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ELIMINATING THE DESTITUTION OF AMERICA'S HOMELESS: A FAIR, FEDERAL APPROACH

BY ALEXANDER TSESI¹

[T]he proper function of a government of the people, by the people, and for the people is to make it possible for all citizens to experience a better, more secure, and more rewarding life.²

INTRODUCTION

Homelessness is a persistent problem in American society. There are few programs that teach homeless persons job skills sufficiently marketable for them to escape destitution. Compounding their hardships, some municipalities have enacted ordinances penalizing people for sitting or sleeping in public places. Such laws exacerbate the plight of the homeless without offering any relief from their abject conditions.

The American dream includes the desire for more economic security. To some Americans, however, it means simply finding shelter on cold nights and food enough to stave off hunger. The lives of homeless people are filled with uncertainties about where to get out of the elements and how to obtain the next meal. Improvement for them means not having to fear the shadow of every passerby while they huddle underneath bridges, inside alleys, and near warm vents.

Homeless people “lack resources and community ties necessary to provide for their own adequate shelter.”³ The Stewart B. McKinney Homeless Assistance Act of 1987 (“McKinney Act”) contains a section characterizing common characteristics of the homeless:

An individual who lacks a fixed, regular, and adequate nighttime residence, or an individual who has a primary nighttime residence that is: (a) a supervised publicly or privately operated shelter de-

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2. Lyndon Baines Johnson, *Vantage Point, Perspectives of the Presidency* 345 (Holt, Rinehart and Winston, 1971).

3. United States General Accounting Office, *Homelessness: A Complex Problem and the Federal Response* 5 (1985) [hereinafter “G.A.O.”].

signed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (b) a public or private place that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as regular sleeping accommodations for human beings.⁴

Homeless people suffer from extreme physical and psychological difficulties. Their problems are compounded by illnesses from exposure to inclement weather, inadequate nutrition, and lack of medical care. Many homeless people with mild psychiatric disturbances eventually fall prey to frank mental illnesses, unable to cope with the strain of seeing their dreams unrealized.⁵ The quality of their clothing deteriorates for lack of money, and their ability to care for their personal hygiene deteriorates for lack of access to bathing facilities.⁶

The socioeconomic conditions that lead to homelessness often persist longer than just one homeless episode. More than half the homeless population is on its second or third homeless episode.⁷ Thirty-seven percent of single homeless people and twenty-three percent of homeless families⁸ are homeless three or more times.⁹ The duration of homelessness varies significantly with twenty-eight percent of the homeless reporting being homeless for three months and thirty percent reporting being homeless for twenty-five months or longer.¹⁰

Many of the homeless are "runaways, victims of domestic violence, persons recently released from prison, refugees, and transient people."¹¹ Do-

4. 42 U.S.C. § 11302(a) (1999). It is impossible to precisely enumerate the number of homeless persons in the United States because their numbers fluctuate daily. In 1986, 49.9 of every 10,000 people were estimated to be homeless in Boston; in 1985, 41.1 of every 10,000 were homeless in the District of Columbia; and during 1983, 13.6 of every 10,000 people were homeless in Pittsburgh. See Martha R. Burt & Barbara E. Cohen, *America's Homeless: Numbers, Characteristics, and Programs that Serve Them* 24 (Urban Institute Press, 1989) (providing multicounty statistics). In 1984, the Department of Housing and Urban Development ("HUD") estimated that there were between 200,000 and 600,000 homeless people in the United States. See *G.A.O.*, *supra* n. 3, at 9.

5. See *G.A.O.*, *supra* n. 3, at 19-20.

6. See David Wagner, *Checkerboard Square: Culture and Resistance in a Homeless Community* 30 (Westview Press, 1993).

7. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 30 (Urban Institute Press 1999).

8. The 1996 HUD Study defined "homeless families" to consist only of those persons living with one or more children under the age of 18. *Id.* at 6. Such a definition seems significantly flawed. While it is understandable that the HUD Study did not consider unmarried persons traveling together to be members of a family, it makes no sense for the compilers to exclude married people without children as members of distinct families.

9. *Id.* at 31.

10. *Id.* at 31. The study further found that 11% of respondents were homeless between four and six months; 15% were homeless for seven to twelve months; and 16% were homeless 13 to 24 months. *Id.* Burt and Cohen determined that in 1987 about one-fifth of all homeless people were homeless for more than four years. See Burt & Cohen, *supra* n. 4, at 3-4.

11. *G.A.O.*, *supra* n. 3, at 18. (where HUD estimated in 1985 that 40 or 50% of the homeless population come from these sorts of troubled backgrounds).

mestic violence is a major cause of homelessness among women.¹² Homeless families are usually composed of adults and children.¹³ Adolescent runaways who live alone often turn to prostitution, theft, and drug dealing out of desperation.¹⁴ These abject people are often criminally assaulted, robbed,¹⁵ and raped.¹⁶

The health risks facing the homeless population are severe. Homeless people are at a higher risk of contracting contagious diseases, such as upper respiratory infections, than the general population.¹⁷ The mentally disabled segment of the homeless population faces unique challenges. The most recent nationwide study of homeless people, the 1996 HUD Study, to which twelve federal agencies contributed, found that a significant proportion of the homeless experience long and short term mental health problems.¹⁸ The same was true of the 1,704 homeless adults the Urban League interviewed in March 1987, nineteen out of 100 surveyed reported a history of mental hospitalization.¹⁹ These statistical findings should be balanced against the tendency to over-diagnose mental illnesses in order to sweep the homeless from public places. Multiple instances have been reported of homeless people unnecessarily institutionalized and, in effect, thereby imprisoned.²⁰

12. See R.M. Yoshimura, *Empowering Battered Women*, 17 U. Haw. L. Rev. 575, 576 (1995); Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 Fam. L.Q. 276 (1995). Many women flee abusers to protect themselves and their children sadly determining that homelessness is preferable to living with abusive domestic partners. See Joan Zorza, *Women Battering: A Major Cause of Homelessness*, 25 Clearinghouse Rev. 421, 424 (1991).

13. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* xviii (Urban Institute Press 1999) (stating there are an average of 2.2 children per homeless family).

14. David Finkelhor et al., *U.S. Dep't of Justice, Missing, Abducted, Runaway, and Thrownaway Children in America, First Report: Numbers and Characteristics*, National Incidence Studies 143 (1990), cited in Gregory A. Loken, "Thrownaway" Children and Throwaway Parenthood, 68 Temp. L. Rev. 1715, 1720 nn. 28-29 (1995) (citing a 1988 Justice Department finding that there were approximately 450,000 runaways nationwide). See Alexis A. Phocas, *Runaways and California's Juvenile Law: The Emancipation Option*, 19 J. Juv. L. 46, 78 (1998) (Concerning the dangerous vocations often pursued by runaways).

15. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 22 (Urban Institute Press 1999) (Approximately two out of every five homeless people are the victims of robbery and theft).

16. *Id.*

17. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 30 (Urban Institute Press 1999); see also Pedro J. Greer, Jr., *Medical Problems of the Homeless: Consequences of Lack of Social Policy*, 45 U. Miami L. Rev. 407, 411 (1996).

18. 39% of the study participants reported having mental health problems within a month of the study; 45% reported having mental health problems within the previous year; and 57% reported some mental health problems during the course of their lifetimes. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 24 (Urban Institute Press 1999) at 24.

19. Burt & Cohen, *supra* n. 4, at 48. The study was conducted in 20 United States cities. *Id.* at 1.

20. *O'Connor v. Donaldson*, 422 U.S. 563 (1975) (where a patient sued a state hospital claiming that his confinement in a mental hospital was a constitutional deprivation of his liberty). The Supreme Court held that it was unconstitutional to deprive persons of their physical freedom solely on the basis of "public intolerance or animosity." *Id.* at 575. See also Norman Siegel, *Homelessness: Its Origins, Civil Liberties Problems and Possible Solutions*, 36 Vill. L. Rev. 1063,

Emergency shelters and soup kitchens are designed to succor to the immediate needs of the homeless, but they only offer temporary solutions to their underlying problems. Two of the principal causes of homelessness are unemployment²¹ and lack of education,²² which leave persons with no alternatives except living on the streets, in shelters, mental institutions, and short term housing.

Even though many of the homeless work, their incomes are inadequate to pay for their living expenses. The 1996 HUD Study determined that, within thirty days of being interviewed by the Census Bureau, forty-four percent of homeless clients had done some paid work.²³ The study also determined that on an average, homeless people made \$365 per month.²⁴ Of those homeless people who were employed, twenty percent expected to stay at their job positions for at least three months, and twenty-five percent engaged in day labor and other temporary jobs.²⁵ Many homeless people worked low paying jobs and were unable to obtain or retain jobs paying adequate living wages.²⁶ Such low earnings rendered it virtually impossible for people to rent even a modest apartment in major American cities.²⁷ The amount was barely enough to buy something to eat every day.²⁸

The limited earning power of the homeless was due, in large part, to the sparsity of education that many of them have received. In 1996, fifty-three percent of homeless people with families and thirty-seven percent of single homeless clients had not completed high school.²⁹ In comparison, twenty-five percent of United States adults had attained less than high school education.³⁰ Approximately twenty-one percent of homeless clients completed high school or passed a high school equivalency examination (i.e. General Education Diploma or "G.E.D.") and another twenty-seven percent obtained some education above high school level.³¹ Thirty percent of the adult population in

1065 (1991).

21. See Martha R. Burt, *Over the Edge: the Growth of Homelessness in the 1980s*, 216 (Russell Sage Foundation, 1992).

22. See Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. Rev. 295, 317, n. 35 (1991).

23. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 29 (Urban Institute Press 1999).

24. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 28-29 (Urban Institute Press 1999).

25. *Id.*

26. See Michael D. Shear & Tom Jackman, *Fairfax Boom Leaves Little Room for Poor; Study Finds Homeless Number Rising*, Washington Post, March 14, 2000, 1 (discussing the rise in homeless population). The rising rents and the persistently low minimum wage are contributing factors to the increased number of employed persons who are homeless. *Id.*

27. See Alice Bussiere et. al., *Homeless Women and Children*, 25 Clearinghouse Rev. 431, 432 (1991). "[A] minimum wage job is not enough to allow a family to rent a typical apartment for 30 percent of the family's income." *Id.*

28. See Martha R. Burt et al., *Homelessness: Programs and the People They Serve* 22 (Urban Institute Press 1999) (concerning hunger rates among the homeless).

29. *Id.* 17-18.

30. *Id.*

31. *Id.*

the United States completed at least high school or received a G.E.D., and about forty-five percent more attained some education beyond high school.³²

Given the current destitution in which the homeless live, the people of the United States have a collective responsibility to develop and establish a Homeless Vocational Training Program ("Program") that will enable homeless people to become self-sufficient.³³ Current state and local government approaches to homelessness are irrationally punitive. A vocational training program designed to train homeless people for work in a modern, technologically advanced society would significantly decrease the incidence of poverty. This program should provide emergency and long-term aid. It must meet the daily requirements of the homeless population and teach willing participants competitive trades. A residential training program, designed to teach persons skills necessary to obtain and maintain adequately paying jobs, will provide a viable and meaningful alternative to homelessness.

