergen's perspective. In fact, much of the system itself may discourage such personal responsibility.

As the innovative British social worker Hilary Cottam observed, the traditional social services approach (in both the U.K. and U.S.) actually encourages clients to exaggerate their disabilities in order to qualify for services. Worse, clients are then prone to embody a self-fulfilling prophecy of damaged goods in perpetual need of help.34 This is particularly a problem in the United States, where Big Pharma has run amok with overly-prescribing all sorts of psychiatric drugs purely in the name of profit, not healing. According to the World Health Organization, by the year 2000, the United States (at less than five percent of the world population) was responsible for over half of the world's entire pharmaceutical consumption.35 Apparently, that overall statistic has remained fairly steady until recent years,36 but pharmaceuticals for "psychiatric disorders" actually increased between 2001 and 2010.37

IV. The "Voluntary Homeless"

The numbers of homeless people vastly increased during the 1980s, but among them, so did the numbers of able-bodied persons fully capable of employment, or at least of making an effort to become reemployed.38 Among the able-bodied have been families who left crowded housing with relatives for homeless shelters in order to qualify for public housing subsidies.39 They did not come from the streets, but rather went there in order to qualify for housing.

Some homeless people actually claim to prefer their "lifestyle," at least for the time being.40 Tim Jackson, a homeless man in Seattle, said he and like-minded homeless people actually preferred living in their own "neighborhood" of the homeless camp, away from "regular citizens." Jackson felt the repulsion was mutual. Jackson concluded their homeless lifestyle was largely a matter of personal preference, saying that Seattle featured ample services for those who wanted to get off the streets.41

In more recent years a group loosely called "travelers" have shown up in many major cities, as far flung as Greenwich Village and West Coast cities. Again, this was what I was decades before the term was coined or, more importantly, the concept was articulated in this form. My only point here is a personal
VIII. Legal and Policy Aspects

Chad Marlow, writing about Greenwich Village, described travelers (also called “cmsties”) as “transient, antisocial, voluntarily homeless.”43 Marlow wrote that "Many cmsties are nothing more than bullies who we embolden by tolerating their hostile behavior."44 Eugene has also experienced a significant influx of travelers. In September 2015, Mayor Kitty Piercy stated that the large population of travelers downtown was getting out of hand. A series of media stories followed, with mostly-anonymous commentators weighing in on the situation, covering virtually every conceivable perspective.45 There were free housing advocates as well as those decrying parasitic, lazy, anti-social behavior. The ad hominem invective flew. Some made the muchrepeated viewpoint that Eugene’s ample homeless services merely attracted more homeless. Some saw the travelers as privileged, white kids with sense of entitlement, enabled by fools. Some wanted to point out the contrast between supposedly better-behaved residential homeless versus transients who cared nothing for the community they inhabited. There were many vague generalizations about lack of decent jobs, corporate crooks, tax policies, etc. Some claimed the travelers did not bother them at all. Some recognized the need for adventure for the young. There were also elements of tolerance and a “live and let live” attitude.46

Not to romanticize or idealize the migrant family, but an absence of social ties, or escape or ejection from damaged or abusive social relationships, is a common attribute of American homelessness. Some of the cmsties or travelers are “throwaway (adult) children” from such broken backgrounds. In striking contrast, family cohesiveness and family loyalty is typical among Hispanic-Americans, who have a conspicuously low-level of homelessness despite poverty.47

There are many other categories or descriptors that various social workers have applied to homeless people, all in an effort to develop special strategies for particular needs. Veterans, the "chronic homeless," homeless families and homeless youth are the main categories addressed by the U.S. Interagency Council on Homelessness.48 As previously mentioned, substance abuse sometimes overlaps with these categories, sometimes exacerbating mental health issues. But there are yet additional people on the street whose status or behavior sometimes only partially overlaps with formal categories of homelessness.

V. Special Categories of the Homeless

It is worth noting that not everyone living in apparent poverty on the street is homeless. Panhandlers are a problematic group when it comes to homelessness for at least two reasons: not all panhandlers are homeless, and the money panhandlers seek almost always tends to be for things that free social services do not already offer. Money gathered by begging rarely goes for the true necessities of food, shelter, and clothing. But there are street denizens who do not beg (and even scorn beggars) and actually work for a living; it is just that they are among the poorest of the working poor, and earn nowhere near what is needed even for a residential hotel room with a shared bathroom down the hall.

VI. Panhandlers

According to homeless consultant Richard Marbut, about 93% of cash given to panhandlers "goes to alcohol, drugs and prostitution."49 Marbut even cautions against distributing free food to the homeless, as he sees this as fostering a continuance of street life. Marbut would rather the homeless seek full, integrated treatment for mental health issues, employment, substance abuse, or whatever else is keeping them on the streets.50 The San Francisco police might agree. They view homelessness as a consequence of a greater drug problem.51 As so many municipalities and their citizens keep re-discovering, most money given to panhandlers is spent on precisely the things they cannot get for free from social services: drugs, alcohol, tobacco products, prostitution, and more recently, fast food, which cannot be purchased with food stamps.

Various myths and realities surround panhandling.52 The amounts of money panhandlers make is inherently mysterious, since only panhandlers know the amounts. Obviously there are motives to low-ball the amount, to evoke sympathy—but some panhandlers, boast of large hauls. Certainly, myths of wealthy panhandlers could be urban legend. Cities with enormous numbers of homeless people (for example, L.A., San Francisco, Portland, Seattle) are bound to feature more competition compared to, say, most Midwestern cities. Homeless policy experts and social service providers practically unanimously agree, there are better ways to help the homeless, such as donating directly to shelters.53 Furthermore, on the streets, there were and remain problems with fake homeless people who use the ploy for sympathy as part of their panhandling strategy.54

VII. Working Poor Street People

Contrasting the usual stereotype, some homeless people have jobs, particularly in cities where high property values prevent some working people from being able to afford housing.55 Lack of affordable housing drives many working people into homelessness and keeps them there.56 In 2014 Gina Ginsberg made an important short film about James Hardin called A Wizard in Eugene.51 Hardin apparently works 10-12 hours a day, walking and scavenging, earning perhaps a dollar or two an hour. True, he is homeless, and most definitely he is a street person, but there is much to laud in Hardin’s life. Hardin is a thoughtful poet who ends the film with an appealing song. But, by his own assessment, he is a misfit. He finds that he needs his solitude, has a low tolerance for office politics, and thus pursues the endeavors that he does.

