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Homelessness: Advocacy and Social Policy

STEPHEN WIZNER*

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I. INTRODUCTION

On March 20, 1990, the Connecticut Supreme Court reversed a decision of the New Haven Housing Court in *Savage v. Aronson*,¹ a case brought by the Yale Law School Clinical Program. The trial court had issued a state-wide injunction on behalf of all homeless families² residing in emergency housing, ordering Connecticut's welfare commissioner to stop enforcing the state mandated one-hundred-day maximum on emergency housing assistance.³ The trial court found that high rents, low levels of Aid to Families with Dependent Chil-

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1. 214 Conn. 256, 571 A.2d 696 (1990).

2. *Id.* at 260, 571 A.2d at 699. A purpose of this Article is to resist the narrow definition of homelessness offered by the Stewart B. McKinney Homeless Assistance Act. The Act defines the term "homeless" or "homeless individual" as follows:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution 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 a regular sleeping accommodation for human beings.

Stewart B. McKinney Homeless Assistance Act § 103(a), 42 U.S.C. § 11302 (1987). According to this definition, only homeless people who visibly present themselves in public realms are classified as "homeless." Many people who lack a stable residence cluster together in overcrowded apartments, "doubling up" with friends or relatives who, most often, are extremely poor themselves. Because these people are seen as coping, they are excluded from the definition of "homeless" in the McKinney Act.

3. *Savage*, 214 Conn. at 259-60, 571 A.2d at 699 (Commissioner of housing was to evict all tenants of welfare motels and other emergency housing units after a one-hundred-day stay.).

dren ("AFDC")⁴ benefits, and lack of rent subsidies had prevented these families from obtaining affordable housing.⁵ After finding that families lodged in welfare motels as an emergency measure had been unable to locate permanent residences,⁶ the trial court enjoined the welfare commissioner from evicting them except to permanent housing.⁷ In so holding, the trial court accepted the plaintiffs' interpretation of the Connecticut AFDC statutes,⁸ that the state was required to support dependent children and their caretaker relatives in a "home," and that for those clients, the welfare motel was "home."⁹

The Connecticut Supreme Court, narrowly construing the Connecticut AFDC statute, rejected the trial court's interpretation and reinstated the Commissioner's one-hundred-day rule.¹⁰ As a result, this decision subjected nearly one thousand families, most of which were mothers with young children, to eviction from emergency housing because their welfare benefits were insufficient to enable them to obtain affordable housing.¹¹ Ignoring this tragic result, the court reasoned that emergency housing in welfare motels must be a temporary relief measure, used only as a last and brief resort.¹²

Although the trial court's statutory construction revealed an attractively humane response to the plight of the homeless, legitimate questions remain whether the trial court's interpretation of the AFDC statute would have helped Connecticut's homeless in the long run. The trial court's decision does not address the underlying causes of homelessness in Connecticut, nor does it look at the practical realities

4. 42 U.S.C. §§ 601-613 (1987). AFDC is a joint federal/state program established under Subchapter IV-A of the Social Security Act. States set minimum standards of need and are given considerable discretion in determining the degree to which benefit levels must meet those needs. See Newman & Schnare, *Reassessing Shelter Assistance: The Interrelationship Between Welfare and Housing Programs*, in HOUSING ISSUES OF THE 1990's, at 121-23 (S. Rosenberry & C. Hartman eds. 1989).

States differ markedly in their calculations of payment standards for shelter under AFDC. *Id.* at 122. Under AFDC, a similar family of three would receive a housing allowance ranging from \$20 in Mississippi to \$260 in Washington state. *Id.* at 127-32. A Mississippi family of four would receive a shelter payment that is close to 8% of the estimated cost of standard housing in that area, while the same family in Washington state would receive more than 90% of its estimated shelter needs. *Id.* at 122. In addition, AFDC shelter payments, in the large majority of states, fall considerably below the costs of standard rental housing in those states. *Id.* at 128-32.

5. *Savage*, 214 Conn. at 260, 571 A.2d at 699.

6. *Id.*

7. *Id.*

8. *Id.* The author served as plaintiffs' counsel in this action. *Id.* at 257, 571 A.2d at 698.

9. *Id.* at 260, 571 A.2d at 699.

10. *Id.* at 258, 571 A.2d at 699.

11. *Id.* at 257, 571 A.2d at 698.