Previously, the homeless were eligible for job related programs through the McKinney Act.³⁴ However, on August 7, 1998, that statutory scheme was repealed.³⁵ Although funding is still available under the McKinney Supportive Housing Program for employment counseling,³⁶ that program is insufficient to provide opportunities for homeless persons without marketable job skills and for those whose skills are inadequate for all but the lowest paying jobs. Other statutes designed to make the indigent more employable, like the Job Training Partnership Act ("JTPA"),³⁷ do not adequately address the needs of homeless people. JTPA enables the United States Department of Labor to disburse block grants to states for workforce preparation of low-income adults, but it does not specifically target the homeless and it lacks a detailed accountability scheme.³⁸

This article proffers statutory guidelines designed to improve the quality of life for homeless persons. Part I analyzes laws directed at homeless populations as well as the differing common law opinions about their effectiveness and validity. Part II evaluates social contract theory and the right of citizens to a sustainable quality of life and then argues that it is in the general interest

32. *Id.*

33. *See infra*, Part II.

34. Such programs were enacted in the *Stewart B. McKinney Homeless Assistance Act of 1987*. *See* 42 U.S.C. §§ 11441-11447 (1987). Congress authorized programs which provided the following training: "(1) basic skills instruction; (2) remedial education activities; (3) basic literacy instruction; (4) job search activities; (5) job counseling; (6) job preparatory training, including resume writing and interviewing skills; and (7) any other activities described in section 204 '29 USC 1604' of the Job Training Partnership Act which the grant recipient determines will contribute to carrying out the objectives of this subtitle; for homeless individuals." 42 USC § 11444 (1987). While the program, which was thereby initiated signaled a significant move forward in the recognition of the needs faced by unskilled homeless individuals, its requirements were too unpecific.

35. *See* Pub.L. 105-220, Title I, § 199(a)(5), 112 Stat. 1059 (August 7, 1998).

36. *See* 42 U.S.C. § 11385 (2000).

37. 29 U.S.C. § 1501 *et seq.* (2000).

38. Telephone Interview with Nicholas Lammers, Director of Office of Adult Services, Employment Training Administration, United States Department of Labor (Apr. 27, 2000).

of society to provide homeless citizens with the opportunity to rise out of their destitute circumstances. Finally, Part III outlines the Homeless Vocational Training Program, which is a detailed statutory scheme for a nationwide residential training program.

I. LAWS DIRECTED AT THE HOMELESS AND JUDICIAL RESPONSES TO THEM

Several cities and states throughout the United States have laws designed to reduce their homeless populations. Such laws prohibit the homeless from carrying out necessary life activities and restrict them from living where they want. Laws aimed at alleviating cities of their obligation to the homeless do not remedy underlying social problems. To the contrary, they aggravate the daily hardships of homeless life.

A. *Sleeping/Camping Ordinances*

Laws prohibiting sleeping and camping in public areas are commonly used to drive out the homeless. The goal of these laws is to eliminate places for homeless people to engage in life sustaining activities, like sleeping and sitting. Possessing no place to sleep, homeless persons then have no choice but to either break the law or leave the jurisdiction.

Some cities have drafted ordinances enabling police officers to harass homeless people who have no other place than public areas to rest. The City of Beverly Hills, California has made it illegal to sleep, sit, or lie on its public ways except for persons sitting on public benches, viewing parades, or when it is so "[n]ecessitated by . . . physical disability."³⁹ Likewise, Los Angeles, California prohibits sleeping in public except for persons attending parades or those sitting on City benches.⁴⁰ Miami, Florida has made a sweeping prohibition against persons sleeping on sidewalks, streets and public places without first obtaining permission.⁴¹ These laws are not drafted to prevent business people from sleeping in parks during lunch breaks or persons from sitting on sidewalks while waiting for public transportation. They are, instead, aimed at homeless people sleeping in public places. It is left at the discretion of the police to determine which sleeping persons to arrest. These cities' laws lack a provision permitting persons to rest in public places during emergency situations. Homeless people who sleep on the streets are usually

39. Beverly Hills Mun. Code (Cal.) § 5-6.1303 (1999). "No person shall sit, lie or sleep in or upon any public street, greenbelt, median island, parking lot, alley, sidewalk, or other public place or way open for pedestrian or vehicular travel. The provisions of this section shall not prohibit a person from sitting upon a public street, greenbelt, median island, parking lot, alley, sidewalk, or other public place if: a) Necessitated by the physical disability of such person; or b) Such person is viewing a legally conducted parade; or c) Such person is seated on a bench lawfully installed for such purpose." *Id.*

40. See Los Angeles Mun. Code (Cal.) § 41.18(d) (1999).

41. "It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places or upon the private property of another without the consent of the owner thereof." Miami Mun. Code (Fla.) §37-3 (1999).

there from dire necessity, not choice.⁴² Theirs is an emergent situation filled with daily perils for survival. They should not be cited for violating city ordinances while engaging in physiologically necessary acts.

While the police in Beverly Hills, Los Angeles, and Miami are permitted to take immediate action, Salt Lake City, Utah officers are required to give persons who are camping in public places five minutes to clear out before citing them for violating the City ordinance.⁴³ It is a coercive use of police power to demand persons to move on such short notice from what may be the only warm grate on the block. Salt Lake City further prohibits its homeless population from using basic necessities like bedding and ground covers on any public grounds.⁴⁴ Other cities, like Santa Ana, California, also forbid the use of camping paraphernalia like sleeping bags in public areas.⁴⁵

Moreover, Santa Ana also prohibits homeless people from storing personal property in public areas.⁴⁶ Such an ordinance evinces lack of understanding and concern about the plight of the homeless who often have no place to put their belongings other than some moderately safe public recesses. Homeless persons, who often only possess clothing and a blanket, have no option but to temporarily leave their things in public when they go into bathrooms or to work sites.

Other cities have restricted persons from sleeping in public only during certain hours. Santa Barbara, California makes it illegal to sleep in public "one half hour after sunset of one day and 6:00 A.M. of the next day."⁴⁷ Laguna Beach, California does not allow sleeping or camping in its public areas; however, seemingly to maintain its tourist industry, Laguna Beach permits persons to sleep on beaches between 7:00 a.m. and 7:00 p.m.⁴⁸ Clearwater, Florida prohibits sleeping on beaches and in parks, unless otherwise authorized, between 11:00 p.m. and 6:00 a.m.⁴⁹ St Petersburg, Florida specifies hours during which no one may lie down to rest or sleep on its property in circumstances that could be construed as alarming.⁵⁰ These cities have

42. The insufficient number of homeless shelters often makes sleeping in public spaces, like the streets or under bridges, the only alternative available to persons lacking their own residence. See *Pottinger et al. v. Miami*, 810 F. Supp. 1551, 1581-82 (S.D. Fla. 1992) (police arresting homeless people engaged in "innocent activities" like sleeping is cruel and unusual punishment under the 8th Amendment).

43. See Salt Lake City Mun. Code (Utah) § 11.12.080 (1987).

44. *Id.* El Paso, Texas has limited the prohibition of camping or using camping equipment to its parks and playgrounds. See El Paso Mun. Code (Tex.), § 13.24.060 (1999).

45. See Santa Ana Mun. Code (Cal.) §10-402 (1999). "It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided: (a) Any street; (b) Any public parking lot or public area, improved or unimproved." See *id.* at §10-401 (giving the definition of "camping" and "camp paraphernalia").

46. *Id.* at §10-403.

47. Santa Barbara Mun. Code (Cal.) § 24-5.3 (1999).

48. "No person shall pitch a tent or camp or sleep upon any beach, park, public street, alley or passageway, or sleep in any automobile parked at any place within the city; provided that between the hours of seven a.m. and seven p.m., it shall not be unlawful to sleep upon any beach within the city." Laguna Beach Mun. Code. (Cal.) § 18.04.020 (1999).

49. See Clearwater Mun. Code (Fla.) § 22.36(3) (1999).

50. See St. Petersburg Mun. Code (Fla.) § 20-76 (1999) "No person shall lie down to rest or to

limited their proscriptions against sleeping in public to hours when it can be reasonably expected that persons with no homes or apartments would be most impacted. They have made no humanitarian exceptions for persons without homes. Instead of looking for solutions to eradicate homelessness, they enforce laws intended to drive out homeless people who are afraid of being violently roused in the middle of the night and cited for victimless and completely innocent activity.

Furthermore, many jurisdictions forbid homeless people from sleeping in their cars at night.⁵¹ Although shelters often do not have enough beds to accommodate all the persons seeking their aid,⁵² homeless people with vehicles are forbidden from resting inside or outside of their cars. Unable to sleep in their vehicles and not having enough funds for rent, homeless people are faced with a dilemma. They have no alternative except to violate the laws or leave jurisdictions prohibiting them from sleeping on the public way and giving them no opportunities to extricate themselves from poverty. Homeless people searching for work, food, and shelter are left without places to rest at night.

B. Judicial Response to Laws Targeting the Homeless

Laws directed at the homeless have been reviewed by numerous courts with differing results. Despite limited Supreme Court guidance, a location specific jurisprudence has developed with some courts striking down and others upholding laws primarily effecting the homeless.

In 1972, the Supreme Court found a Jacksonville, Florida vagrancy ordinance unconstitutional.⁵³ That ordinance, which prohibited undesirable persons like the poor and nonconformists from walking and loitering, was void for vagueness because it: (1) failed to give reasonable notice of what conduct was forbidden; (2) encouraged arbitrary arrests;⁵⁴ and (3) gave the Jacksonville police unlimited discretion to arrest persons for innocent conduct.⁵⁵ In a

sleep in a public park, public street or public property between the hours of 11:00 p.m. and 8:00 a.m. under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety or well-being of persons or property in the vicinity." *Id.* (The language of this ordinance seems to imply that a person suffering from a medical emergency in public, who could be reasonably expected to cause alarm, would violate the ordinance by lying down on a St. Petersburg sidewalk.)

51. See Haw. Rev. Stat. § 291C-112 (1999); Miami Mun. Code (Fla.), § 37-4; San Francisco Police Code (Cal.) § 97; Santa Barbara Mun. Code (Cal.) § 24-5.3; Laguna Beach Mun. Code (Cal.) § 18.04.020.

52. See *Johnson v. Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (acknowledging that homeless people seeking shelter are often turned away), *rev'd on standing grounds*, *Johnson v. Dallas*, 61 F.3d 442 (5th Cir. 1995); see also *In re Eichorn*, 81 Cal. Rptr. 2d 535, 537 (Cal. Ct. App. 1998) (detailing circumstances when there were not enough shelter beds for all the homeless people living in the city).

53. *Papachristou v. Jacksonville*, 405 U.S. 156 (1972). The Jacksonville ordinance criminalized "[r]ogues, vagabonds, or dissolute persons" who were "begging . . . wandering or strolling around from place to place without any lawful purpose." *Id.* at 156 n. 1.

54. *Id.* at 162.

55. *Id.* at 168, 170.

later case, the Supreme Court ruled on a California statute that required people meandering through the streets to show their identifications to police officers.⁵⁶ The Court held that the California law was void for vagueness since it did not sufficiently define what conduct was criminal and vested “virtually complete discretion in the hands of the police.”⁵⁷

Following the Supreme Court, several state courts overturned ordinances making it illegal to loiter or sleep in public places. For example, *Cicarelli v. Key West*⁵⁸ found unconstitutional an ordinance forbidding persons from loitering in public areas.⁵⁹ The Court found the ordinance overly broad because it forbade conduct that did not threaten public safety or breach the peace of any pacing pedestrians.⁶⁰ In *Florida v. Penley*,⁶¹ a Florida Circuit Court reviewed a conviction under St. Petersburg Ordinance section 22.57, which restricted persons from “sleeping upon or in any street, park, wharf or other public place.”⁶² Penley was arrested by an officer who approached him, shook his leg, and, finding Penley asleep, arrested him.⁶³ The Court held that the ordinance was void for vagueness because it did not distinguish between harmful and innocent conduct.⁶⁴ Furthermore, it facilitated “arbitrary and erratic” conduct by the police.⁶⁵

An ordinance prohibiting persons from sleeping in or loitering around their parked motor vehicles was struck down as being void and arbitrary in *Horn v. Montgomery*.⁶⁶ The Court of Criminal Appeals found that the law was unconstitutionally vague because, similar to vagrancy ordinances, it punished “unoffending behavior.”⁶⁷ Likewise in *Pompano Beach v. Capalbo*,⁶⁸ a Florida District Court of Appeals examined a law forbidding persons from sleeping or lodging in public within their motor vehicles.⁶⁹ Although the or-

56. *Kolender v. Lawson*, 461 U.S. 352, 354, 361 (1983) (citing California Penal Code § 647(e) which provides that a person was guilty of disorderly conduct, “[W]ho loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer to do so, if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification.”) *Id.* at 353.