After watching the film, suddenly I saw a younger version of myself in Hardin. I was not a street person like him, but I was living in rentfree substandard housing that had no indoor plumbing. I did odd jobs on the cheap for elderly widows (one in particular I regarded as my surrogate grandmother).58 But more substantially, I cleaned up over 100 acres following clear cuts, for the U.S. Forest Service, making $20 an acre for the first forty-two, then a big raise to $27 for the last sixty. Not even counting equipment depreciation, I might have cleared a dollar an hour. Firewood sales paid for groceries and gasoline during the months-long endeavors. So, I do sympathize and empathize with James Hardin and wish him well. But more pertinent, I wish more people would recognize and respect his work ethic in contrast to able-bodied young people begging out of pure laziness.

There is a can and bottle gatherer in Eugene whom I’ll call “Lester.” I had seen him around for a few years, sometimes making the rounds ahead of the recycling truck in my neighborhood or elsewhere. I introduced myself by asking him how many miles he walked in a day. Twenty or thirty? “Not as much as that,” he said modestly. When I guessed that he earned about $1 an hour he smiled a little bit and said, "Probably." I told him that I admired his work ethic. Tellingly, he then immediately volunteered the following: "I hate those people who hold up signs [begging for money]. What are they learning? If everyone held up a sign how would the world go ‘round.” We shook hands and gave each other our names, then parted, saying we’d see the other around.59 Lester was gentle, kind, articulate, thoughtful, and of course, hard-working. In a different life, someone like Guillermo del Toro or Wim Wenders would have discovered him and cast him in a role as poignant as Harry Dean Stanton in the 1984 film, Paris, Texas. But such has not been fate.
Court cases from the past couple of decades have perpetuated the legal ambiguity regarding homelessness in relation to equal protection, due process, and rights involving interstate travel, and particularly regarding the Eighth Amendment protection against cruel and unusual punishment. Decisions and dissents create quite a collection of perspectives that seem to cover every conceivable constitutional interpretation of homelessness, and the main issues associated with homelessness. Like penitentiary policies, which have a history of oscillating between rehabilitation and "lock them up and throw away the key," homeless policies have periodically moved back and forth in a spectrum defined by compassion and criminalization. As many legal scholars have indicated, criminalization of homelessness is problematic for several reasons, including legal deprivation of life-sustaining activities (such as sleeping and eliminating waste), to loss of freedom and other citizenship rights.60 The U.S. Interagency Council on Homelessness has recently reiterated how criminalization opens the possibility of liability and constitutional challenges, as well as the ineffectiveness of criminalizing the homeless.61

In the broadest sense, most involved in debates about homelessness have traditionally fallen into two camps. One has advocated a sympa- thetic, socialistic welfare approach.62 The other advocated a more libertarian, laissez, faire argument for personal responsibility and a work ethic-yet fully recognized that a subset of the homeless were genuinely helpless and in need of public assistance.63 The latter group continues to promote more nuanced homelessness policies, while making the obvious point that parasites detract from, and thus harm, the cause for the genuinely needy.64 They would disagree that housing is a human right, something that their detractors advocate.

IX. Housing as a Human Right

James W. Ely, Jr.’s title Guardian of Every Other Right65 encapsulates what many scholars have observed about property being requisite for so many other rights. These rights range from Lockeian ideas of independence and liberty, to privacy, to self-defense, to personal development, to protection of personal property and its associated “personhood,” the latter replete with emotional attachments to the things we tend to collect during the course of our lives.66 Homelessness, of course, becomes the “guardian of every other right” turned upon its head. Often it is far worse than an absence of home—it is an absence even of shelter. And yet housing as a constitutional right has remained elusive, despite an extensive legal history.

Callahan v. Carey61 was a landmark case that homeless advocates are fond of citing, partly because it was based on the New York State Constitution. The crucial clause reads, "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."68 In 1938, the people of New York voted to approve their amended constitution, which included this Social Welfare clause. But, as illustrated below, just because New York residents chose to amend their constitution did not result in a constitutional right to housing. Furthermore, during the 1990s, New York City ironically became ground zero for the reversal of unconditional homelessness rights, including the "criminalization" of homelessness that attracted national attention69-constitutional amendment notwithstanding. Mayor Rudolph Giuliani became the epitome of tough new policies regarding the homeless.70 In October 1999, Giuliani announced that homeless people would have to work if they wanted to stay in the city’s homeless shelters.71 He was merely citing 1995 state regulations already stipulating as much.72

Homeless advocates are less fond of citing the 2003 follow-up of 1979’s Callahan v. Carey.13 The suit not only qualified the original case, but upheld New York City’s efforts to address chronic homelessness by requiring certain conditions, such as having clients seek and accept other shelter, look for work, avoid criminal behavior, and cooperate with the creation of an “independent living plan.”74 The detractors, apparently, wanted unconditional shelter for them.75 Callahan II upheld the aforementioned 1995 state regulations stipulating conditional homeless sheltering.76 Perhaps even more importantly, Callahan II also noted that prior to Callahan I an earlier case had already settled the dispute involving able-bodied homeless and unconditional shelter.77 Barie v. Lavine ruled that the 1938 state constitutional amendment passed by New York voters did not, in fact, stipulate shelter for those who could help themselves.78 So much for interpretations of Callahan I as implying unconditional shelter. In the larger picture of recent history, another main problem with Callahan I was that the New York Supreme Court decided it right on the eve of the 1980s, when the numbers and characteristics of homeless people so radically changed.79

A constitutional right to housing does not exist, and state and federal courts have resisted all efforts to the contrary, Callahan I notwithstanding.80 Courts have also demonstrated serious limitations regarding legal action against indecent or substandard housing.81 This has been the case despite the adamanty of those who claim there ought to be a constitutional right to housing, and most certainly despite the sometimes shrill, sometimes irrational rhetoric of those claiming a constitutional right to housing already exists. For example, years ago Karl L. Cambronero tried to imply that property ownership rights led logically to rights to property. Cambronero also conflated the right to purchase housing (as well as clearly illegal racial discrimination in housing) with an overall right to housing.82 True, Cambronero wrote his piece before the mushrooming of homelessness during the 1980s, but homelessness conditions in following decades merely magnified the dangers arising from his false premise. Ann M. Burkhar tried to claim, ahistorically (even anti-historically), that our own era evokes the colonial era’s low tolerance for the poor and unemployed.83 This determinist-falacy ignores all the social services that began in the Progressive Era, not to mention how such social services were massively enhanced during FDR’s New Deal and LBJ’s Great Society. The general welfare state has been around for generations. Burkhard even relied upon Charles Beard’s well-debunked 1913 book, An Economic Interpretation of the Constitution and made a long winded complaint about poverty and powerlessness,84 which Is sort of like complaining about gravity. Maria Foscarinis wanted housing to be a right, not a “privilege,” and claimed that shelter was “justice,” not charity.85 Even the National Law Center on Homelessness and Poverty states, “Housing is a human right.”86 Unfortunately, it is not as simple as all that. Issues of personal responsibility, work ethic, and parasitism alone complicate matters. Courts have even demonstrated serious limitations regarding legal action against indecent or substandard housing.87 Courts have not been able to agree even whether or not criminally homeless people violate the Eighth Amendment.88

