

The Growth of a Movement for a Human Right to Housing in the United States

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The growth in the United States of human rights activism directed at domestic conditions is an important recent development. The most publicized efforts and successes have applied human rights law and utilized international comparison in countering violations of civil and political rights, such as the Supreme Court case striking down the juvenile death penalty.¹ Significant also is the broad public attention to dramatic abuses committed by the United States, such as those at Abu Ghraib, which were widely perceived and discussed as human rights violations. Both have helped advance a public discourse domestically in which America may be discussed as a human rights violator.

Although such developments are striking, they are at the same time limited in their reach, suggesting their incremental progress. For example, while the *Roper* Court's ruling and its reliance on international standards and practice was a major step forward for proponents of the application of human rights norms in the United States, the ruling itself was limited to the execution of minors. Earlier efforts to challenge the death penalty itself, and in particular its disparate racial impact, were not successful. In its 1987 ruling in *McCleskey v. Kemp*,² the Court noted that abolishing the death penalty based on racial discrimination would force it to tackle racial discrimination at all levels of sentencing, a project it did not want to undertake.³ This failure spurred, in turn, a new and invigorated effort among organizations ranging from innocence projects to organizations that focus on capital sentencing to develop strategies to address capital punishment as a domestic human rights violation.

More recent—and less publicized—is the growth of a movement to use human rights law to address domestic economic and social injustice. Over the past few years, a growing number of advocates, academics, and poor people themselves have focused on articulating conditions and claims in human rights terms. By adding human rights to their advocacy tools and conceptual frameworks, they have had some success with the adoption by government bodies of human rights standards. This is an increasingly important part of my work, and it will frame my discussion here.

Because the American legal framework is traditionally described as one that protects “negative” liberties and not “positive” rights, making the

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1. See *Roper v. Simmons*, 543 U.S. 551 (2005).

2. 481 U.S. 279 (1987).

3. *Id.* at 314–15.

case for basic economic justice is challenging.⁴ Establishing it as a matter of right, not privilege—justice, not charity—is even more so. An array of federal, state, and sometimes local laws provide a variety of assistance aimed at poor people, some of which are “entitlements”; that is, they provide assistance to all who meet the eligibility criteria. But complex requirements mean that many do not receive the aid to which they are entitled. One example is the gap between the approximately 40 percent of homeless people who are disabled and the 11 percent who actually receive the aid to which their disability entitles them.⁵ Further, there is no requirement that the assistance be at levels sufficient to meet basic needs, as demonstrated by the pittance paid to the dwindling number of doctors willing to accept Medicaid.⁶ Because there is no right to counsel in civil matters, countless improper denials of entitlements go unchallenged.⁷

Housing is one area in which there is no entitlement at all. Federal statutory law established housing programs in 1937, and then again in 1949;⁸ the latter included the expressly stated goal of a “decent home and suitable living environment for every American family”⁹ as soon as feasible, echoing Roosevelt’s earlier call for an economic bill of rights.¹⁰ But this language was hortatory only, and no particular funding level or number of units was guaranteed. Indeed, while there have been some periods of significant—though never sufficient—funding, housing programs have been highly vulnerable to cuts and, in recent decades, have been cut substantially.¹¹ Current estimates are that only one-fourth of all Americans who are poor enough to qualify actually receive housing assistance.¹² Each year, some 3.5

4. *See, e.g.,* *Bowers v. Devito*, 686 F.2d 616 (7th Cir. 1982) (Posner, J., writing for the majority); *see also* Cass R. Sunstein, *Why Does the American Constitution Lack Social and Economic Guarantees?*, 56 SYRACUSE L. REV. 1, 3 (2006).

5. *See* INTERAGENCY COUNCIL ON HOMELESSNESS, *HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE* (1999), available at http://www.huduser.org/publications/homeless/homelessness/ch_3d.html; NLCHP, *KEY DATA CONCERNING HOMELESS PERSONS IN AMERICA 5* (2006), available at http://www.nlchp.org/FA_HAPIA/HomelessnessFactsJune2006.pdf.