57. *Id.* at 358.

58. *Cicarelli v. Key West*, 321 S.2d 472 (Fla. 3d DCA 1975).

59. *Id.* at 472, 474.

60. *Id.* at 474.

61. *Florida v. Penley*, 276 S.2d 180 (Fla. 2d DCA 1973).

62. *Id.* at 180 (citing St. Petersburg Code of Ordin. (Fla.) § 47 (1955)).

63. *Id.*

64. *Id.* at 181.

65. *Id.* See St. Petersburg Mun. Code (Fla.) § 20-76 (1999) St. Petersburg rewrote its ordinance prohibiting persons from sleeping in public between 11:00 p.m. and 8:00 a.m. in circumstances that could cause others to become alarmed. This alteration did not aid poor people sleeping at night in public areas for lack of financial resources. Although St. Petersburg’s anti-sleeping ordinance is more narrowly tailored than before, it still criminalizes innocent conduct such as sleeping.

66. *Horn v. Montgomery*, 619 S.2d 949 (Ala. Crim. App. 1993).

67. *Id.* at 951.

68. *Pompano Beach v. Capalbo*, 455 S.2d 468 (Fla. DCA 1984).

69. *Id.* at 468 (citing the Pompano Beach, Florida ordinance at issue, “It shall be unlawful for any person to lodge or sleep in, on, or about any automobile, truck, camping or recreational ve-

dinance gave notice of what conduct was forbidden, the Court nevertheless found it unconstitutionally vague because it gave “unbridled discretion” to the police.⁷⁰ On a whim, the police could decide whether or not to arrest a child sleeping in a car, trucker asleep in his vehicles, an inebriated person sleeping in his van, or a “latterday [sic] Okie who has made his jalopy his home.”⁷¹ The Florida District Court of Appeals also held that the Pompano Beach ordinance was unconstitutionally overbroad.⁷² The prohibited conduct was in no way criminal because it did not impinge on anyone else’s interests.⁷³

On the other hand, the Hawaii Court of Appeals, in *Hawaii v. Sturch*⁷⁴, upheld a state statute “prohibit[ing] persons from using vehicles parked on public property as dwelling places during the hours of 6:00 p.m. to 6:00 a.m.”⁷⁵ The court held that Hawaii had the right to regulate the use of vehicles through its police power.⁷⁶ The court rejected Sturch’s void for vagueness argument saying that the statute made clear what conduct was prohibited.⁷⁷ The court further found that there was no “fundamental right to sleep in a public place.”⁷⁸ The *Sturch* court noted that the State could regulate sleeping since it was not constitutionally protected and could enforce the ordinance through its police power.⁷⁹ In effect, the court held that Hawaii’s police power trumped people’s natural right to sleep. The *Sturch* decision is ambivalent to the physical needs of homeless persons having no place to rest other than their motor vehicles. For destitute persons, even a car is a luxury, but it is a possession the protective uses of which are restricted in Hawaii.

In *Whiting v. Westerly*⁸⁰, the United States Court of Appeals for the First Circuit upheld an ordinance forbidding persons from sleeping in their motor vehicles and another that banned sleeping outdoors.⁸¹ Similar to *Sturch*, the First Circuit reasoned that sleeping in public could be regulated since “[t]he act of sleeping in a public place, absent expressive content, is not constitutionally-protected conduct.”⁸²

In 1994, the California Court of Appeals heard a case, *Tobe v. Santa Ana*,⁸³ challenging a Santa Ana ordinance that was used to arrest homeless

hicle or similar vehicle in any public street, public way, right of way, parking lot or other public property, within the limits of the city.”) *Id.* (citing Pompano Beach Man. Code (Fla.) § 31.66 (1984)).

70. *Id.* at 470.

71. *Id.*

72. *Id.*

73. *Id.* at 471.

74. *Hawaii v. Sturch*, 921 P.2d 1170 (Haw. App. 1996).

75. *Id.* at 1172.

76. *Id.* at 1174.

77. *Id.* at 1176.

78. *Id.* at 1177.

79. *Id.* at 1174.

80. *Whiting v. Westerly*, 942 F.2d 18 (1st Cir. 1991).

81. *Id.* at 24.

82. *Id.* at 21.

83. *Tobe v. Santa Ana*, 27 Cal. Rptr. 2d 386 (Cal. App. 1994), *rev'd Tobe v. Santa Ana*, 892

people sleeping in public.⁸⁴ The court determined that the ordinance was enacted as part of Santa Ana's express policy to "move all vagrants and their paraphernalia out of Santa Ana by continually removing them from the places that they frequent[ed] in the City."⁸⁵ The City enacted the ordinance even though the housing element of its own general plan noted that there were 332 shelter spaces for Santa Ana's 3,000 homeless persons.⁸⁶ County-wide, in 1993, there were only 975 shelter spaces for approximately ten to twelve thousand homeless people.⁸⁷ The director of Santa Ana's armory summed up the plight of the homeless: "When the Santa Ana [armory] is filled, the homeless have nowhere to go and some return to the Civic Center area where [under the camping ordinance] they are subject to arrest merely for wrapping themselves in a blanket to protect themselves against the cold."⁸⁸ The ordinance *de facto* violated the homeless plaintiff's right to travel since Santa Ana enacted it to prohibit them from living within its city limits.⁸⁹ The California Court of Appeals showed a keen awareness of the abject poverty of the homeless litigants:

The city speciously claims denying petitioners the use of sleeping bags and blankets outdoors does not outlaw necessities of life because the homeless can sleep somewhere else. Where? Some of the homeless declarants did prefer the outdoors to an overcrowded armory, but none expressed a preference to living as a way of life in a Civic Center parking structure or doorway during the cold, rainy January evenings when they were cited. They had no better place to go than some public location.⁹⁰

The Santa Ana ordinance criminalized poverty and its extreme byproduct, possessing no place to live.⁹¹ Santa Ana confused the need to aid its homeless population with criminalizing activity essential to human survival.⁹² The Court also recognized that the ordinance invited arbitrary and selective enforcement by the police, and it was therefore vague and overbroad.⁹³

When *Tobe*⁹⁴ was appealed, the Supreme Court of California did not acknowledge any of the social concerns that the Court of Appeals found central to this case. It confined its discussion to technical constitutional issues.⁹⁵ While the Supreme Court of California conceded that homeless persons have

P.2d 1145 (Cal. 1995).

84. *Id.* at 387.

85. *Id.* at 387-89.

86. *Id.* at 387 (based on 1989 statistics).

87. *Id.* at 390.

88. *Id.*

89. *Id.* at 392. The Court found that Santa Ana had no compelling reason to prohibit anyone's right to travel. *Id.* at 393 n.9.

90. *Id.* at 393.

91. *Id.* at 394.

92. *See id.* (quoting Supreme Court Justice William O. Douglas, *Vagrancy and Arrest on Suspicion*, 70 Yale L.J. 1, 12 (1960)).

93. *Id.* at 394.

94. 892 P.2d 1145 (Cal. 1995).

95. *Id.* at 1161-1164.

liberty interests in the right to travel,⁹⁶ it held that the camping ordinance did not violate that right. The Court found that the ordinance did not target transients since it applied both to Santa Ana residents and to nonresidents; thereby, it only incidentally prevented homeless people from living in Santa Ana.⁹⁷ The Court discounted the argument that Santa Ana enacted the ordinance to force homeless persons from the City, holding that “[t]he city had agreed to discontinue such attempts when it settled . . . prior litigation.”⁹⁸ Neither did the Court believe that the ordinance was vague and overbroad since police officers could distinguish between activities not covered under it, such as sleeping in the park during a picnic, and those that were covered, such as sleeping in the park at night under a blanket.⁹⁹ The very need for officers to make such a distinction indicates that the ordinance targeted “undesirables,” the homeless, for whom living in Santa Ana was impossible since there were not enough shelter beds and they could expect to be repeatedly arrested for sleeping in public.

Justice Mosk, who wrote the dissenting opinion in *Tobe*, found that Santa Ana’s anti-camping and anti-sleeping ordinance targeted the homeless whose abject condition itself was made a crime.¹⁰⁰ Since there were not enough shelter beds for all the homeless people in Santa Ana, many of them had no alternative but to sleep in public areas where they were subject to arrest.¹⁰¹ The ordinance prevented the homeless from exercising their constitutional right to travel to Santa Ana¹⁰² by forbidding them from sleeping or storing their possessions in public.¹⁰³ The city’s power to control public areas and to make those places aesthetically pleasing for residents and tourists were not compelling enough reasons for preventing destitute homeless citizens from living within Santa Ana’s boundaries.¹⁰⁴

While the majority in the California Supreme Court’s decision in *Tobe* upheld the facial constitutionality of Santa Ana’s anti-camping ordinance, it refused to address whether persons could be arrested for sleeping or camping in public for lack of any alternatives.¹⁰⁵ In *In re Eichorn*,¹⁰⁶ a homeless person sought to raise the necessity defense to justify violating Santa Ana’s anti-

96. *Id.* at 1161.

97. *Id.* at 1164.

98. *Id.* at 1159.

99. *Id.* at 1168.

100. *Id.* at 1171 (Mosk, J., dissenting).

101. *Id.* (Mosk, J., dissenting).

102. Several Courts, including the United States Supreme Court, have recognized both the right to interstate and the right to intrastate travel. See *Saenz v. Roe*, 526 U.S. 489, 506 (1999); *Shapiro v. Thompson*, 394 US 618 (1969); *Edwards v. California*, 314 U.S. 160 (1940) (plurality opinion); see also *Spencer v. Casavilla* 903 F.2d 171, 174 (2d Cir., 1990); *Lutz v. City of York, Pa.*, 899 F.2d 255, 268 (3d Cir. 1990); *In re White*, 97 Cal.App.3d 141, 148 (Cal. Ct. App. 1979).

103. *Tobe*, 892 P.2d at 1181 (Mosk, J., dissenting).

104. *Id.* at 1182-83 (Mosk, J., dissenting).

105. *Id.* at 1155 n. 8 (stating that the court would not assume the ordinance would be applied against persons having no alternative to camping in public).