Along this line of argument, some homeless advocates are fond of (partially) quoting the “housing right” contained in Article 25(1) of the United Nations’ Universal Declaration of Human Rights. The National Law Center on Homelessness and Poverty writes, “Safe, affordable housing is a fundamental human right enshrined in numerous international treaties, and the Universal Declaration of Human Rights.”89 But this is only a partial citation. The ending is as important as the isolated selection the homeless advocates misuse: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”90 (emphasis added).90 Even the United Nations, with all its genuinely wonderful cosmopolitan idealism, recognizes the personal responsibility requirement universal in human nature. After all, too many parasites are in danger of killing the host, especially in situations of limited funding—and all funding is inevitably eventually limited In the world of politics and resource allocation.

Another argument homeless advocates are fond of using is the comparison of homelessness in the United States with other countries, often the prosperous and (compared to America) more socialized western European nations.91 This is apples and oranges. First of all, small nations not the destination of massive foreign immigration cannot be compared to a large nation of immigrants like the United States. As vastly bloated as American military spending has been throughout the post-World War II era, it has nonetheless absorbed NATO countries and others from decades of spending very much at all.92 In other words, it is easy to spend your nation’s money on social amenities when you do not have to worry about defending yourself. Secondly, truly socialist countries like
X. Eighth Amendment Issues

Case law regarding homelessness reflects the homelessness muddle itself, and has generally only perpetuated ambiguity. In Pöttinger v. City of Miami,94 Carl Clyde Atkins, then a Senior District Judge, overturned a city ordinance that criminalized unavoidable “life-sustaining activities” of homeless people, such as eating and sleeping in public.95 Atkins made a landmark ruling for Miami’s homeless on a number of constitutional grounds, including Eighth Amendment protection from cruel and unusual punishment, right to due process under the Fourteenth Amendment, and protection against personal property seizure under the Fourth Amendment.96 Furthermore, Judge Atkins ordered the City of Miami to create two “safe zones” where homeless people could camp peacefully and not be subject to arrest.97 The City of Miami fought back for five years. Atkins enlisted the help of the American Civil Liberties Union. Finally, all parties settled out of court, agreeing that Miami police would continue to receive formal training in protecting the homeless.98

The New York Times heralded Atkins’ ruling as a “model for other cities,”99 but apparently not all cities agreed. At the time of the Pöttinger ruling, New York City itself was just embarking upon the Giuliani era of criminalizing the homeless. And, in the mid-1990s, San Francisco launched the Matrix Program to deal with its massive homelessness problem, and seriously qualified the Pöttinger precedent in Joyce v. City and County of San Francisco.100 The Matrix Program was designed to deal with the common problems associated with the homeless, such as public drunkenness, obstruction of public walkways, aggressive panhandling, and the like.101 Plaintiffs in the case argued that the police were targeting the homeless, whereas the city contended that Matrix included social services designed to end chronic homelessness.102 In other words, “conditional shelter.” Plaintiffs sought injunctive relief against the thousands of citations the police were continuing to issue, but District Judge Delwen Lowell Jensen denied their case and ruled that the Eighth Amendment did not protect those targeted by the Matrix Program.103

In 1994, shortly after the Joyce ruling and in light of both Pöttinger and Joyce-District Judge Elton Joe Kendall ruled in Johnson v. City of Dallas104 that punishing public sleeping was indeed unconstitutional, thereby affirming the Pöttinger precedent but contradicting the Joyce ruling.105 The following year, the Supreme Court of California swung to the other end of the pendulum in Tobe v. City of Santa Ana 106 ruling that a city ordinance prohibiting camping in public parks was not unconstitutional after all, as an earlier appellate court had ruled.107 Dissenting in Tobe, Justice Stanley Mosk argued at length that the California appellate court had been correct. Mosk wrote that the Santa Ana city ordinance violated a citizen’s right to equal protection, as stipulated in the Fourteenth Amendment as well as the California constitution.108 Anticipating an issue central to future cases, both District Judge Kendall in Johnson and Justice Mosk in Tobe recognized an absence of numerically adequate shelter in Dallas109 and Santa Ana respectively.110 To Kendall and Mosk that meant, ipso facto, many homeless people would have no choice but to sleep in public.

Thus, in only a few years between 1992 and 1995, various courts issued a hodgepodge of decisions and dissents that, ultimately, could support either a continuance of the general status quo (then and now) or a radical shift in homeless policy. The latter would seem to indicate an inclusion of the numerically adequate shelter factor. This issue contributed to a more recent landmark case, Jones v. City of Los Angeles,111 and also featured prominently in the recent Bell v. City of Boise case.112

Jones swayed the pendulum back toward Eighth Amendment protection, at least to some extent. In Jones, the Ninth Circuit Court of Appeals reversed a district court ruling that upheld a city ordinance stating, “No person shall sit, he or sleep in or upon any street, sidewalk or other public way.”114 Undisputed facts in the case included homeless people in excess of available beds by the tens of thousands in Los Angeles. Perhaps the crux of the case came down to conduct and status. The previous district court had relied upon Joyce v. City and County of San Francisco 115 which ruled that conduct associated with homelessness116 was punishable by law, regardless of being homeless.117 Judge Kim McLane Wardlaw, writing the prevailing opinion in Jones, made the opposite interpretation. Judge Wardlaw reasoned that homelessness in Los Angeles was unavoidable, given the shortage of beds, and therefore Los Angeles had “encroached upon Appellants’ Eighth Amendment protections by criminalizing the unavoidable act of sitting, lying, or sleeping at night while being involuntarily homeless.”118 Crucially, Wardlaw stipulated that Los Angeles in no way owed the homeless shelter.119 Furthermore, Wardlaw ruled that Los Angeles could continue to arrest and prosecute panhandling and homeless people obstructing public rights of way.120 Even the appellants in the Jones case were not seeking to overturn the Municipal Code on constitutional grounds; but rather, asking that it be not enforced 24 hours a day in the Skid Row section of L.A.121