12. See *id.* at 274-77, 571 A.2d at 706-07.

of housing homeless families in welfare motels. Welfare motels are an expensive means of housing homeless families, ranging from seventy to ninety dollars per night.¹³ In addition, by failing to provide counselling, financial management assistance, drug rehabilitation, or employment opportunities, welfare motels fail to address adequately the needs of homeless people. Neither policymakers nor advocates for the homeless would design a housing program that places homeless families in motels for long, costly stays at public expense.¹⁴ Unfortunately, the real world with which the poor have to contend is always more complex and unpredictable than the policymakers' most sophisticated models. In the world that homeless people experience today, vacancy rates for affordable apartments are at an historic low and rents are rising,¹⁵ while AFDC benefit levels have not kept pace with these increasing costs.¹⁶ Moreover, a large segment of the population continues to rely on shelter assistance.¹⁷ Given this housing crisis, Connecticut's imposing this arbitrary limit on the number of days in which families can seek shelter in welfare motels will only intensify the homelessness problem because it allows the state to evict people who are still homeless. Arbitrary limits neither account for the condition of the homeless, nor address their fundamental problems.

13. On a national level, rates for welfare motels—most of which do not have cooking facilities—average \$2,100 per month. In New Haven, rates range from \$70 to \$90 per night. See Tuhus, *Motel Hell*, NEW HAVEN ADVOC., July 25, 1988, at 1, 6.

14. Yet, for some Connecticut homeless families, the welfare motel program provides the only relief available. The state's vast expenditure on welfare motels illustrates the absurdity of any housing program that includes stays in welfare motels. Of course, for homeless families, shelter in a welfare motel is better than no shelter at all. See *id.*

15. JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIVERSITY, *THE STATE OF THE NATION'S HOUSING* 1989, at 4-6 (1990).

16. AFDC grants have not kept up with inflation. The value of AFDC grants has plummeted since the mid-1970's. AFDC payments have declined to approximately 70% of their 1968 value, offset to some degree by benefits like food-stamps and Medicaid. Rossi, *The Family, Welfare and Homelessness*, 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 281, 292 (1989).

17. According to recent estimates, 21% of the present welfare population receive a housing subsidy. Newman & Schnare, *supra* note 4, at 135-45. The remaining 79% is forced to rely on shelter allowances that are far less than the HUD allowances. *Id.*

HUD authorized 10-year allowance programs in two metropolitan areas under its Housing Assistance Supply Experiment ("HASE"). See Lowry, *Looking Back on the Housing Assistance Supply Experiment*, RAND PAPER SERIES P-6785, at 1 (1982). Policymakers designed HASE to test the market and community effects of allowance programs. *Id.* In an assessment of HASE's strategy and conclusions, Ira Lowry, research director of the program since its inception in 1971, writes that "the new idea was that the essential features of a contemplated national program could be tested by a carefully designed experiment conducted on a relatively small scale." *Id.* at 9. As to the program's actual usefulness, Lowry admits that although "[t]he experiment was undertaken to provide guidance for a national program . . . a sample of two small metropolitan areas does not provide the basis for statistical inference to other places." *Id.* at 15.

The debate over welfare motels demonstrates the profound tension between the pressures placed on legal advocates for the homeless by the immediate needs of their clients and the long-term objectives mapped out by legal and social theorists who study the homelessness problem. Advocates for the homeless contend that homelessness is a supply problem—a result of the shortage of affordable housing that needs to be addressed by positive legislation and aggressive litigation.¹⁸ Social and legal theorists, on the other hand, define homelessness as a demand problem—one symptom, among many, of the condition and behavior of the extremely poor.¹⁹ These theorists charge that advocates for the homeless have exaggerated the homeless problem by expansively defining those who deserve to be labelled “homeless,”²⁰ by inflating the actual number of homeless people,²¹ and by misrepresenting the causes of homelessness.²² They question whether there actually is a shortage of affordable housing and offer suggestions such as financial assistance, life management counselling, and housing vouchers to extend aid to those individuals deserving of