106. 81 Cal. Rptr. 2d 535 (Cal. Ct. App. 1998).

camping ordinance.¹⁰⁷ The trial court denied Eichorn the right to offer evidence to a jury in support of that defense,¹⁰⁸ but the California Court of Appeals overturned the ruling.¹⁰⁹ The arresting officer recorded in her police report that Eichorn had said that he had gone to a shelter on the evening of his arrest but found there were no available places there.¹¹⁰ Professor James Meeker from the University of California–Irvine offered testimony bolstering Eichorn’s claim that he violated the anti-camping ordinance from necessity. Meeker stated that, “Most [single homeless men] were sleeping outdoors because they had no other choice.”¹¹¹ Even though ninety-eight percent of the homeless worked, their salary was not enough for them to pay monthly rent.¹¹² The Court of Appeals found Eichorn was sleeping in public because he had no other choice due to his economic circumstances; therefore, the trial court erred by prohibiting Eichorn from raising a necessity defense.¹¹³

The absurdity of arresting people without homes for sleeping outdoors was also discussed in *Pottinger v. Miami*.¹¹⁴ Several homeless people were arrested for violating Miami’s ordinances prohibiting sleeping on sidewalks, benches, and in parks.¹¹⁵ The arrestees were not disorderly, did not engage in drug related activity, nor were they involved in harmful activities.¹¹⁶ The court heard evidence that indicated that there were not enough shelters in Miami to accommodate the city’s entire homeless population.¹¹⁷ The court also found that demographic factors, like lack of family support, contributed to the absence of alternative sleeping accommodations available to the homeless.¹¹⁸ The City’s anti-sleeping and anti-camping ordinances left the homeless in an untenable position: they had to sleep, since that is a necessary, life-sustaining activity, but they had no place to sleep except in public places, where they were subject to arrest.¹¹⁹ Arresting homeless people for sleeping, eating, and doing similar innocent acts, was as cruel and unusual a punishment as were vagrancy ordinances.¹²⁰ The court then found that the ordinances also violated homeless persons’ right to travel, penalizing them for migrating, sleeping, resting, and “performing other harmless life-sustaining activities.”¹²¹ Miami chose to arrest homeless people sleeping on the street,

107. *Id.* at 536.

108. *Id.*

109. *Id.* at 540.

110. *Id.* at 537.

111. *Id.*

112. *Id.*

113. *Id.* at 540.

114. 810 F. Supp. 1551 (S.D. Fla. 1992).

115. *Id.* at 1559-60.

116. *Id.* at 1560.

117. *Id.*

118. *Id.* at 1563.

119. *Id.* at 1565.

120. *Id.* at 1564. For a discussion on the unconstitutionality of vagrancy and loitering ordinances see *supra* text accompanying notes 53-57.

121. *Pottinger*, 810 F. Supp. at 1580.

rather than resorting to less intrusive and more productive options like providing sufficient shelter spaces or alternative services.¹²²

The District Court in *Pottinger* also considered the subjective and recognized property interest of homeless people.¹²³ The court found that the Miami police violated homeless individuals' Fourth Amendment right against unlawful searches and seizures by confiscating their personal property.¹²⁴ The court found that homeless people manifested their subjective privacy interest in the little property they possessed by keeping bedrolls, clothing, food, and toiletries covered by plastic, protected in cardboard boxes, or enclosed within suitcases.¹²⁵ Just as any other person living in the United States, the homeless litigants had legitimate Fourth Amendment expectations against unlawful seizures of their properties while they worked or pursued other tasks that took them away from their living spaces.¹²⁶

There has been a shortage of shelter spaces for homeless people in cities other than Miami and Santa Ana. For example, in *Johnson v. Dallas*,¹²⁷ a federal District Court found that many people involuntarily slept on public lands because there were not enough shelters in Dallas to accommodate all the needy.¹²⁸ Dallas's ordinance, prohibiting persons from sleeping in public, criminalized the conduct of persons fulfilling a natural urge required to maintain life, and therefore its enforcement constituted cruel and unusual punishment, violating the Eighth Amendment.¹²⁹ While the court held that the City was not obligated to provide anyone with shelter, it found that it was unconstitutional to enforce its anti-sleeping ordinance as long as there were people living in Dallas having no alternative to sleeping in public.¹³⁰

In contrast to *Pottinger* and *Johnson*, *Joyce v. San Francisco*¹³¹ upheld a municipal effort to prevent homeless people from sleeping on streets. In *Joyce*, Plaintiffs challenged San Francisco's Matrix program that provided humanitarian services while vigorously enforcing ordinances prohibiting persons from engaging publicly in certain life-sustaining activities, such as sleeping.¹³² The District Court refused to treat homelessness as a status and ruled that Matrix did not violate the Eighth Amendment;¹³³ denied that there was a fundamental right to sleep and, therefore, rejected Plaintiff's equal protection argument;¹³⁴ and held that Matrix did not disparately treat City resi-

122. *Id.* at 1581-82.

123. *Id.* at 1571.

124. *Id.* at 1573.

125. *Id.* at 1571.

126. *Id.* at 1573.

127. *Johnson v. Dallas*, 860 F. Supp. 344 (N.D. Tex. 1994), *rev'd on standing grounds*, *Johnson v. Dallas*, 61 F.3d 442 (5th Cir. 1995).

128. *Id.* at 350.

129. *Id.* 349-50. "It should be a foregone conclusion that maintaining human life requires certain acts, among them being the consuming of nourishment, breathing and sleeping." *Id.* at 350.

130. *Id.* at 351.

131. *Joyce v. San Francisco*, 846 F. Supp. 843 (N.D. Cal. 1994).

132. *Id.* at 845-46.

133. *Id.* at 854-57.

134. *Id.* at 859-60.

dents and non-residents (and therefore rejected the claim that it violated Appellant's right to travel).¹³⁵

The City of Tucson had a program similar to Matrix in so far as it required the Tucson Community Services Department to assist homeless persons in finding work and housing, while also empowering the police to enforce Arizona's trespass statute against any homeless persons who did not desist from camping on city property.¹³⁶ The District Court, in *Davison v. Tucson*, began its discussion by recognizing that homelessness is a glaring social problem.¹³⁷ The court nevertheless held that Appellants, who had not been arrested, lacked standing to argue that they were subjected to cruel and unusual punishment in violation of the Eighth Amendment; rejected Appellants' equal protection argument by denying that the homeless were a suspect class; and found Tucson did not abridge their right to travel since it did not prevent traveling to but rather remaining at established camp sites.¹³⁸

In both *Joyce* and *Davison*, courts found that the respective cities had social programs which provided homeless people with counseling.¹³⁹ Moreover, in *Joyce* the court found that San Francisco provided homeless persons with programs like general assistance, food stamps, rental assistance, and free health care¹⁴⁰ all of which were meant to help them become self-sustaining. On the other hand, in *Pottinger*, *Johnson*, and *In re Eichorn* there was no evidence of similar social programs, and so the courts found those cities' anti-sleeping and anti-camping ordinances unconstitutional.¹⁴¹ Anti-sleeping ordinances have been upheld in cities with social services,¹⁴² but where there was no alternative for the homeless to sleeping in public areas or in their own vehicles, courts have struck down laws prohibiting that activity.¹⁴³

Laws prohibiting homeless people from publicly engaging in life-sustaining activities, without providing them with any alternatives, do nothing

135. *Id.* at 860.

136. Tucson City Council Resolution Number SS/MARCH 4-96-102; *See Davison v. Tucson*, 924 F. Supp. 989, 991 (D. Arizona 1996). The Resolution had the following provisions:

1. That the Community Services Department, in coordination with other appropriate City departments, work with persons currently camping on City property to inform them of all sources available to assist them in finding employment and housing.
2. That appropriate City officials provide a minimum of 72 hours notice to persons illegally camping on City property that they will need to vacate that property or else face enforcement action.
3. That after the City has provided notice, and if individuals do not vacate City property on which they are illegally camping, that the Tucson Police Department take appropriate enforcement action for violation of the State trespassing statutes.

Id.

137. *Davison*, 924 F. Supp. at 992.

138. *Id.* at 992-93.

139. *Joyce*, 846 F. Supp. at 847; *Davison*, 924 F. Supp. at 991.

140. *Joyce*, 846 F. Supp. at 848.

141. *Pottinger*, 810 F. Supp. at 1580; *Johnson*, 860 F. Supp. at 349-50; *In re Eichorn*, 81 Cal. Rptr. 2d at 540.

142. *Joyce*, 846 F. Supp. at 847; *Davison*, 924 F. Supp. at 991.

143. *Pottinger*, 810 F. Supp. at 1580; *Johnson*, 860 F. Supp. at 349-50; *In re Eichorn*, 81 Cal. Rptr. 2d at 540.

to alleviate the causes of their circumstances. Neither do they eliminate the risk of future homelessness. It is critical for the welfare of the most indigent segment of the population that laws dealing with the homeless be more far-sighted. Programs should be established that teach people the skills needed to flee poverty in place of laws punishing them for being too poor to enjoy elementary comforts like beds and roofs. The next part of this article argues that social contract theory requires governmental entities to provide opportunities for persons wanting to raise themselves from homelessness.

II. STATE AND FEDERAL FOUNDATIONS FOR AIDING AMERICA'S HOMELESS

Numerous state and federal laws establish governmental obligations to the poor. This Part reviews the theoretical foundations of American social contract theory as it pertains to social welfare, then discusses federal obligations to the homeless, and, finally, reviews some state constitutions and statutes pertaining to relief for the poor.

A. *Social Contract Theory and Assisting the Poor*

According to social contract theory, people give up some liberties that they enjoyed in a state of nature to secure a better life in a political society.¹⁴⁴ Persons submit themselves to the authority of government in order to better secure their rights.¹⁴⁵ Political communities remain cohesive because they improve the quality of life and cumulative happiness for their inhabitants.¹⁴⁶ Governmental entities are obligated to secure good for their whole communities, not just for a privileged few.¹⁴⁷

Government functions best when it improves the life and happiness of its citizens.¹⁴⁸ While this ideal might not be entirely realizable, theoretically, the body politic exists to provide a good life for its subjects.¹⁴⁹ Government should play a central role in enabling its socioeconomically diverse popula-

144. See Locke, *John Locke, Two Treatises of Government* 2: § 131 (Peter Laslett ed., Mentor Press 3rd Repr. 1965) [hereinafter *Two Treatises*].

145. *Id.*

146. The happiness of an entire country can be measured by the collective happiness of the individuals comprising it. See Aristotle, *Politics* 1354a 25 (Richard McKeon ed., 1941). “[I]t is evident that the form of government is best in which every man, whoever he is, can act best and live happily.” *Id.* at 1324a 25. A government can be best evaluated by the effect it has on the happiness and character of its citizens. See John Stuart Mill, *Considerations on Representative Government* (Currin V. Shields, Ed., Liberal Arts Press, 1958).

147. G.E.R. Lloyd, *Aristotle* 257 (1968); Henry B. Veatch, *Aristotle: A Contemporary Appreciation* 120 (Indiana University Press, 1974) (distinguishing Aristotle’s view that collective good is the goal of the political state to the opinion that the state is obligated to secure good for only some classes or groups of citizens).

148. See Aristotle, *Politics, in The Basic Works of Aristotle* Bk. VII: Ch. 2 (Richard McKeon, ed., Benjamin Jowett tr., Random House 1941) (“It is evident that the form of government is best in which every man, whoever he is, can act best and live happily.”).

149. *Id.* Bk. III: Ch. 8 (discussing that “a state exists for the sake of a good life, and not for the sake of life only”).

tions to enjoy the public good, whether that good is economic, political, educational, cultural, or health related.¹⁵⁰ It is the government's obligation to provide opportunities for its most economically disadvantaged persons, the homeless, to enjoy life free from the predations of hunger and inclement weather.

To better understand the obligation the government owes its indigent citizens, it is important to consider the philosophical underpinnings of the Declaration of Independence and the Constitution. Since there is no explicit entitlement to welfare for the homeless, it is further important to identify and comprehend the general principles of governmental assistance that underlie the social contact between the American people and their government.