Jones was later vacated through a settlement agreement,122 but its jurisprudence continues to merit consideration. Judge Pamela Ann Rymer dissented in Jones, disagreeing with what she described as “the majority’s expansive construction of the substantive limits on criminality.”123 Rymer reiterated that conduct was criminally hable, regardless of homeless status.124 She pointed out that the U.S. Supreme Court and all federal appellate courts had ruled as such, so far.125 Moreover, Rymer reasoned that the Eighth Amendment applied to those convicted, not merely arrested.126 She wrote, “We do not- and should not-immunize from criminal liability those who commit an act as a result of a condition that the government’s failure to provide a benefit has left them in.”127

The 1994 Joyce case influenced and informed Rymer’s dissent, and in regards to “status” or “condition” of being homeless, raised issues that continue to dog the homeless debate. In Joyce, District Judge Delwen Lowell Jensen found the “status” issue dubious, particularly as it intersected with free will and personal responsibility.128 In other words, Jensen saw the need to distinguish between those who are homeless through no fault of their own and those who will not help themselves. It is a distinction that seems lost upon many homeless advocates. But there are important reasons for making distinctions among homeless populations, partly because these populations are quite complex. And because homelessness requires expenditure of public funds, one way or another, it is important to make distinctions in an effort to address various issues with precision rather than vague policies.

In Joyce and Tobe, the Department of Justice also saw camping bans as a violation of the Eighth Amendment.129 Regarding the Bell v. City of Boise case, the Department of Justice maintained this earlier stance, and encouraged the court to view camping bans as a violation of the Eighth Amendment.130 The Jones case, from the DOJ’s point of view, revealed that adequate shelter had to be available before anyone could be charged with illegal camping, a rationale that the DOJ continued to advocate in Bell.131 Judge Ronald E. Bush dismissed the Bell case in late 2015 on standing.132

XI. Cost Effectiveness

Aside from constitutional or even statutory matters lies the problem of expensive and ineffective homeless policies. Repeatedly scholars and other observers indicate the lack of cost-ineffectiveness in so many policies dealing with the homeless.133 United States Interagency Council on Homelessness has been among the many recent voices to repeat this observation134 and estimates that the taxpayers pay somewhere between $30-50 thousand annually per homeless person.135 Below are some more detailed examples of how allowing homelessness costs more than sheltering homeless people.
People with severe mental illness cost New York taxpayers more than double the public expenditure (over $40 thousand in 1998 dollars) for housing such individuals at public expense.136 Homeless health care is paid for directly or indirectly by the public, and these expenses alone plummet when homelessness ends. A recent study published in the Journal of the American Medical Association found that median health care costs dropped from $4066 to $1492 per month after bringing the homeless off the street for at least six months.137 Some of the homeless in San Francisco apparently reduced their health care costs by even more (82% in 2013) by getting shelter.138 Good fiscal policy often does not translate into good political policy, however, as reflected in the periodic criminalization of the homeless.

A wide spectrum of observers (including the police) agree that trained social workers helping the homeless is less expensive, more humane, and more cost effective than criminalizing life-sustaining behaviors such as sleeping and eliminating waste. Some observers have concluded that shelter combined with a support system is probably the only realistic and wise way of dealing with homelessness.139 But regardless of economic logic and policy efficacy, "cracking down" on the homeless makes political hay in various circumstances. Yet, in the long view, having the police do what trained social workers should be doing is not only expensive, but ultimately ineffective; even exacerbating the problem. Cost ineffectiveness of traditional homeless policies has helped inspire a great many experiments with alternative approaches.

XII. Policy Experiments

Criminalization of homelessness has not solved the problem and can sometimes clearly violate individuals' constitutional rights. Often such criminalization has been inhumane. But business-as-usual social services have not always helped either, and as the homeless demographic continues to shift and evolve, policy makers, advocates, and scholars have discovered all sorts of innovative and imaginative responses to homelessness, some more theoretical than others. None is more fascinating than the concept of "property outlaws," especially when seen in the broad context of American property law history.

XIII. Property Outlaws

In 2007, Eduardo Moisés Peñalver and Sonia K. Katyal published an ingenious law article about "property outlaws."140 Peñalver and Katyal distinguish three kinds of property outlaws in American history: acquisitive outlaws, expressive outlaws, and intersectional outlaws.141 Acquisitive outlaws included (most famously) nineteenth century squatters of western legend, whose illegal activities (mainly at the cost to absentee land speculators) helped give rise to the Homestead Act. The Homestead Act legitimized what the squatters were doing, particularly as their actions married labor to property in the tradition still evocative of Lockean principles142 not yet rendered obsolete by industrialism,143 and the encroachment of government largess.144 Many Americans are uncomfortable with acknowledging that, after all, the entire nation was preempted from aborigines, and acquisitive outlaws were often the immediate agents of these takings.

In more recent times, expressive outlaws were at the forefront of the Civil Rights Movement. By deliberately violating property law with actions like the occupation of Alcatraz Island and lunch counters in Nashville and Greensboro, Indians and African Americans drew attention to racism and social inequities related to race.145 Intersectional outlaws are a mixture of acquisitive and expressive outlaws. They have received less national notice, but sometimes very high levels of local approval, by squatting in abandoned urban buildings and thereby mitigating neighborhood deterioration fostered by absentee and indifferent owners.146 In 1987, Congress liked the ideas expressed by urban squatters/intersectional outlaws enough to allocate "unutilized" and "underutilized" federal property for temporary homeless housing, via the Steward B. McKinney Homeless Assistance Act.147

All property outlaws tend to illuminate scenarios involving "haves" and "have-nots" and often demonstrate how official policies are out of sync with social realities.148 As Katyal and Peñalver write, "nonviolent violations of property rights constitute a broadly acceptable means of communicating strong moral disapproval."149 Thus, we should take seriously all sincere advocates for the genuinely homeless, especially those who cannot help themselves. Some tough love might be in order for those who find themselves homeless because of the culmination of years of bad decisions and failures of personal responsibility. This includes the bourgeoisie who, quite recently, bought middle class homes beyond their means.150

Regarding how the homeless intersect with property outlawry, Peñalver and Katyal bring up the idea of "doctrine of necessity," which justifies the impoverished with nonviolent utilization or taking of available surplus.151 But perhaps of greater long-term significance, this version of expressive outlawry can bring attention to out-of-sync policies, demonstrate tangible as well as ostentatious alternative scenarios to lawmakers, and provide "imaginative legal possibilities beyond the parameters of existing democratic debate."152 Property outlawry remains at the cutting edge of conceptual and actual policy addressing homelessness. More elementary is an ongoing and ongoing debate between conditional and unconditional shelter. The latter seems to be gaining favor under the "Housing First" model.