6. *See* Cornell Legal Information Institute, *Medicaid Law: An Overview*, <http://www.law.cornell.edu/wex/index.php/Medicaid> (last visited Mar. 19, 2007).

7. *See* Paul Marvy and Debra Gardner, *A Civil Right to Counsel for the Poor*, *HUM. RTS. MAG.*, Summer 2005, available at http://www.publicjusticecenter.org/pdf/ACivilRighttoCounsel_rp.pdf.

8. *See* David Listokin, *Federal Housing Policy and Preservation: Historical Evolution, Patterns, and Implications*, 2 HOUSING POL’Y DEBATE 157, 159–60, available at <http://www.innovations.harvard.edu/showdoc.html?id=3030> (last visited Mar. 19, 2007).

9. National Housing Act of 1949, 42 U.S.C.A. § 1441 (West 2007).

10. Franklin Delano Roosevelt, *State of the Union Address* (1944), available at <http://www.fdrlibrary.marist.edu/011144.html>.

11. NLCHP, *HOMELESSNESS IN THE UNITED STATES AND THE HUMAN RIGHT TO HOUSING*, v–vi (2004), available at [http://www.nlchp.org/content/pubs/Homeless%20in%20the%20US%20&%20the%20Human%20Right%20to%20Housing-RTH%20Report%20\(2004\).pdf](http://www.nlchp.org/content/pubs/Homeless%20in%20the%20US%20&%20the%20Human%20Right%20to%20Housing-RTH%20Report%20(2004).pdf) (hereinafter NLCHP Report).

12. NAT’L LOW INCOME HOUS. COAL. [NLIHC], *RECENT DATA SHOWS CONTINUATION, ACCELERATION OF HOUSING AFFORDABILITY CRISIS* 1 n.3 (2006), available at <http://www.nlihc.org/doc/RN06-05.pdf>.

million Americans are homeless, including about 1.35 million children.¹³ Each year, thousands die from exposure to heat or cold or, more recently, violence in the streets.¹⁴

Lawyers, including myself and the other members of my organization, have taken a variety of approaches in addressing this terrible injustice in American law. For example, we have worked to promote the enactment of new legislation, including the first (and still only) major federal legislation addressing homelessness, the McKinney-Vento Act.¹⁵ This has resulted in federal funding for shelter, in addition to transitional and permanent housing, as well as some legal protections, such as the right of homeless children to attend school.¹⁶ We have gone to court to enforce its provisions when they have been violated. We have also fought the criminalization of homelessness through constitutional challenges to laws that, for example, make it a crime to sleep in public places in the absence of an alternative.¹⁷ Although these strategies have made a significant difference, they have not come close to guaranteeing housing for all homeless people, nor to establishing a legal right to housing for all. In contrast to the constitutions of many other countries, including South Africa, France, and Belgium,¹⁸ the U.S. Constitution does not include an explicit right to housing, and the Supreme Court has been unwilling to recognize an implied one.¹⁹

At Habitat II, a U.N. conference in Istanbul in 1996, homelessness advocates from the United States, including myself, first saw the potential of filling the gap in U.S. policy by drawing on international human rights law. The long term goal of my organization, the National Law Center on Homelessness & Poverty ("NLCHP"), is to end and prevent homelessness in America. Establishing a human right to housing in the United States would achieve that goal. Falling short of it would maintain a condition of, at best, uncertainty for those at risk of or currently facing the horror of homelessness.

Beyond that overarching reason, there are others. First, public debate about poverty and poor people has become increasingly punitive and

13. NLIHC ET AL., *THE CRISIS IN AMERICA'S HOUSING* 5 (2005), available at <http://www.nlihc.org/doc/housingmyths.pdf>.

14. NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, *THE HARD, COLD FACTS ABOUT THE DEATHS OF HOMELESS PEOPLE* 2 (2006), available at <http://www.nhchc.org/memorialday/HardColdFacts.pdf>.

15. See, e.g., Maria Foscarinis, *Homelessness, Litigation and Law Reform: A U.S. Perspective*, 10.2 AUSTRALIAN JOURNAL OF HUMAN RIGHTS 105, 111, available at <http://www.austlii.org/au/journals/AJHR/2004/6.html>.