John Locke's political philosophy was essential to the formulation of the tenets established through the Declaration of Independence and the Constitution.¹⁵¹ Some of the American revolutionaries, like Richard Henry Lee, even accused Thomas Jefferson of copying parts of the Declaration of Independence from Locke.¹⁵² In fact, Jefferson extolled Locke as one of the three greatest men who ever lived,¹⁵³ and he considered Locke's writings to be "elementary" to the study of "public right."¹⁵⁴ Consequently, in evaluating the extent to which government must provide opportunities for the homeless, it is important to analyze Locke's views about the compatibility of property rights with the obligation to provide public assistance.

According to Locke, the efficacy of government should be measured by how well it preserves the lives, liberties, and possessions of its members.¹⁵⁵ Beneficent use of political power helps citizens partake in the common good.¹⁵⁶ Persons do not renounce their natural right to self-preservation

150. See Cass R. Sunstein, *Republicanism and the Preference Problem*, 66 Chi.-Kent. L. Rev. 181, 190, 196 (1990).

151. See Donald Doernberg, "We the People": John Locke, *Collective Constitutional Rights, and Standing to Challenge Government Action*, 73 Cal. L. Rev. 52, 65 (1985); Herbert Friedenwald, *The Declaration of Independence* 201 (Macmillan Press 1904); Jerome Huyler, *Locke in America: The Moral Philosophy of the Founding Era* (University Press of Kansas 1995); Terry Kogan, *A New-Federalist Tale of Personal Jurisdiction*, 63 S. Cal. L. Rev. 257, 307 (1990); Willard S. Randall, *Thomas Jefferson: A Life* 205 (H. Holt 1993); Morton White, *The Philosophy of the American Revolution* (Oxford University Press 1978); *But see* Garry Wills, *Inventing America: Jefferson's Declaration of Independence* 172-75 (Doubleday 1978) (arguing that Locke did not influence writing of Declaration of Independence).

152. See Edward Dumbauld, *The Declaration of Independence and What It Means Today* 42 (University of Oklahoma Press 1950).

153. R.M. MacIver, *European Doctrines and the Constitution*, in *The Constitution Reconsidered* 52 (Coyers Read ed., Columbia University Press 1938). Isaac Newton and Francis Bacon were the other two. *Id.*

154. Charles M. Wiltse, *The Jeffersonian Tradition in American Democracy* 46 (Hill and Wais 1960) quoting Letter from Thomas Jefferson to Henry Lee (May 8, 1825), in *16 Writings of Thomas Jefferson* 118-19 (1903-04).

155. Locke, *Two Treatises*, *supra* n. 144, 2: § 171.

156. See Richard Ashcraft, *The Politics of Locke's Two Treatises*, in *John Locke's Two Treatises of Government* 23 (Edward Harpham ed., University Press of Kansas 1992); see *The Cambridge Companion to Locke* 242 (Vere Chappell ed., Cambridge University Press 1994).

when they join a political community.¹⁵⁷ People's property rights to a superabundance of goods cannot be asserted at the expense of the natural right of persons to the bare necessities.¹⁵⁸ Everyone is obliged to preserve his own life and health, and, as long as his needs are met, he is also obligated to preserve the life of his fellow countrymen.¹⁵⁹ Charity, therefore, is required by the natural right and shared equally by all members of a society to ensure preservation.¹⁶⁰ Furthermore, according to Locke, "a proprietor who has more than enough to sustain himself is under a positive duty to sustain those who do not."¹⁶¹ The obligation to engage in social charity, therefore, is a limitation on the property rights of individuals.¹⁶²

Just as each person has a right to possess property acquired through honest labor and "fair acquisitions," so too are extremely needy persons entitled to subsistence from persons who have plenty.¹⁶³ Throughout his writings, Locke recognizes the right of the indigent to receive and the duty of the government to provide charity.¹⁶⁴ Locke presumes that since everyone has a natural right to food and raiment, the government must provide these and other necessities to those who, through no fault of their own, are least able to care for themselves.¹⁶⁵

Modern political theorists, like John Rawls, have refined Locke's contract theory.¹⁶⁶ Rawls' "difference principle" is a more systematic approach to the distribution of goods in a society with a disparate distribution of wealth:

Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in

157. See Locke, *Two Treatises*, *supra* n. 144, 2: § 16 (arguing that the self-preservation is a fundamental law of nature).

158. See A. John Simmons, *The Lockean Theory of Rights* 331 (Princeton University Press 1992).

159. See Locke, *Two Treatises*, *supra* n. 144, 2: § 6.

160. See Simmons, *supra* n. 158, at 332.

161. Locke, *Two Treatises*, *supra* n. 144, 1: § 42; See James Tully, *A Discourse on Property: John Locke and His Adversaries* 132 (1980).

162. See Simmons, *supra* n. 158, at 328; John C. Winfrey, *Charity Versus Justice in Locke's Theory of Property*, 42 *J. of the History of Ideas* 436 (1981).

163. Locke, *Two Treatises*, *supra* n. 144, 1: § 42. "Charity gives every Man a Title to so much out of another's Plenty, as will keep him from extreme want, where he has no means to subsist otherwise." *Id.*

164. See Simmons, *supra* n. 158, at 328.

165. See *Proposal for Reform of the Reform Laws*, 2 H.R. Fox Bourne, *The Life of John Locke* 382 (Aalen, Scientia-Verl 1969) [hereinafter "*Proposal*"]. The *Proposal* is not wholly benevolent, however. In fact it is in many sections unsympathetic about the plight of the poor. See Simmons, *supra* n. 158, at 334-35. The proposition that laws should be made to provide for persons most unable to help themselves also appears in *Considerations of the Lowering of Interest, and Raising the Value of Money*. 5 *Works of John Locke* 11 (T. Tegg 1823).

166. See John Rawls, *A Theory of Justice* 11 n.4 (Belknap Press of Harvard University Press 1971) (using Locke's, Kant's, and Rousseau's works as the definitive expositions of social contract theory).

ways that help the less fortunate as well.¹⁶⁷

Persons are more likely to act in the public interest when they are directed to do so by legal injunctions and social norms than when they are acting on individual altruism.¹⁶⁸

However, redistribution that arbitrarily and forcefully takes possessions from those who are richer is not just, but intrusive. Instead, a fair system of distribution involves a scheme of taxation from which government can provide for the public good.¹⁶⁹ The amount levied for taxes should not be so excessive as to put those who are well off in jeopardy;¹⁷⁰ on the other hand, it should be enough to improve the prospects of reasonably comfortable and secure lives for the needy.¹⁷¹ Such a distributive system is advantageous to all the members of society, regardless of their current economic status because no one can be certain that he or his progeny will not need governmental aid in the future.¹⁷² Since people would want others to help them and their progeny, if they should become impoverished, it is the ethical obligation of those who are currently financially secure to aid the needy and the wretched.¹⁷³

B. Constitutional Obligations

Social contract theory¹⁷⁴ requires federal government to advance and augment the opportunities available to homeless people seeking to improve their lives. The principles embodied in the Preamble to the United States Constitution reflect Lockean ideals of charity toward destitute persons.¹⁷⁵ Specifically, the Preamble requires the government to “promote the general welfare.”¹⁷⁶ The United States government has an overarching duty to exercise its power for the well-being of its subjects. While the Preamble provides

167. *Id.* at 101-02.

168. *Id.* at 281; *see supra* n. 150, at 190.

169. *See* Rawls, *supra* n. 166, at 278.

170. *Id.* at 114 (writing about “natural duties”).

171. *Id.* at 285.

172. Perhaps the best example of this precept was Croesus, King of Lydia (ca 560-46 B.C.E.), who thought Solon (ca 639-559 B.C.E.), Athenian lawmaker and *archon*, would deem him the happiest man on account of Croesus’ great wealth. Plutarch, *The Lives of the Noble Grecians Romans* 113-14 (John Dryden tr., Modern Library 1932). He was angered when Solon told him, “The Greek’s] wisdom . . . is a cheerful and a homely, not a noble and kingly wisdom; and this, observing the numerous misfortunes that attend all conditions, forbids us to grow insolvent upon our present enjoyments, or admire any man’s happiness that may yet, in course of time, suffer change. For the uncertain future is yet to come . . .” *Id.* at 114. Croesus later learned the truth of Solon’s words when the former was conquered by Cyrus, King of Persian (ca 550-29 B.C.E.). *Id.*

173. *See* Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals* 40-41 (Thomas K. Abbott tr., Bobbs-Merrill Educational Publishing 1949) (explicating the categorical imperative).

174. *See supra* Part II, A.

175. *See supra* text accompanying nn. 144-66.

176. “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, *promote the general Welfare*, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” U.S. Const. Preamble (emphasis added).

a general outline of goals for the government to follow, courts have not derived substantive rights from it.¹⁷⁷ The Preamble has not played a more conspicuous part in constitutional doctrine because it is not self-executing.¹⁷⁸ Its importance to the United States scheme of government should not, however, be underestimated. Although the Preamble does not delegate the power and duty to promote general welfare to a specific branch of government, it should be adhered to by every branch of government, just as the Ninth Amendment's guarantee of limitless rights must be respected by all three branches.¹⁷⁹

Welfare, just as the other obligations found in the Preamble, like justice and liberty, represents a durable and collective obligation of the United States.¹⁸⁰ Social contract theory requires government to provide its subjects with a better life through the fair allocation of resources.¹⁸¹

Implicit constitutional rights are not novel. The Supreme Court has found numerous essential constitutional rights that are not expressly stated in the Constitution. For example, while the right to interstate migration has long been acknowledged,¹⁸² the source of that right has been assigned to various sections of the Constitution including the Citizenship Clause of the Fourteenth Amendment,¹⁸³ the Privileges and Immunities Clause of Article IV,¹⁸⁴ the Commerce Clause,¹⁸⁵ and the Privileges and Immunities Clause of the Fourteenth Amendment.¹⁸⁶ The multiplicity of the Court's approaches on this subject, indicates that it considers the right to travel embedded in the underlying premises of the Constitution rather than explicitly mandated. Likewise, the right to privacy has been found to be in the "penumbra" of the Bill of Rights,¹⁸⁷ the Fourteenth Amendment,¹⁸⁸ the roots of the First

177. See *Jacobsen v. Massachusetts*, 197 U.S. 11, 22 (1905) (stating that substantive powers are only those found in the "body of the Constitution").

178. See J.M. Balkin, *The Canons of Constitutional Law*, 111 Harv. L. Rev. 963, 1020 n. 177 (1998).

179. *Id.* (comparing the provisions of the Preamble to the Ninth Amendment); See *Planned Parenthood v. Casey*, 505 U.S. 833, 1000 (1992) (Scalia, J., concurring and dissenting in part) (stating that the Ninth Amendment is a "boundless source of additional, unnamed, unhinted-at 'rights'"; see also *Massachusetts v. Upton*, 466 U.S. 727, 739 (1984) (Stevens, J., concurring) (arguing that the "truism" found in the Ninth Amendment goes to the core of the relationship between sovereign and citizens); *Roe v. Wade*, 410 U.S. 113, 153 (1973) (finding that Ninth Amendment is a broad enough source of rights to include a woman's right to choose whether to terminate her pregnancy); *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring) (stating that the Ninth Amendment guarantees rights like procreation although they are not explicitly mentioned in the Constitution).

180. See Saikrishna B. Prakash, *Book Review: American Aristocracy*, 109 Yale L.J. 541, 542 (1999) (book review).

181. Leonard G. Ratner, *Utilitarian Imperative: Autonomy, Reciprocity, and Evolution*, 12 Hofstra L. Rev. 723, 725 (1984).