XIV. Conditional Shelter

Some people believe that unconditional shelter tends to encourage laziness, and even an "institutionalization" similar to military lifes and repeat criminal offenders. Dennis D. Hirsch called this "shelterization."153 A common criticism is that generous homeless services actually merely attract more homeless offenders.154 There is an old sentiment about "a hand up, but not a hand out" predicated upon the idea of unconditional charity running the danger of perpetuating parasitism. Maine Governor Paul LePage (himself formerly homeless) and consultant Robert Marbut would be considered contemporary advocates of this approach.155 Conditional shelter generally requires a guest to abstain from alcohol or illegal drugs, undergo mental health counseling, make an effort to find a job, and the like. Thus, conditional shelter tends to be woven in with other social services besides provision for a warm and dry place to sleep.

Numerous city leaders have experimented with all sorts of innovative approaches to solving the homeless problem. We have all seen the "will work for food" signs that some street people hold up. In Albuquerque, Mayor Richard Berry decided to take them up on it. The result has been a program that the city has coordinated with homeless service providers to give homeless people jobs, shelter, and social services.156 Austin, Texas features a program called Front Steps that provides a comprehensive array of services, including immediate shelter and long-term housing, counseling for substance abuse and mental health issues, as well as specific care for veterans and their families.157 This is similar to the PATH program in California,158 which offers support while also encouraging eventual independence and personal responsibility. Seattle and Eugene have created authorized camping sites that screen out unruly inhabitants and coordinate with social services for various forms of aid, including asking residents to describe an eventual exit plan.159 Tiny homes (in the size range of 300 square feet or less) is one approach that Chicago, Seattle, Eugene, and other municipalities are trying.160 Most of these shelters have conditions, including bans on alcohol and drug ban. They are, after all, impromptu communities suddenly gathering together strangers, and any gathering of people runs the hazards of anti-social behavior.
All of the above approaches reflect conditional shelter and/or shelter with an accompanying array of services designed to end chronic homelessness but discourage "shelterization." Without knowing it at the time, I actually witnessed a dynamic behind "shelterization" during the 1970s when I briefly stayed at a homeless shelter in Stockton, California. This was after hitchhiking to the West Coast from Virginia and finding myself at odds with the puritanical parents of an old junior high school buddy. It was either conform to their narrow little set of rules or leave, and I left.

I remember walking down some Stockton street, seventeen years old, with my home on my back, feeling fairly depressed. Some pitying stranger actually offered me three dollars, right out of the blue. Sometimes pride goeth before a fall, but I could not have fallen much lower. Besides, the stranger's three dollars seemed immaterial, given my situation, so I turned the money down. The sympathy was a waste, and actually it only made me feel more depressed about my situation. Anyway, I must have asked around for directions and made my way to a homeless shelter. It was situated in an old high school gymnasium. The cots were all arranged on the former basketball court, but there were separate rooms along the perimeter, which had probably functioned as coaches' offices or equipment storage closets. One of these side rooms was occupied by a homeless individual who would not leave, despite the gentle and ineffective efforts of the staff to expel him.

The staff was very kind to me as well. When I arrived, they asked my birthdaydate, and when I told them they quietly suggested I had been mistaken by a year, and "added" a year on their roster to make me eighteen, the minimum legal age they could accept people. I found myself with a cot. The staff was astonished and pleased the following day when they found me doing chores.

"But those are your rules," I said, nodding to the posted sign that stipulated we guests clean up after ourselves and perform basic janitorial work at large. I had read the rules the previous night.

"Few comply," they answered.

I swept the floor anyway. It was something to do.

Three days was the maximum stay, which was enough time to get acquainted with this homeless man who would not leave his private room. I cannot remember his name. He was amiable enough. Somehow they had entrusted him with the key, and he would not give it back. He would leave daily to fetch a half pint of bourbon from the neighborhood store, then return to his room to drink. He was well rooted by the time I arrived, and he showed no signs of departure after my three days were spent. I imagine that eventually they changed the lock, called the police, or something. Otherwise, this guy might have stayed indefinitely. He apparently had the desire to withdraw from society in a public place. He might have thrived in a Housing First environment.

XV. Housing First

According to the National Alliance to End Homelessness, the Housing First approach follows its name in making permanent housing its first priority.161 Afterwards, social services are available on an "as-needed and entirely voluntary basis."162 This is a major departure from conditional shelter approaches. The Housing First movement appears to be gaining ground in a number of localities.163

In 1992, the Canadian psychiatrist Sam Tsemberis developed Housing First. In 2016 he told BBC News, "curing addiction or curing mental illness is still something we don't know how to do, and that was exactly what was being asked of people."164 He was referring to conditional shelter, wherein service providers required the homeless to stop using or abusing substances, and receive counseling, as a condition for receiving shelter. Tsemberis decided giving people a home first was a better solution. Philip Mangano, homelessness czar under President George W. Bush, was impressed and persuaded by Tsemberis's work. "Every single study we did revealed that it was less costly to provide the housing and the services than it was to have those people randomly ricocheting in expensive health and law enforcement systems."165 After promoting the program and implementing it across the nation, they saw immediate results, including drastic reduction (approximately a 40%) in the chronically homeless.166 There have been some stunning success stories in particular places. Medicine Hat (in Alberta, Canada) supposedly became the first city to end homelessness altogether through Housing First. Jamie Rogers led the program in this small city of 63,000 people with a small town feel. He declared Housing First completely successful.167 By 2015, Utah had reduced its homeless population by over 90% through Housing First.168

Naturally, Housing First has not been a placebo. The program failed in San Francisco, despite giving homes to around 10,000 people. Dr. Josh Bamberger, who directed the program, said they mistakenly housed the wrong demographic, with low income being the main criteria.169 In retrospect, he wished they had targeted those with the most medical needs and expenses. But San Francisco has other, particular problems. Echoing the San Francisco police, Bamberger said, "I think if you're struggling with sobriety and people are offering you drugs and alcohol on a regular basis, it's harder to make progress."170 Bamberger also cited the notoriously expensive housing costs in San Francisco. The contrast between San Francisco and Medicine Hat or Utah is a case in point regarding unique homelessness conditions in particular locations. In general, Housing First is catching on, especially in places like Eugene and Portland where traditional responses have not reduced homeless populations.