16. Robert Rosenthal & Maria Foscarinis, *Responses to Homelessness: Past Policies, Future Directions, and a Right to Housing*, in *A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA* 322–23 (Rachel Bratt et al. eds., 2006).

17. See generally Foscarinis, *supra* note 15.

18. See NLCHP Report, *supra* note 11, at 58–59; Maria Foscarinis, Brad Paul, Bruce Porter & Andrew Scherer, *The Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE. REV. 97, 100 (2004).

19. Cf. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (holding there is "no constitutional guarantee of access to dwellings of a particular quality").

marginalizing, with poor people and especially homeless people stereotyped and blamed for their condition. The terms of public discussion have practical implications, as homeless and poor people are criminalized for conduct directly related to their condition, and in some cases are beaten or murdered.²⁰ Human rights discourse, on the other hand, is tremendously equalizing: everyone has rights—regardless of status—simply by virtue of being human. Everyone has responsibilities as well. No one is singled out. A human rights approach thus has the potential to reframe public debate and perception, and eventually, to affect actions.

In addition, international law, including human rights, is part of U.S. law. The application of human rights law to litigation in U.S. courts is not straightforward and not always advisable. But, properly employed, it can make a difference.²¹ Judges are increasingly interested in international law; a number of Supreme Court Justices have recently spoken about its importance and relied upon it in their rulings.²²

Incorporating human rights into domestic advocacy also opens the door to advocacy before international and regional bodies, some of which have oversight over the United States.²³ Even if they have no enforcement authority in practice, they can be a forum for drawing attention to and publicizing injustice. They can also make findings that can then be used in advocacy before U.S. courts or legislative bodies, as was done with the successful campaign against the juvenile death penalty mentioned at the beginning of this Article.

In the past few years, NLCHP, together with an international housing rights group, the Centre for Housing Rights and Evictions, has hosted three national conferences and several regional training sessions focused on the human right to housing. Preparing for the first national event, held in 2003, we had little sense of how much (if any) interest there would be among U.S. housing and homelessness advocates. Yet some seventy-five activists from around the country participated, the event was extremely well-received, and a core group coalesced for follow-up planning and work.²⁴

Following the first event, a group of Chicago activists convinced the Cook County Council to adopt a resolution recognizing housing as a human

20. "From 1999 through 2005, there have been 472 acts of violence by housed people, resulting in 169 murders of homeless people and 303 victims of non-lethal violence in 165 cities from 42 states and Puerto Rico." National Coalition for the Homeless, Hate Crimes and Violence Against People Experiencing Homelessness, NCH Fact Sheet #21 (Dec. 2006) available at <http://www.nationalhomeless.org/publications/facts/Hatecrimes.pdf>.

21. See Foscarinis, et al., *supra* note 18, at 108–11.

22. See *Roper*, 543 U.S. 551; *Grueter v. Bollinger*, 539 U.S. 306, 342 (2003) (Ginsberg, J., concurring); see also Foscarinis, et al., *supra* note 18, at n. 67.

23. See NLCHP, SHADOW REPORT TO THE U.N. HUMAN RIGHTS COMMITTEE (2006), available at http://www.nlchp.org/FA_HUMANRIGHTS/Shadowreport.pdf; Maria Foscarinis, *The Human Right to Housing, Notes from the U.S.*, 30 N.Y.U. REV. L. & SOC. CHANGE 447, 458–9, 462–4 (2006).

24. For a summary of some of these events, see Foscarinis et al., *supra* note 18, and Foscarinis, *supra* note 23.

right, and then used that resolution in their successful advocacy for increased state housing subsidies.²⁵ Later, following a Chicago regional training attended by advocates, public housing tenants, and homeless people, the group built on the excitement created by learning about the human right to housing to organize a rally and campaign that succeeded in generating more housing funds.