182. See *Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986).

183. See *Saenz v. Roe*, 526 U.S. 489, 506 (1999).

184. See *Zobel v. Williams* 457 U.S. 55, 80-81 (1982) (O'Connor, J., concurring).

185. See *Edwards v. California*, 314 U.S. 160, 173-74 (1941).

186. *Id.* at 178 (Douglas, J., concurring).

187. See *Griswold*, 381 U.S. at 483 (1965).

188. See *Roe v. Wade*, 410 U.S. 113, 153 (1973).

Amendment,¹⁸⁹ and the Fourth Amendment.¹⁹⁰ The right to privacy of marital intimacy was found to be implicit in the Third Amendment protection against the quartering of soldiers and the Fourth Amendment protection against unreasonable searches and seizures.¹⁹¹ Two more sources of marital intimacy rights are the unspecific “concept of liberty” in the Constitution and the Ninth Amendment.¹⁹²

Just as some other fundamental rights are not explicitly mentioned in the Constitution, so too is the right to minimum subsistence implicit in the Preamble’s mandate of general welfare. In joining together to form the Union, the people did not forfeit their right to self-preservation. They expected the United States government to protect that right better than they could have guarded it in a state of nature. Therefore, the concept that the government must provide opportunities for homeless persons, living in abject poverty, is implicit in the underlying purpose of the government to improve its citizens’ lives.

C. State and Local Humanitarian Provisions

Several state Constitutions have recognized the fundamental need and personal right to community support for persons unable to extricate themselves from the shackles of poverty. There are a variety of state constitutional and legislative schemes designed to aid poor people, including the homeless.

1. State Constitutional Provisions for Aiding Indigents

Some states recognize the importance of providing assistance to the needy, but have unspecific requirements for fulfilling that end. For example, the Rhode Island Constitution states that government is established for the “protection, safety . . . happiness . . . [and] good of the whole.”¹⁹³ The terminology of that section, like the Preamble to the United States Constitution, lends itself to broad interpretation and therefore evasion of State responsibility because the obligations are not assigned to any branch of the Rhode Island government.¹⁹⁴ Michigan, in similarly ambiguous terms declares “public health and general welfare of the people of the state” to be matters of “primary public concern.”¹⁹⁵ The Alaskan Constitution requires its legisla-

189. See *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

190. See *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968).

191. See *Poe v. Ullman*, 367 U.S. 497, 549 (1961).

192. *Griswold*, 381 U.S. at 486 (Goldberg, J., concurring).

193. See R.I. Const. art. I, § 2. “All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens.” *Id.*

194. See *Opinion to Governor*, 145 A.2d 87, 89 (R.I. 1958) (stating that R.I. Const. art. I, § 2 is advisory and not mandatory).

195. Mich. Const. art. IV, § 51. “The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.” *Id.*

ture to "provide for public welfare,"¹⁹⁶ but the section is discretionary and does not offer objective standards to which the legislature can be held accountable.

Several state Constitutions, on the other hand, provide guidelines for supporting indigent populations. The essential elements of those constitutions specify the governmental entity whose duty it is to provide assistance and which individuals are entitled to governmental relief.¹⁹⁷ Kansas requires counties, under state supervision and financial participation, to provide for the aged, infirm, or persons suffering from "other misfortune[s]."¹⁹⁸ Particularly interesting is Kansas's acknowledgment that society is obligated to aid persons suffering acute hardships.¹⁹⁹ The Oklahoma Constitution uses similar language, requiring its counties to provide for "inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county."²⁰⁰

While Kansas and Oklahoma leave it to the discretion of lawmakers to determine what services counties are obligated to provide, Idaho has taken a more focused approach. The state of Idaho must establish and support "education, reformatory, and penal institutions," intended to provide for the "public good," of the insane, deaf and dumb.²⁰¹ Although this provision does not specifically direct aid to the indigent, it does create an affirmative right to the homeless who are mentally ill.²⁰²

The state of New York considers aiding the poor to be in the public interest²⁰³ and has zealously maintained its affirmative duty to provide for the needy.²⁰⁴ That obligation is found in the New York Constitution which requires the legislature to establish "aid, care and support of the needy."²⁰⁵ In interpreting this section, the New York Court of Appeals found that the

196. Alaska Const. art. VII, § 5. "The legislature shall provide for public welfare." *Id.*

197. See William C. Rava, Student Author, *State Constitutional Protections for the Poor*, 71 Temp. L. Rev. 543, 554 (1998).

198. Kan. Const. art. VII, § 4. "Aged and infirm persons; financial aid; state participation. The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof." *Id.*

199. *Id.* (stating that inhabitants of Kansas may "have claims upon the aid of society" because of "age, infirmity or other misfortune.").

200. Okla. Const. art. XVII, § 3. "The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county." *Id.*

201. Idaho Const. art. X, § 1. "Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law." *Id.*

202. See *supra* nn. 18-20 (concerning frequency of mental illness among the homeless).

203. N.Y. Const. art. XVII, § 1. "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." *Id.*

204. See *Tucker v. Toia*, 43 N.Y.2d 1, 8 (N.Y. 1977).

205. See *supra* n. 203 (stating that "aid, care and support of the needy are public concerns").

State Constitution mandates the provision of assistance be provided to the needy.²⁰⁶ Legislative history of the New York constitutional convention reveals that assistance to the needy was deemed to be “a fundamental part of the social contract,”²⁰⁷ and it is in the interest of the whole society to “care for the unemployed and their dependents.”²⁰⁸ The court held that it was unconstitutional to deny public assistance to persons who were needy “through no fault of their own.”²⁰⁹

In contrast to New York’s Constitution, Montana’s constitutional provision for aid to the needy is weak and unenforceable. Montana’s 1988 Constitution merely provides that, “[t]he legislature *may* provide such economic assistance and social and rehabilitative services” to persons whom the legislature considers to be needy because of misfortune.²¹⁰ As long as Montana’s welfare laws are rationally related to a legitimate governmental purpose, its discretionary constitutional provision prevents the judiciary from holding welfare laws unconstitutional based on equal protection grounds.²¹¹ Prior to 1988, when the Montana Constitution was amended, the welfare clause incorporated the more definitive term “shall” in place of the current “may.” Then, the welfare provisions were only constitutional if they could meet heightened scrutiny.²¹² By amending its Constitution, Montana made it easier for the legislature to evade judicial review of its welfare laws.

2. State Assistance Statutes

In addition to constitutional provisions for aid to the poor, some states have statutes for maintaining the needy, among whose ranks are the homeless. For example, to give substantive effect to its constitutional provisions, New York enacted legislation designating welfare districts that must disburse assistance to persons who are unable to provide for themselves.²¹³ A Missouri statute requires counties to support, maintain, and relieve their poor inhabitants.²¹⁴ Similar to New York, Missouri has defined “poor persons” to be those who are “unable to support themselves.”²¹⁵ It is a positive duty in Missouri for county governments to provide poor relief because such is done

206. *Tucker*, 43 N.Y.2d at 7.

207. *Id.*

208. *Id.*

209. *Id.* at 8.

210. *See* Mont. Const. art. XII, § 3(3) (emphasis added).

211. Alabama has made it a duty for the legislature to require that counties provide for the maintenance of the poor. Ala. Const. art. IV, § 88 (“It shall be the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor.”). However, the Alabama courts have found no way to force the legislature to carry out this constitutional provision. *See Atkins v. Curtis*, 66 S.2d 455, 458 (Ala. 1953) (holding that there is “no way to force the legislature to perform” the duty under Article IV, section 88 of the State Constitution to “make adequate provision for the maintenance of the poor”); *see Zempel v. Uninsured Employers’ Fund*, 938 P.2d 658, 662 (Mont. 1997).

212. *Zempel*, 938 P.2d at 662.

213. *See* N.Y. Soc. Serv. Laws § 62 (Consol. 1999).

214. *See* Mo. Rev. Stat. § 205.580 (1998).

215. *In re Est. of Ballard v. Clay County*, 355 S.W.2d 894, 897 (Mo. 1962).

for a “public purpose.”²¹⁶ In fact, aid to the indigent is for the “good of society.”²¹⁷ Persons who are unable to find employment because of existing economic conditions, are “entitled to public relief” in Missouri.²¹⁸ However, the means for administering relief to the poor is left to the discretion of counties which may provide poor persons with services such as residential facilities.²¹⁹

New Jersey has placed on both municipalities and counties the onus of aiding poor persons in emergent circumstances.²²⁰ The governmental entities determine the extent of the emergency and the duration of the assistance to which indigents are entitled.²²¹ California, which also places the obligation to support the needy on cities and counties, limits the assistance to their lawful residents.²²² However, eligibility is not predicated on the duration of residence.²²³ Persons who cannot provide for themselves and those who are not supported by their relatives, friends, state or private institutions are eligible for relief.²²⁴ Homeless persons, without addresses, may not be excluded from public assistance.²²⁵ Otherwise, a “valid address” requirement could have prohibited eligible homeless people from receiving county or city assistance.²²⁶ While California law requires assistance to needy people like the homeless, courts leave it to the government’s discretion to determine the type and level of aid to provide.²²⁷

This brief overview of state constitutions and statutes indicates the broad differences in their entitlement schemes. Despite these variations, however, several states have acknowledged that providing aid to the poor serves the public good²²⁸ and is obligatory under the social contract theory.²²⁹ Nevertheless, the differences are significant in that indigent persons receive varying levels of assistance based not on need but on location.

D. Government Obligation and Aiding the Homeless through Job Training

There are vital public policy benefits in enabling homeless citizens to be-

216. *State ex rel Gilpin v. Smith*, 96 S.W.2d 40, 41 (Mo. 1936).

217. *See Jennings v. St. Louis*, 58 S.W.2d 979, 981 (Mo. 1933).

218. *Id.*

219. *See Ballard*, 355 S.W.2d at 897.

220. *See* N.J. Stat. Ann. § 44:8-120 (1999).

221. *Id.*; *Rodgers v. Gibson*, 528 A.2d 43, 46-47 (N.J. Super. App. Div. 1987) (holding that municipality can limit the eligibility of assistance to specific duration).

222. *See* Cal. Welfare & Instn. Code § 17000 (West 1999).

223. *See Nelson v. San Diego Bd. of Supervisors*, 190 Cal. App. 3d 25, 31 (Cal. App. 1987).

224. *See* Cal. Welfare & Institutions Code § 17000.

225. *Nelson*, 190 Cal. App. 3d at 30-31.

226. *Id.*

227. *See Scates v. Rydingsword*, 229 Cal. App. 3d 1085 (Cal. App. 1991) (rejecting challenge to reduce or terminate shelter and emergency assistance programs for the homeless); *See Bell v. Bd. of Supervisors of Alameda County*, 23 Cal. App. 4th 1695, 1705-1710 (Cal. App. 1991). Counties can fulfill their statutory obligation to provide aid and support to indigents by in-kind aid such as food and shelter, and may simultaneously reduce the levels of general assistance by the value of in-kind aid. *Id.* at 1707.

228. *See e.g.* N.Y. Const. art XVII, § 1.