Eugene adopted the Housing First approach in December 2015,171 but we have a very long way to go before seeing any mitigation in the homeless population here, whether it be travelers or residential homeless. Two hours north by interstate, Portland faces similar challenges. In Portland, healthcare providers (including five hospitals) recently donated over $21 million dollars to build housing for the homeless and low-income people in danger of becoming homeless. Supposedly this is the largest such donation of its kind.172 But it makes sense that healthcare providers would be behind this, given the well-documented extra expense of medical attention for the homeless compared to the housed. The United States Interagency Council on Homelessness is firmly behind Housing First.173

XVI. Relational Welfare

There are hazards of government programs substituting for families, but a great many reasonable people would argue that in the complex socio-economic scenarios of the post-industrial society, government social services are a necessity. Thus rather than a libertarian argument of either/or, we might think: innovatively about what kind of social services are most effective as well as economically efficient. Enter the remarkable Hilary Cottam.

Cottam, a British leader in social welfare innovation, has offered the alternative "Relational Welfare" to the traditional post-World War II social services approach.174 As the term implies, the focus is on social networks of families, neighbors, friends, and social workers themselves, rather than "needs" as traditionally defined.175 Cottam's strategies and practices, through her group Participle, involves social workers actually working with and living closely with their clients, thus initiating the beginning of the relationship model.176 Participle has seen marked success with even the most difficult cases involving...
families suffering from entrenched deprivation: financial, social and psychological."177 Participle encourages clients to develop their own capabilities and personal dreams rather than dependency upon the traditional, top-down, hierarchical welfare system.178 As Cottam put it, the freedom to lead a better life will be reflected in a person's capabilities. If there is to be an equal chance for everyone to realise [sic] their potential, the starting point has to be more than just 'opportunities', it must be a deep commitment to fostering the broader skill sets that enable us to seize and shape opportunities. Underpinning our vision is a belief that everyone needs a role or purpose in life, a place to be and meaningful relationships with others.179

As previously mentioned, in the traditional welfare state model, clients were tempted to exaggerate their disabilities or problems in order to qualify for services. In addition to obvious fraud, this unfortunately led clients to see themselves as actually incapable.180 The Participle approach has counteracted this through the aforementioned techniques. Compared to the traditional welfare state approach, Cottam and Participle have achieved better results at less public expense.181 Instead of bureaucrats themselves consuming the vast majority of public expenditure (a long standing criticism of the modern welfare state)182 the money more directly affects the clients at hand. Perhaps more importantly, by developing relationships with clients, social workers potentially achieve important distinctions, such as sorting through "genuine" mental illnesses and other maladies more directly derived from "mere" substance abuse.

The qualification of "community" would seem to pose an immediate limitation to Cottam's ingenious approach to homelessness in the United States, which still retains elements of "frontier culture" despite it being the twenty-first century. The fact that "community policing" is an innovation rather than the norm is a reflection of that.183 In our frontier-derived society, autonomous individualism often supersedes the sort of society Cottam is dealing with in Britain. Particular aspects of homelessness often reflect broken or nonexistent families, particularly in the case of those escaping domestic violence or throwaway children. The aforementioned travelers are notorious for their antisocial behavior, thus making Relational Welfare approaches all but impossible. But this would be true of any transient homeless population. Such individuals might be hundreds or even thousands of miles away from family members or, indeed, anyone who is acquainted with them at all. Regardless of all this, Relational Welfare strikes at the heart of human beings as fundamentally social mammals, and thus has much to recommend it. I've written about (and I'm sure others have noted before me) that property law in the United States reflects to some degree an untenable and unsustainable frontier-esque legacy of high mobility and lack of long-term vision for progressive zoning and controlled growth. Also to some degree, the same might be said of our social relations, where communities come and go and social relations often remain tenuous. Perhaps the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 comes the closest, so far, of approaching the Cottam/Participle approach.

The HEARTH Act encouraged "the creation of State Interagency Councils on Homelessness and the formulation of jurisdictional 10-year plans to end homelessness at State, city, and county levels."184 Perhaps most pertinent, the HEARTH Act sought "constructive alternatives to criminalizing" the homeless through public camping bans, seizing personal property, punishing loitering, and the like.185 A key phrase was "when there are no suitable alternatives" allowing the homeless to obey such laws.186 It is an ambitious if noble piece of legislation roughly attempting to accomplish in the vast United States what Hilary Cottam already reveals as effective in England.

XVII. Some Observations and Conclusions

Sam Rasoul, a Virginia state legislator, recently observed that liberals generally seek improvements in government services to solve social problems, whereas conservatives are more likely to focus on personal responsibility, based on the premise of autonomous control of one's own life.187 Rasoul concluded that, "Neither view effectively captures the accountability our great nation must have toward both the individual and the system."188 Rasoul recognized that people are obviously born into different circumstances, thus giving them a start in life with great hindrances or privileges.189 So, basically, Rasoul was illustrating a false dichotomy, and as with so many false dichotomies, the better philosophy is some mixture of the two points of view. No one mixture will fit all circumstances, and definitely not so when it comes to the issues and problems surrounding homelessness.

A problem like homelessness (when it is a problem) is never really "solved," any more than poverty or unequal wealth distribution is ever "solved." Instead, there are varying degrees of severity when it comes to homelessness, and varying levels of effective response and humane consideration for those who suffer homelessness. Hilary Cottam and the Participle example of Relational Welfare offer a path toward more nuanced homeless policy that might improve upon distinctions between those who need and those who want. It's a wonderful theory, as is Housing First, and the right mix of social and individual responsibility will undoubtedly go a long way toward mitigating contemporary homelessness in the United States.

If the courts (and particularly the Supreme Court) ever settle on bans against public camping as violations of the Eighth Amendment, then perhaps this in effect becomes a step toward housing (or at least shelter) as a constitutional right. In the meantime, Housing First has shown some remarkable improvements in some locations, but arguments for some conditions remain persuasive, at least with some people in some circumstances. But undoubtedly, criminalization of the homeless is expensive, ineffective, and often exacerbates problems (partly by shifting them, kicking the can down the road, etc.). And yet, political popularity has often favored criminalization despite all logic and lessons from past practices to the contrary. This sort of dynamic must drive social workers to distraction in their ongoing efforts to help the homeless.