18. See *infra* Section III of this Article for a discussion of the effect of advocacy on the homelessness problem.

19. Conservative social policy critics have challenged Robert Hayes' assertion that the remedy for homelessness can be depicted by three words: “housing, housing, housing.” Ellickson, *The Homelessness Muddle*, 99 PUB. INTEREST 45, 59 (Spring 1990). Even liberal social policy critics, such as William Julius Wilson, view the “truly disadvantaged” as suffering from a social pathology characterized by welfare dependency, unemployment, out-of-wedlock births, female-headed single-parent families, and high crime rates. See generally W. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987) (discussing the recurring socio-economic problems of America's underclass). These social policy critics agree that increasing the availability of affordable housing is not a long-term solution to homelessness. See Ellickson, *supra*, at 59; see also W. WILSON, *supra*, at ix-x. What the homeless need is job training, employment opportunities, day care, counselling, treatment programs for substance abuse and mental disorders, and other social service programs targeted to particular groups designed to enable the homeless or near-homeless to cope with the world and assume responsibility for their lives. Ellickson, *supra*, at 59. The relationship between temporary solutions to, and the roots of, homelessness is exemplified by public housing projects. One need not study the permanent effects of public housing projects to see that such projects fall short as an economical means of housing the poor. Public housing projects ghettoize the poor by entrenching them in environments that are racially segregated, crime-ridden, and populated primarily by welfare-dependent, single-parent, female-headed households. See W. WILSON, *supra*, at ix-x. Critics of federal housing policy have argued persuasively that these projects often result in racial segregation, and unsafe, unsanitary living conditions. *Id.* Nevertheless, in today's housing market, the poor have no other option and actually may be fortunate to end up in public housing.

20. Ellickson, *supra* note 19, at 46 (arguing that advocates grossly have misrepresented the problem).

21. *Id.* at 52.

22. *Id.* at 53-56.

assistance,²³ rather than "[o]pening all purpose shelters."²⁴ Characterizing the problem as a "fog of misinformation"²⁵ and positing long-term social objectives, however, ignores the immediate needs of the homeless.

This Article argues that the theoretical view of the homelessness problem, regardless of whether it makes sense as part of long-term social policy, is of little relevance to the homeless person's immediate needs. This argument is made from the viewpoint of an advocate for homeless people confronting and coping with their individual crises, not from the policymaker's viewpoint. Legal advocates confront homelessness as an emergency condition. It is their task to address individuals' current housing needs, not to devise measures that may become effective for the individual or society in the future. Advocacy must work directly, centering upon the housing needs of homeless people, not upon homelessness as an abstract social issue or, as some conservative writers contend, a behavioral condition.²⁶

This Article argues that the advocate's viewpoint *is* relevant to social policy, a fact of which academic writers on homelessness take insufficient account. Too often, critics describe advocates as well-intentioned but radical activists, focused exclusively on their clients' immediate needs. In doing so, they contend, advocates ignore the causes of the problems they seek to ameliorate and the enduring effect of their advocacy both on their clients and on society. Social policy critics seldom acknowledge, however, that the world in which we live is not a microeconomic model, but a complex amalgam of idiosyncratic problems. In failing to do so, these writers lose sight of the realities to which social policy must be addressed.²⁷

Section II of this Article details conservative and liberal accounts

23. *Id.* at 59-60. Ellickson summarizes his viewpoint by noting that:

[G]overnments and charities should make distinctions among the homeless instead of muddling together a highly diverse group of people. Such distinctions would enable service providers to extend aid to, say, the casualties of deinstitutionalization, and to cease providing unlimited and unconditional aid to the able-bodied. The current shelter policies of many cities mire young adults in the dependent and antisocial culture of the underclass. By now we should know better than to provide cures that simply make things worse.

Id. at 60.

24. *Id.* at 59.

25. *Id.* at 58.

26. *Id.* at 57-58.

27. Advocates and theorists alike should recall Jerome Frank's admonition concerning the interrelationship of theory and practice: "An interest in the practical should not preclude, on the contrary it should invite, a lively interest in theory. For practices unavoidably blossom into theories, and most theories induce practices, good or bad." Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1321 (1947).

of the homelessness problem. With immediate and long-term social policy concerns in mind, Section III describes three different approaches taken by Yale Law School students and clinical faculty:²⁸ (1) affirmative class actions; (2) eviction defense; and (3) development of affordable housing. Finally, Section IV argues that an effective social policy must encompass the immediate, practical needs of the homeless, as well as longer-term objectives that aim to address the homelessness problem.