229. *Tucker*, 43 N.Y.2d at 7.

come productive members of society. Arguably, the best way to aid the poor is to help them find jobs.²³⁰ The inability to find work, however, is only part of the problem facing the homeless. Although many homeless people work, their salaries are insufficient to pay for rent and living expenses.²³¹ Educational programs that teach the homeless marketable skills would help such individuals find adequately paying jobs. By subsidizing a Homeless Vocational Training Program, the government can play an important role in reducing poverty, unemployment, and crime.²³²

Legislation designed to aid the homeless should seek to maximize their well-being,²³³ promote the common good, improve living conditions, and secure property rights.²³⁴ The United States must secure the opportunity for persons, regardless of their current social and economic standing, and allow them to improve their lives.²³⁵ A detailed, federally subsidized program²³⁶ can better assure the welfare of the homeless than can disparate state welfare schemes. The need for government intervention is particularly acute for homeless people without normal social networks, like family members, to fall back on during desperate times.²³⁷

III. HOMELESS VOCATIONAL TRAINING PROGRAM

The United States government can best fulfill its duty to aid the homeless, by creating training programs designed to teach marketable skills. Services are needed to make homeless people more readily employable in well-paying jobs.²³⁸ Providing persons the opportunity to engage in the "workings of society" would increase economic and social prosperity.²³⁹ Equality of opportunities for all segments of the United States society requires that "the prevailing social and economic institutions afford everyone a fair opportunity to derive an income sufficient over time to provide for needs

230. See Locke, *Proposal*, *supra* n. 161, at 383.

231. See Shear & Jackman, *supra* n. 26, at 1 (stating that minimum wage and rising rents are contributing factors to increasing number of employed homeless people); see *supra* text accompanying nn. 22-27.

232. See Sherri Kimmel, *On the Record with Ridge and Itkin*, 20 Pa. Law. 36, 36 (Oct. 1998) (quoting Tom Ridge's view that education combats poverty, unemployment, and crime); Jeralyn E. Merritt, *Legislative Committee's 1997 Plan of Action*, 20 Champion 47, 47 (Nov. 1996) (arguing that poverty and homelessness are factors that increase the crime rate).

233. See Thomas Hobbes, *Philosophical Rudiments Concerning Government and Society* Ch. 13 § 8 (writing on the obligation of princes to procure welfare for their subjects).

234. See Locke, *Two Treatises*, *supra* n. 141, at 2: § 131 (contending that people leave the state of nature and form social compacts to promote the common good).

235. See Francis Sparshott, *Taking Life Seriously: A Study of the Argument in Nicomachean Ethics* 283 (University of Toronto Press 1994) (discussing Aristotle's view that people join political communities to secure "welfare in general").

236. See *infra* Part III.

237. See Burt, *supra* n. 21, at 29.

238. See Linda S. Dakin, *Homelessness: The Role of the Legal Profession in Finding Solutions through Litigation*, 21 Fam. L.Q. 93, 106 (1987).

239. 42 U.S.C. § 2701 (Supp. V Jan. 4, 1965-Jan. 18, 1970) (relating to President Lyndon Johnson's Economic Opportunity Program).

that are considered "basic."²⁴⁰ A publicly funded Homeless Vocational Training Program²⁴¹ ("Program") must teach persons skills enabling them to earn more than the minimum wage, which is too low to achieve economic stability and independence.²⁴² The Program should address the emergency, transitional, and long term needs of the homeless.²⁴³ Residential facilities should be available to Program participants, and they should receive classroom instruction and on-site training. At the end of the Program, a counseling department should help graduates find jobs. The Program will reduce the average duration and recurrence of homelessness.

The specific needs of the various segments of the homeless population must be addressed to improve Program efficacy. The federal government can substantially contribute to the success of the Program in organizational and financial capacities. State and local governments should also play an important role by representing the specific concerns of their communities and tailoring aspects of the Program to meet those specific needs. Participation in task forces by currently or formerly homeless persons and representatives of labor and management are also essential to designing training regimens, which will operate within the parameters of the Program and should be tailored to the needs of participating cities.

A. Enrollees

Guidelines for admission must identify the targeted population. Eligible applicants should be currently homeless or have been homeless at least two times in the last twelve months. Proof of homelessness can be provided through at least two affidavits from non-family members, and each separate homeless occurrence would require at least two affidavits. Next, applicants should be tested and interviewed to determine whether they would benefit from training, education, and social services. The potential participants must

240. Frank I. Michelman, *Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 Harv. L. Rev. 7, 14 (1969).

241. In formulating the vocational training program that follows, I have used the following statutes as springboards: 20 U.S.C.A. § 2301 et. seq. (West 2000) (Vocational Education); 20 U.S.C. § 1241 et seq. (Supp. V Jan. 4, 1965-Jan. 18, 1970) (Vocational Education); 42 U.S.C. § 2701 et seq. (Supp. V Jan. 4, 1965-Jan. 18, 1970) (Economic Opportunity Program) (repealed 1981); 42 U.S.C. § 2901 et seq. (Supp. V Jan. 4, 1965-Jan. 18, 1970) (Employment and Investment Incentives) (repealed 1981).

242. In real-dollar amounts the value of the minimum wage is below the 1982 level. See *Clinton Continues Call For Increasing Minimum Wage*, White House Bulletin (March 8, 2000); *Catholic Charities USA Supports Increase in Minimum Wage*, U.S. Newswire, (March 7, 2000) (presenting Catholic Charities USA's argument that current level of minimum wage (\$5.15/hour) is "inadequate" for poor families "to meet their basic needs"). If the minimum wage of 1968 kept pace with inflation it would currently be \$7.50 per hour. See Sandra Barbier, *MIT Economist Advocates Reshaping Labor Market*, Times-Picayune, March 22, 2000, at C01. Taking inflation into account, the value of the minimum wage is twenty percent lower than the 1970s levels. See Bob Deans, *Record Economic Boom Continues to Elude Many*, Palm Beach Post, at 1F (Feb. 20, 2000).

243. Burt & Cohen, *supra* n. 4, at 9 (presenting three abstract solutions to homelessness: (1) emergency response; (2) transitional programs; and (3) prevention).

be willing to work in a group environment, structured on rules, and willing to fulfill educational and training requirements. Lastly, applicants should be permanent residents or citizens of the United States.

Program enrollees should receive stipends sufficient for them to defray expenditures not provided for by the Program. The monthly stipends can be increased after the participants have completed half of their courses. Homeless parents with children must receive greater stipends. Part of the stipends of persons with child support obligations should be paid directly to the children's custodians or guardians.

Participants should be governed by a code of conduct. Disciplinary violations can be punished by expulsion from the program or by reduction of stipend amounts, provided that the amount paid directly for enrollees' child support obligations cannot be reduced.

B. Program Funding

Financial resources for the Program should come from state and federal educational appropriations. The federal government should provide matching funds to state and local programs targeting the diminution and elimination of homelessness. Half the operating costs of state and local programs should be provided by the federal government. The other fifty percent should come from participating states, whether wholly from their budgets or partly from local and/or county governmental entities. The allocation and disbursement of those funds should be based on the following criteria:

1. The Program must be administered in a fiscally responsible way. Fiscal responsibility will be determined by certifying to United States Congress that funds are distributed through an administratively cost effective method;
2. The formation of an executive task force to coordinate the distribution of resources to state, local, and private programs which demonstrate the potential and ability to improve the welfare of homeless individuals. The task force must consist of various federal agencies meaningfully providing to the development of an effective Program with realistic entrance and evaluation criteria. The Departments of Education, Labor, and Health and Human Services should be included in the task force.

The task force will have to consult with national and state advisory boards composed of governmental and non-governmental experts who are substantially familiar with education, labor, management, and social services for the homeless. Members of the state and local advisory boards should be appointed for specific periods of time. At least two of their members shall be specialists in the administration of vocational programs. Furthermore, some task force participants should be knowledgeable about skilled and unskilled industries both for healthy and disabled people.

The task force must initially conduct federal, state and local studies about the needs of the homeless populations and the areas of labor shortages that the Program will seek to eliminate. The advisory boards will then provide the task force with advice about Program administration, organization,

recruitment, and about proven and experimental programs. Available funds should be allocated to targeted areas based on those findings.

The federal government should disburse funds to programs designed to teach and train homeless individuals for career oriented employment. The proportional distribution of federal funds must be based on demographic studies. To assure Program integrity, a yearly accounting of the distribution of funds shall be provided to Congress.

C. State & Local Administration

States should provide the federal government with biannual reports detailing: (1) the use of funds allocated for state and local occupational programs for the homeless; (2) how those programs have improved the vocational skills and job retention of homeless people; and (3) statistics detailing whether Program graduates again become homeless. The funds allotted to state and local governments can be used to develop existing or new vocational training programs.

Those programs must specifically be designed to train homeless persons in marketable skills enabling them to compete in state and local job markets. Mandatory course work shall reflect advisory boards' consultations with labor, managerial, educational, business, and homeless advocacy specialists. Local agencies interested in receiving funding must follow the federal and state guidelines for developing specific plans addressing the duration, components, requirements, and funding of the local programs. States will certify those local programs and allocate funds proportional to the homeless populations of certified local programs.

It shall be the responsibility of the states to provide qualified personnel to teach the theoretical and practical aspects of the training. States will also be responsible for funding job counseling and placement for persons who complete the Program.

Local entities must communicate and interact with the neighborhoods where the educational centers will be located. Community members should be given opportunities to publicly express their opinions about: (1) educational center locations; (2) labor needs; and (3) employment opportunities for community members as office, administrative, or educational staff.

D. Personnel

Guidelines used for the hiring of vocational training personnel must be included in both local plans submitted to the state and in state plans submitted to the federal government. Job interviews must determine applicants' qualifications and their level of commitment to the abatement and eventual elimination of homelessness.

The personnel should include persons specialized in the occupations they teach and career counselors knowledgeable in the socioeconomic hardships of homelessness. Instructors and administrators can also be drawn from Program graduates.

The needs of program participants with special requirements must also

be met. For example, healthcare professionals and counselors having appropriate educational and/or employment backgrounds should work with homeless persons who have physical or mental disabilities. Health care workers and counselors can be state employees providing services to several educational centers.

Program staff must commit to at least one year of full or part-time employment. Compensation will vary depending on whether the hired individuals are volunteers or paid employees. Volunteers will be eligible to receive room, board, travel expenses, as well as a monthly stipend. The stipend amounts of volunteers who continue working beyond their one year commitment should be increased. College students may receive scholarships and/or college credits for their work. Recent college graduates can be compensated through partial federal student loan relief.

E. Vocational Training

State and local training programs must meet the needs of a cross section of the homeless population. Classes should aid persons at various levels of education: they must be understandable to non-highschool graduates but sufficiently instructive to persons with some college education. Vocational courses should aid persons who (1) were never employed; (2) need retraining to learn marketable skills; (3) have physical or mental disabilities; and (4) meet Program qualifications.

The classes taught at educational centers should be developed by state and local agencies. The courses shall reflect findings of local studies on area manpower needs. The goal of conducting area studies is to establish which skills are needed in the local job markets and to improve the likelihood of upward mobility for homeless participants.

Courses must include classroom and practical instruction components. The Program should train persons in skilled and semiskilled professions and in recognized and developing professions. The classes can also be structured to give interested participants the option to advance their education in junior colleges and beyond. Some students might also require literacy classes to make them competitive applicants in job markets. Non-highschool graduates should be offered special instruction at the completion of which educational centers or cooperating institutions should administer a G.E.D. examination.

The offered classes must reflect the varying physical abilities of the participants. Job skills appropriate for the physically disabled and elderly persons must be taught.

Special job training must also be provided for the mentally ill. On average, people with a history of mental institutionalization are unemployed longer than the rest of the homeless population.²⁴⁴

Where possible, practical instructions should be combined with low cost services provided to communities in which educational centers will be located. For example, centers that will train persons in automobile mechanics,

244. See Burt, *supra* n. 21, at 25.

will need to build or rent garages where students can participate in hands-on training. Students working at those garages can provide low cost services to interested customers. The profits realized from these enterprises can be re-invested in the Program. The reinvested amounts could account for part of states' fifty percent matching fund obligation.²⁴⁵ In the alternative, paychecks can be paid directly to working participants, and part of their salaries could then be withheld to defray their vocational education costs.