Human rights law can also provide models to help frame advocates' legislative agendas and galvanize support for them, and thus begin to reshape public policy. In another example, Los Angeles activists convinced a mayor's commission developing a ten-year plan to end homelessness in the city to include a human right to housing as one of seven key principles around which the plan is built, and added detailed information about what the right to housing means.²⁶

This past July, a record number of U.S. NGOs presented "shadow reports" to the U.N. Human Rights Committee as part of its five-year review of the United States for compliance with the International Covenant on Civil and Political Rights ("ICCPR"). NLCHP, as one of these organizations, focused on how homelessness and the mistreatment of homeless people violates the ICCPR. At the hearing in Geneva, a committee member, reading from NLCHP's report, questioned the U.S. delegate, Wan Kim, the Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice, about homelessness in the United States. Kim said in response: "Housing rights are basic important rights guaranteed at both the state and federal level. Every person is entitled to shelter as a basic need" ²⁷

Kim's apparently unscripted, and surely unauthorized, statement was not made part of the official record. But it speaks volumes. The assumption underlying it—of course something as basic as housing must be a right!—reflects an understanding of housing or at least shelter as something very fundamental, one hallmark of our notion of human rights. Indeed, it assumes that shelter is fundamental to American notions of human rights, and is thus guaranteed under U.S. law.

Moving from current conditions of severe inequality and injustice to the kind of America described by Kim will be one of the biggest challenges in the coming decades. It will require greatly expanding the number of people—activists and the concerned public alike—interested in human rights and their potential impact in the United States. It will require building a movement with the leadership and support of people whose rights are most directly affected.

25. Res. To Support H.B. 4100 (Cook County, Ill. 2004), *available at* <http://www.cookctyclerk.com/html/032304resdoc.htm>.

26. BRING LOS ANGELES HOME: THE CAMPAIGN TO END HOMELESSNESS 5, 53 (2006), *available at* http://www.bringlahome.org/docs/BRINGLAHOME_book_final.pdf.

27. Email from Eric Tars to author on July 16, 2006 (copy on file with author).

It will require working on different levels and pursuing a variety of strategies. Human rights advocacy can be a powerful grassroots tool for organizing communities to press for change; it can also help shape organizers' demands by offering models for new policies. While advocacy at the local level has more immediate potential, advocacy at the national level is needed as well, and is beginning to occur, as evidenced by the pressure brought to bear on the federal government in the international arena of the Human Rights Committee. Litigation strategies, perhaps initially focused at the state level, are also important and warrant further development.²⁸

In the past decade, especially the past few years, we have begun building momentum. While the right to housing is where we began our work, it is axiomatic in human rights law that all rights are interdependent, and so we are incorporating others as well. The recent establishment of the U.S. Human Rights Network to bring together and support groups and people working across all the different human rights is a significant development that will help build the movement we need.

There are many human rights heroes in my life. They include all the homeless and poor people who took the time and trouble to come to our trainings, to serve on panels, to speak—and who immediately grasped what human rights meant to their lives. They include a gentleman who was staying at a shelter in Washington, D.C. and who served as a most eloquent, confident, and energetic master of ceremonies at the kick-off rally we held on the eve of our 2006 national conference on the right to housing. They include Florence Roisman, now a law professor, who as a legal services lawyer wrote an article advocating for a right to housing and who spoke at our first national event, and Chester Hartman, who has long written on the right to housing. They include Ajamu Baraka, the head of the U.S. Human Rights Network, who is working tirelessly to build a true network and movement. There are many, many more.

Most important in my own life are my late parents, Nicolas and Rosa Foscarinis, who fought for justice in Nazi-occupied Greece at great personal cost and suffering. When they came to this country they never forgot these experiences, and they never looked past injustice, despite their own successes. My mother, a physician, made house calls to housing projects at night; my father, a political scientist, spoke out against injustice here and in his native country. Both supported progressive causes until the end of their lives, never wavering from what they knew would be a long struggle. They are my personal heroes.

28. For an overview of strategies, see generally CENTRE ON HOUSING RIGHTS AND EVICTIONS AND NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, HOUSING RIGHTS FOR ALL: PROMOTING AND DEFENDING HOUSING RIGHTS IN THE U.S. RESOURCE MANUAL, SECOND EDITION (2006), available at <http://www.nlchp.org/Pubs/index.cfm?TAB=2&FA=7>.