As rightly-renowned scholar, Karen Armstrong, has written, compassion has been central to every major world religion.190 Compassion means to "suffer with," and thus empathize, if not sympathize, with our fellow humans in their time of need and sorrow. Undoubtedly, among the homeless there is a great deal of suffering. Still, we should not confuse compassion with misplaced or ill-directed sympathy, even when it comes from the sort of unthinking noblesse oblige that is quite common where I live. The latter obfuscates and sometimes exacerbates a problem such as homelessness. For example, Ben Brubaker, a volunteer with a social services program in Eugene, reflects the classic misplaced sympathy problem. "The constant flow of negative sensationalism journalism" is what he called a television news story, just because one of its disguised reporters hauled a high panhandling take.191 This is ironic, because if people gave money directly to programs like the one Brubaker volunteers with, the funds would actually get spent on medical care instead of the mood-enhancing things the homeless usually buy. That isn't to say that charities and homeless service providers will always spend their funds correctly, but the latter is an unavoidable hazard when it comes to any organization that has a budget.

As for the public, the near-universal rule of never giving money directly to the homeless-but, rather, to homeless services-at least ends the direct funding of substance abuse, which in itself so often helps perpetuate homelessness, unemployment, and unintended side effects like depression and a low sense of self-worth.

Sadly, the homelessness muddle is not likely to end soon, partly because of the deep cultural factors that help perpetuate it. In a vast nation of highly mobile people still cherishing frontier virtues, community is bound to run thin in places. Otherwise, strong community and Relational Welfare could go far in mitigating homelessness. Other cultural attributes, such as personal financial irresponsibility (popularly obfuscated as "financial illiteracy" lately),192 showed their contribution to homelessness during the recent housing crisis and economic recession. The United States has among the lowest personal savings rate in
the developed world, but even compared to many developing countries throughout Asia, the Middle East, Africa, and South America. 

Low personal savings among Americans will not likely change any time soon. This is another frontier legacy, where the “boom and bust” cycle of unstable economics reigned. And personal savings are, after all, one of the surest bastions against economic forces that no individual has controlled since at least the industrial age. The Rust Belt alone shows what happens when manufacturing and markets shift, and no person or even government can control that. But we can control our own finances to a remarkable degree.

One of the most disturbing cultural trends has been the “invention” or expansion of mental illnesses and the expensive medication designed to cure them. Obviously, this cultural attribute goes far beyond the homeless demographic. With literally thousands of pharmaceutical industry lobbyists in Washington, D.C. and in state capitols nationwide, this phenomenon is likely to stay with us virtually unhindered for at least as long as Big Tobacco did.

As with so many issues, one key question remains, are people doing their part? In their current circumstances, with their current set of limitations and abilities? If so, then they deserve the support and aid of any decent society, especially if they find themselves in circumstances that were not of their making. There are some truly horrific cases out there, of foster kids who endured years of abuse before finding themselves living on the streets. Even the best social programs face an enormous challenge in trying to help them.

It would be easy, and even accurate, to criticize some of the homeless for being personally irresponsible, for being lazy, opportunistic parasites on society, for being obnoxious beggars, or for possessing an arrogant sense of entitlement—but these negative traits exist at all levels of society. Panhandling dressed up in a bow tie often becomes “fundraising.” Any number of government contractors producing projects of dubious worth, at extreme expense, are most assuredly opportunistic social parasites. Leaders of “nonprofit” organizations earning six figure salaries and corporate CEOs earning far more definitely think they’re entitled to these gargantuan compensation packages. After all, they have “earned” this income according to social norms that must ultimately contain at least some arbitrary and capricious elements. So what we would really be criticizing here would be universal human behaviors; only, by picking on the homeless, we would be choosing the most unfortunate demographic who also happen to possess them.

* Will Sarvis is a freelance writer living in Eugene, Oregon. The author very kindly thanks Professor Julie Cheslik and law student Julie A. Sims for their most stellar editorial attentions regarding this essay.

2. See generally Robert C. Ellickson, The Homelessness Muddle, in Faculty Scholarship Series 45 (Yale Law Sch. Faculty Scholarship 1990) (proposes that the attempts to combat homelessness in the 1980s have not achieved their stated aims), http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=14598&context=fss_papers.
4. Compare id. (showing Oregon to have the third highest homeless rate in 2013), with Wayne Wagner, Homeless Property Rights: An Analysis of Homelessness, Honolulu’s “Sidewalk Law,” and Whether Real Property is a Condition Precedent to the Full Enjoyment of Rights Under the U.S. Constitution, 35 U. Haw. L. Rev. 197, 198 (2013) (showing that Hawaii has a high rate of homelessness that is near Oregon’s rate).
5. See Homelessness Research Insut., supra note 3, at 33.
6. See Heather Marek, Eugene's Exclusion Ordinance: A Dilemma for Civil Liberties, Public Space, and the Homeless 48 (May 2010) (unpublished M.A. thesis, University of Oregon), https://cldc.org/wp-content/uploads/2012/02/Marek-ExclusionZone-Project.pdf. Marek attempts to debunk the common notion that Eugene's amenities attract the homeless from other places, but she relies on insufficient data, such as police arrest records, which may very well list local addresses, but do not specify when those addresses were established (such as twenty years or twenty days previously). 1d. at 51-52.
14. Id. at 98, 109-10.


21. See Sommers & Satel, supra note 20, at 142-76, for a general discussion on how PTSD was invented.

22. See Barber, supra note 20, at xviii-xix.

23. Lauren Slater, Opening Skinner's Box: Great Psychological Experiments of the Twentieth Century 64-71 (2004); see also David L. Rosenhan, On Being Sane in Insane Places, 179 Sei. 250, 251 (1973).


27. Email from Gene Obersinner, Crisis Intervention Therapist (Dec. 4, 2013) (on file with author).


29. Email from Obersinner, supra note 27.

30. Amy's objections to the Eugene Mission were similar to other's perspectives. See Marek, supra note 6, at 49-50.


32. SF Struggles to Help, supra note 28.

33. Id.


38. See Ellickson, supra note 2, at 45-46; Hirsch, supra note 16, at 496-97, 504.


40. For corroborating statements, see Cook, supra note 10 (statements by "Spice" and "Dice").


42. For corroborating statements, see Cook, supra note 10 (statements by "Spice" and "Dice").

43. For corroborating statements, see Cook, supra note 10 (statements by "Spice" and "Dice").

44. Id.

45. See Edward Russo, Mayor: Loitering A Growing Problem, Register-Guard (Eugene, Or.), Sept. 6, 2015, at AI [hereinafter Loitering Growing Problem]; Saul Hubbard, No Easy Answers for Transients, Register-Guard (Eugene Or.), Sept, 13, 2015, at AI; Edward Russo, Arrival of Eugene 'Travelers' Meeting Expected, Register-Guard (Eugene Or.), Oct. 25, 2015, at AI [hereinafter Eugene 'Travelers' Meeting].