Program enrollees demonstrating exceptional ability in business administration will be eligible for special educational grants and scholarships. Examinations should be administered to interested persons shortly before their graduation. Those whose test scores are in the top ten percent can enroll in additional classes on business administration or can receive scholarships to local junior colleges. Junior college graduates with at least a 3.25 grade point average (on a 4.0 scale) will then be eligible for government grants for colleges and universities.

*F. Residential Programs*²⁴⁶

State governments may find it efficient to contract with existing vocational and technical institutions. Evaluation of whether to build new educational centers or use existing ones should be based on: (1) concerns about the quality of instruction; (2) availability of educational centers in areas accessible to dense concentrations of homeless persons; (3) safety evaluations; and (4) cost/benefit analyses.

Providing the homeless participants with temporary housing will significantly alleviate their immediate abject destitution. Residential facilities can be built contiguous to the educational centers or provided with the cooperation of nearby private homeless shelters. Where close-by housing is unavailable or too expensive, participating local agencies should locate or build shelters for students. Participants who live far from the educational centers should receive stipends to defray their travel expenses.

Residential facilities must include at least classrooms, dormitories, shower facilities, bathrooms, and dining areas. To reduce operational costs, Program participants should be responsible for the upkeep and daily cleaning of the facilities.

An amicable relationship shall be maintained with the community where educational centers will be located. Services must be designed to benefit community members and program participants by meeting neighborhood needs while providing training for homeless participants. For example, in areas with dilapidated houses, participants can renovate the buildings to the economic enrichment of the community and for the training benefit of the

245. See Part III. B.

246. Part of the funds for residential centers could be disbursed by the Department of Health and Human Services' through the McKinney Supportive Housing Program. See 42 U.S.C. § 11381 *et seq.* (2000); 24 C.F.R. § 583.100 (2000). McKinney Supportive Housing also provides funds to cover shelter for persons with disabilities like mental illness and with substance abuse problems. See 24 C.F.R. § 582.5 (2000).

enrollees. Property values will then rise and the skills of students will improve.

G. Social Services²⁴⁷

Social services should be provided to Program enrollees. It is important to meet the special needs of homeless individuals. Social workers providing services to enrollees can either be employed by educational centers or state and local social service agencies.

Day care assistance shall be made available to Program participants with young children, most of whom are women.²⁴⁸ The added responsibility of caring for children complicates economic advancement. To establish equal opportunities for men and women it is necessary to establish day care centers. They must provide children with essential services like health and hygienic care and daytime supervision. Where part of the vocational training will be conducted at private businesses, seventy-five percent of the day care costs should be provided from Program funds and the rest should be contributed by participating businesses.

Other important social services will include medical treatment, especially for people with contagious diseases. Homeless persons with tuberculosis²⁴⁹ will be integrated into the program with the advice of infectious disease physicians. To reduce operating expenses, the consulting physicians should be employees of state or local health departments. Persons with substance abuse problems²⁵⁰ must be provided with counseling and, if necessary, access to detoxification centers. Specialized care shall be made available to disabled persons.

Mental health services must also be provided to persons with mental illness.²⁵¹ Social service departments should evaluate the abilities of mentally ill enrollees, participate in developing instructions for them, monitor their progress, and place them in group homes and jobs after Program completion. A vocational training program geared to the special needs of high functioning persons with mental disabilities can enable them to become productive and self-supporting members of society.

247. The McKinney Supportive Housing Program currently contains a provision for funding supportive services like employment counseling. See 42 U.S.C. § 11385 (2000). However, there is no current McKinney provision providing the homeless with vocational training. Employment counseling will be more effective as a part of the Program proposed in this article than it is independent of any training. Part of the funding provided through the Supportive Housing Program should be diverted to a vocational opportunity program.

248. Homeless women are more likely than men to be accompanied by children. See Burt et al., *supra* n. 7, at 18.

249. Rebecca Allison, *Princess Royal to Visit Crisis Millennium Eve Party*, Press Ass'n Newsfile (December 23, 1999) (stating that the homeless are at particular risk of contracting tuberculosis and other infectious diseases); Suzanne Leigh, *Medical Students Volunteer at Homeless Shelter*, Fort Worth Star-Telegram, 29 (April 30, 1999) (finding that 32% of San Francisco's homeless population had tuberculosis).

250. Alison Watt, *Improving Healthcare for the Homeless*, Physician Assistant, 77 (Feb. 1, 2000) (discussing the frequency of substance abuse among homeless population).

251. See *supra* nn. 18-20.

*H. Vocational Counseling and Placement*²⁵²

Local agencies must develop counseling and placement programs for enrollees and graduates. A counselor shall be available to discuss employment guidelines, occupational standards, and student progress. Information must be maintained on the availability of jobs in all the skilled and semi-skilled professions taught at the educational center. Job advertisements can be maintained and solicited from public and private employers. Classes should be taught on writing resumes and interviewing for jobs.

I. Business Participation

The federal government must develop overall guidelines, plans, and standards of accountability for Program coordination with private employers. State and local governments must develop and administer specific cooperative plans with the business community. Business participation should be encouraged by including local business people in community advisory boards.

The Program should partially reimburse private employers for recruiting costs and transportation costs. To improve community relations preference should be given to businesses located near the educational centers.

A participating business will be eligible for institutional loans if it:

1. Demonstrates an ability to repay the loan within ten years;
2. Agrees to repay the loan at a rate determined by the Secretary of the Treasury;
3. Shows that the loan amount coupled with the business' available resources will be enough to achieve Program goals;
4. Demonstrates a willingness to use subcontractors from state or local low-income areas;
5. Creates at least ten new jobs to be filled exclusively with Program graduates by a date certain;
6. Specifies qualification standards that will be used for the hiring of applicants; and
7. Presents a detailed plan for employee retention and training.

Preference should be given to businesses located in low-income areas and/or owned by low income individuals. The maximum loan amount shall be determined by the Secretary of the Treasury and shall come from Program resources.

J. Public Works

Public works projects must be developed for Program graduates who are

252. Limited Employment counseling is currently being provided under the McKinney Supportive Housing Program, 42 U.S.C. § 11385 (2000). However, this program has only had a limited success since it is not integrated with any employment training program. Telephone Interview with Bob Kenison, Associate General Counsel, United States Department of Health and Human Services (April 26, 2000).

unable to find private or public employment after a diligent three-month search. Persons hired onto public works projects will need to document their job search efforts. Wherever possible, graduates should be hired in the vocations that they were trained. The public works projects must be structured to help participants further improve skills, provide them with constructive supervision, and improve their qualifications in their chosen specialties.

The general objectives of public works projects shall be environmental conservation, efficient transportation, and neighborhood improvement. Environmental works must aim to conserve and manage federal, state, or local preserves, parks, and forests. Transportation projects will build, develop, and renovate roads and highways. Neighborhood development shall target rural and urban, low income areas.

K. Assistance after Graduation

A transitional period of assistance provided between graduation and full time employment would increase Program success. Of primary importance is the development of on-the-job training. Funds or tax incentives can be given to employers willing to provide training to Program graduates. Such training must be for job positions that the employer then has available and which present opportunities for inter-company advancement. The trainee should not displace any current employees.

Other post-graduation services are also essential to the homeless. Educational centers must make available clothing for job interviews and the initial weeks of work. Persons who are hired should be supplied with work clothing until they earn their first pay check and can afford a modest wardrobe.

Likewise graduates and their dependents will need living quarters for three months after being hired on their first post-graduation job. Until they can earn enough for rental deposit and for the first month of rent, sleeping quarters must be made available for them at the educational centers or at local shelters. Persons finding work away from the temporary residences should be given travel vouchers or reimbursed for transportation costs.

L. Successful Programs

Several privately and governmentally funded homeless programs have demonstrated the effectiveness of vocational training. However, those programs are few, have limited resources, and vary in their scope of assistance, illustrating the need for a uniform federal program.

Chrysalis, operating in Los Angeles, California, taught homeless persons computer skills, assisted them to search for jobs, and provided "on-the-job training."²⁵³ In 1994, sixty-six percent of Chrysalis' 700 clients found temporary or full time jobs.²⁵⁴ The per-person program cost of \$563 generated ap-

253. See National Law Center on Homelessness & Poverty, *Smart Programs, Foolish Cuts: Successful Programs Addressing the Causes of Homelessness* 25 (August 1995).

254. *Id.*

proximately \$500,000 in tax revenues and saved the government approximately \$800,000 in welfare spending.²⁵⁵ Ready, Willing and Able (“RWA”) was a more ambitious program designed to generate revenue while training single homeless men in construction and housing renovation.²⁵⁶ Participants were paid between \$5-\$6 per hour with a total per-person operating cost of \$7,350.²⁵⁷ RWA provided food, temporary lodging, and counseling during the nine to twenty-four month program.²⁵⁸ The extensive training and support program enabled eighty-seven percent of the graduating participants to find jobs paying \$14,000- \$25,000 per year.²⁵⁹

While Chrysalis and RWA assisted all homeless persons, other work-training programs were more specialized. At a cost of \$857 per person, Base Camp, Inc. targeted homeless veterans for job training, counseling, and substance abuse services.²⁶⁰ Binding Together, Inc. trained homeless persons with a history of severe drug abuse in the businesses of printing and copying.²⁶¹ ACT NOW was a job training program for the homeless mentally ill.²⁶²

Valuable lessons can be learned from successful programs of this type. However, to better maximize the job training efforts for the homeless, the systematic and federally accountable Homeless Vocational Training Program proposed in Part III.A-K of this Article should be enacted.

CONCLUSION

A Program designed to teach the homeless marketable job skills would significantly reduce the duration of homelessness and its rate of recurrence. A reduction in the rate of homelessness would benefit the United States economy. People aided in shedding the scourge of indigence would increase consumption, decrease their reliance on welfare, and increase business profits.²⁶³

The Homeless Vocational Training Program has more potential for success than short term solutions, like emergency housing programs, because the residential training program outlined in this article takes homeless people’s short and long term needs into account. A coordinated federal, state, and local Homeless Vocational Training Program would provide national funding to areas with homeless populations. The Program should be administered by state and local governmental agencies and monitored by the federal government. Federal matching funds should be available to participating states. The

255. *Id.*

256. *Id.* at 36.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.* at 26. 67% of Base Camp, Inc. graduates retain jobs that pay an average of \$7.00 per hour for at least 13 weeks.

261. *Id.* at 28.

262. *Id.* at 31.

263. See Sar A. Levitan et al., *Economic Opportunity in the Ghetto 20* (Johns Hopkins Press 1970) (discussing the effects of decreasing ghetto unemployment).

input of homeless or formerly homeless people and management and labor representatives must be incorporated to assure that the needs of the poor and of the marketplace be addressed. The Program must address the differing needs of the homeless population by training them in skilled and semiskilled professions commensurate with their several abilities. Social services will have to be provided for the mentally ill and substance abusers in the homeless population. It would be inadequate to train persons without aiding them through an employment resources center, including job postings, counseling, and public works projects. After completion of the Program, homeless persons still need three months of aid to earn enough for rent and deposit.

It is vital that the opportunity to learn marketable skills be made available to motivated homeless people. Persons willing to put in the effort of learning job skills can then escape from the labyrinth of problems that confront them in the streets.²⁶⁴

264. As Eric, a homeless man told David Wagner, "So these jobs [I've had] flipping burgers, dishwashing, there's no real skills. Any idiot can do these things. [That's why I'm] trying for job training and need to finish school [get a general equivalency diploma]. I'll be down here [on the streets] as long as I don't have degrees or real skills." Wagner, *supra* n. 6, at 82.