II. THE DEBATE BETWEEN CRITICS AND ADVOCATES

A. *A Supply or Demand Problem?*

Conservative social policy critics contend that homelessness does not stem from problems with the supply side of the housing market, but rather with the demand side.²⁹ That is, the best way to increase and improve the stock of housing³⁰ is to concentrate on programs that aid the many people in our society who are socially dysfunctional, with an eye to the risk that some may take advantage of social welfare programs, rather than assuming responsibility for their own lives.³¹ Conservative commentator Charles Murray takes this characterization of the problem further, claiming that government-sponsored social programs are actually harmful to the people they are intended

28. The author is not only director of this program, but has served as counsel to many of the clinic's clients.

29. Ellickson, *supra* note 19, at 59.

30. Some social policy critics argue that new housing for the wealthy will remedy the housing problems for the poor. The process by which housing construction for the rich results in improvement in housing for the poor is called "filtering." R. RATCLIFF, *URBAN LAND ECONOMICS* 321-34 (1949). As new housing for the non-poor is built, families move into it, leaving their previous apartments vacant. The demand for the type of housing they have vacated is reduced, making it available for families with slightly lower incomes. *Id.* This filtering seeps down through quality levels of the housing market, eventually allowing poor families to move from substandard to standard housing. *Id.* For a recent account of the filtering process in the post-war period, see Weicker, *Private Production: Has the Rising Tide Lifted All Boats?*, in *HOUSING AMERICA'S POOR* 53-54 (P. Salins ed. 1987).

There is no empirical evidence that filtering actually occurs. Weicker summarizes the evidence as follows:

Filtering is hypothesized to occur when the incomes of the rich increase, even if the incomes of the poor do not. . . . During the postwar period, the income distribution seems to have become slightly more equal, then after 1967 slightly more unequal, but the changes are small. Throughout the period, the poor have increasingly lived in better housing, whether or not filtering has been happening.

Id. at 54.

Even if filtering occurs in some indirect sense, the process is irrelevant in terms of meeting the immediate housing needs of the poor. The lack of affordable housing for the poor is a current problem that needs to be tackled directly. The construction of new homes for upper- or middle-class families is a roundabout means of achieving that end.

31. Ellickson, *supra* note 19, at 57.

to help.³² One allegedly harmful effect is what Murray calls the "moral hazard": the risk that recipients of government largesse will become dependent on public support and will thereby be deprived of the incentive to work and the motivation for individual responsibility.³³ Thus, these social theorists argue, if it were not for homeless shelters, soup kitchens, and emergency housing, many people labeled homeless would find housing with relatives or friends, and would be able to work to support themselves.³⁴

In a recent article, commentator Robert Ellickson contends that "homelessness is not mainly attributable to breakdowns on the supply side of the housing market, any more than hunger in the United States can be blamed on inadequacies in food production."³⁵ The majority of the homeless, Ellickson argues, are not ordinary people who are random victims of a housing squeeze.³⁶ Rather, the homeless are troubled people who have had difficulty managing their lives.³⁷ The construction of housing will not help them obtain what Ellickson maintains is the solution to their problem: individualized social service programs that will enable them to exercise more rational judgment and to manage their lives more reasonably.³⁸ Ellickson links the increasing size of the homeless population to the rise in our nation's number of shelters.³⁹ Shelters "draw in" some people,⁴⁰ he argues, who could "double-up"⁴¹ with friends or family, enter an institution, or find permanent, inexpensive rental apartments.⁴² Shelters cause

32. C. MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 9 (1984).

33. *Id.*

34. See Ellickson, *supra* note 19, at 51 (arguing that generous programs of aid increase the number of homeless people in a given area by attracting them from other areas).

35. *Id.*

36. *Id.* at 57.

37. *Id.* Despite the media attention given to homelessness in the past several years, homelessness traditionally has been seen as the problem of troubled and bothersome individuals. See generally Hopper, *The Ordeal of the Shelter: Continuities and Discontinuities in the Public Response to Homelessness*, 4 NOTRE DAME J.L. ETHICS & SOC. POL'Y 301 (1990) (explaining public attitudes toward the homeless throughout history). Even some contemporary writers have referred to the homeless as freeloaders who move into shelters seeking a good housing deal. See Main, *The Homeless of New York*, 72 PUB. INTEREST, 1, 3 (Summer 1983).

38. Ellickson, *supra* note 19, at 59.

39. *Id.*

40. *Id.* at 50.

41. "Doubling-up" often is not an option for homeless families because their primary relatives also tend to be extremely poor. Offering shelter and sustenance to other family members poses too severe a strain for those who are barely able to meet their own needs. See Rossi, *supra* note 16, at 291. See generally P. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* (1989) (discussing the origins of homelessness and the lack of relief provided by doubling-up).