46. See Loitering Growing Problem, supra note 45; Hubbard, supra note 45; see Russo, hereinafter Eugene 'Travelers' Meeting, supra note 45.


49. See Marbut Interview, supra note 9.

50. Id.


55. See Johnson, supra note 10.


58. For my short story, inspired by the woman I regarded as my surrogate grandmother, see Will Sarvis, Paper Boy, in Another Dimension of Loneliness 10 (2015).


62. See, e.g., Berger, supra note 26, at 365; see also Adams, supra note 8, at 3; Mitchell, supra note 60, at 505-08.
63. For examples, see Dugger, supra note 39; Unconditional Right to Shelter, supra note 16, at 21, 24-25; Hirsch, supra note 16, at 493, 497-98; Reich, supra note 60, at 758, 764, 774. See also infra p. 36 and note 155 (discussing Maine Governor Paul LePage and consultant Robert Marbut).

64. Ellickson, supra note 2, at 59; Hirsch, supra note 16, at 493.


66. See Eduardo Moisés Peñalver & Sonia K. Katyal, Property Outlaws, 155 U. Pa. L. Rev. 1095, 1135 (2007); Reich, supra note 60, at 771; Waldron, supra note 60, at 300, 303-304. See generally Margaret Jane Radin, Property and Personhood, 34 Stan. L. Rev. 957, 1016 (1982); Wagner, supra note 4, at 212.


68. See N.Y. Const, art. XVII, § 1.


70. See id. at 169; see also Maya Nordberg, Jails Not Homes: Quality of Life on the Streets of San Francisco, 13 Hastings Women’s L. R. 261, 278-79 (2002).


74. Id. at 152-53.

75. See id. at 154.

76. N.Y. Comp. Codes R. & Regs. tit. 18, § 352.35.

77. See Callahan, 307 A.D.2d at 154.

78. See Barie v. Lavine, 357 N.E.2d 349, 352 (N.Y. 1976)


82. Cambron, supra note 80, at 362, 364, 366, 367.

83. See Burkhart, supra note 80, at 216.

84. Id. at 276. For a discussion of Charles Beard, see Ellen Nore, Charles A. Beard; An Intellectual Biography 63, 65 (1983); see generally David Hackett Fischer, Historians’ Fallacies: Toward a Logic of Historical Thought (1970).

85. Foscaxinis, supra note 17, at 36, 37.


88. See discussion, infra Part B.


91. See Berger supra note 26, at 333, 355.


93. See Unconditional Right to Shelter, supra note 16, at 25 (“Communist bills of rights contain an array of positive rights including, typically, an express right to shelter. These constitutions also set out what might be called ‘bills of duties,’ which invariably include an express duty to work.”).

95. Id. at 1556.

96. Id. at 1584-85.

97. Id. at 1585.


99. See id.

100. See Joyce v. City of S.F., 846 F. Supp. 843, 856, 858 (N.D. Cal. 1994).

101. Id. at 846.

102. Id. at 847.

103. Id. at 864.


105. See id. at 348-50.


107. Id. at 1169.

108. Id. at 1176.


110. Tobe, 892 P.2d at 1152.

111. Jones v. City of L.A., 444 F.3d 1118, 1140-41 (9th Cir. 2006).

112. See also Bell v. City of Boise 834 F. Supp. 2d 1103 (D. Idaho); rev'd, 709 F.3d 890 (9th Cir. 2013), remanded to 993 F. Supp. 2d 1237 (D. Idaho 2014).

113. Jones, 444 F.3d at 1138.

114. Id. at 1123.


116. See id. at 858.

117. Id.

118. Jones, 444 F.3d at 1132.

119. Id. at 1138.

120. Id. at 1137.

121. Id. at 1127.


123. Jones, 444 F.3d at 1140.

124. See Id. at 1139.

125. See Id.

126. Id. at 1140.

127. Id. at 1139.


130. Id. at 3-4.

131. Id. at 10-11.


133. See Adams, supra note 8, at 13; see also Nordberg, supra note 70, at 295.


139. See U.S. Interagency Council Homelessness, at 31-32; Berger, supra note 26, at 334; see also Adams, supra note 8, at 43, 63-64; Marek, supra note 6, at 30, 59; Shumsky, supra note 26, at 229.

140. Peñalver & Katyal, supra note 66.

141. Id. at 1105.


143. See David G. Ritchie, Natural Rights: A Criticism of some Political and Ethical Conceptions 268-71 (1924); see also Richard T. Ely, Property and Contract in their Relations to the Distribution of Wealth, Vol. fl 541-43 (1914).

144. See Reich, supra note 60, at 778.

145. See generally Peñalver & Katyal, supra note 66, at 1104-05, 1114-22, 1136, 1137.

146. Id. at 1125-28, 1163.


148. See Peñalver & Katyal, supra note 66, at 1101, 1186.

149. Id at 1137.

150. It is rare for homeless advocates to mention this factor; for an exception, see Wagner, supra note 4, at 229.

151. Peñalver & Katyal, supra note 66, at 1173-74, 1176.

152. Id. at 1140, 1162, 1184.

153. See Hirsch, supra note 16, at 497-98, 506; see also Ellickson, supra note 2, at 59; Unconditional Right to Shelter, supra note 16, at 21, 33.


162. Id.

163. See supra note 7 and accompanying text; see also infra notes 168, 171 and accompanying text.


165. Id.

166. Id.

167. Id.


169. The Inquiry: Should We Give Every Homeless Person a Home?, supra note 164.

170. Id.


176. See Relational Welfare, supra note 175, at 140.

177. Id. at 137.

178. See Cottam, supra note 34, at 7; see also Relational Welfare, supra note 175, at 137, 140.

179. Cottam, supra note 34, at 8.

180. See id. at 9.

181. See Relational Welfare, supra note 175, at 139.


185. Id. § 1004(9) (G).

186. Id.


188. Id.

189. Id.


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