42. Ellickson, *supra* note 19, at 50-51.

homelessness, Ellickson asserts, by offering negative incentives.⁴³

Although Ellickson cites some ulterior motives that lead people to move into shelters,⁴⁴ this treatment of homelessness is marred by stereotypical portrayals of the homeless as lazy, troubled people who have chosen their condition.⁴⁵ Personality traits may explain, in part, why some people become homeless. Families do not become homeless, however, because of the lure of shelters. The inadequacy of Ellickson's explanation is most apparent in his interpretation of a 1988 survey conducted in New York City.⁴⁶ The survey found that seventy-one percent of the families arriving in shelters had been doubled-up with friends or family the previous night and that eighteen percent had been living in their own dwellings.⁴⁷ These numbers, Ellickson concludes, show that shelters "draw mainly from housing."⁴⁸ Ellickson has equated the term "housed" with housing. But, one night spent doubled-up after an eviction, for example, does not equal appropriate, permanent housing. By moving into public shelter, these families had shifted into the *category* of those called "homeless."⁴⁹ Yet they were already homeless. That is, these people had already left homes which they could no longer afford. Regardless of whether these families decided to move into a shelter, it is obvious that they did not decide to become homeless. They became homeless merely because they were not able to pay their rent.

Ellickson rejects the idea that the homeless are normal people who have encountered difficult times and thus have fallen into homelessness through no fault of their own.⁵⁰ Advocates for the homeless, conversely, assert that the homeless are the victims of a harshly competitive housing market, and, more generally, of a larger socio-economic order that has systematically failed to accommodate the

43. *Id.* at 50. A drug addict, for example, might choose to move into a shelter to free up funds for drugs. Similarly, a jobless person housed in a shelter has less incentive to find a job which would allow her to rent a room. *Id.*

44. *Id.*

45. *Id.* at 59.

46. *Id.* at 47.

47. *Id.*

48. *Id.* Ellickson appears to embrace two inconsistent views: (1) a social pathology argument that poor people who become homeless are incapable of rational economic behavior; and (2) a free-market (perverse incentive) argument that poor people who become homeless are capable of rational economic behavior and are acting as rational utility-maximizers when they choose to take advantage of free shelters, soup kitchens, and other social welfare measures offered to them. *Compare id.* at 59 (arguing that homeless people are troubled and *need help managing* their lives) with *id.* at 50 (noting that a drug addict, after hearing of free shelter, would *decide* to move out of his room and enter that shelter).

49. *See supra* note 2 (text of the Stewart B. McKinney Homeless Assistance Act's definition of the term "homeless," and criticism of its narrowness).

50. Ellickson, *supra* note 19, at 57.

unfortunate.⁵¹ Advocates have argued that because the homeless are victims of an "endemic disorder," they deserve a "redress of grievance."⁵² Because advocates believe that homelessness is the error of the system and not an issue of individual responsibility, they have disregarded the issue of incentives in social policy that Ellickson and other writers find so troublesome. Moreover, by focusing on the lack of low-income housing, advocates have overlooked the question of whether some housing programs, such as public housing, actually help poor people at all. These advocates fail to see the results of public housing projects which critics argue isolate poor people in racially segregated poverty ghettos, giving rise to a tangle of social pathologies such as crime, drugs, teenage pregnancy, single-parent and female-headed households, illegitimate births, unemployment, and welfare dependency.⁵³

B. Social Policy Attitudes Toward the Homeless

In debates over homelessness, as in almost all social-welfare debates, conservatives and liberals are polarized in their attitudes toward the needy. While the conservatives tend to blame the individual homeless person for his troubles,⁵⁴ liberals believe the homeless person is an innocent victim of the economy's weaknesses.⁵⁵ Conservative theorists write of the homeless person who rationally seeks

51. Leo Strole, Professor of Social Sciences at Columbia University, has written: "All [of the homeless] are 'fall out' rejects of a highly competitive, cornucopian socioeconomic system that cannot mobilize the fiscal wherewithal and organizational talents for quasi-family care of its casualties." Strole, *Forward* to E. BAXTER & K. HOPPER, *PRIVATE LIVES/PUBLIC SPACES: HOMELESS ADULTS ON THE STREETS OF NEW YORK CITY* ii (1981).

52. K. HOPPER, E. BAXTER, S. COX & L. KLEIN, *ONE YEAR LATER: THE HOMELESS POOR IN NEW YORK CITY*, 1982, at 55 (1982).

53. William Julius Wilson's book entitled *The Truly Disadvantaged* charts the isolation of Blacks and Hispanics in ghetto neighborhoods, and argues that it is this social isolation, coupled with a narrowing opportunity structure, that has produced social disorganization and pathology. W. WILSON, *supra* note 19, at ix. The plight of the urban poor, according to Wilson, is not simply the product of different cultural norms, or the consequence of restricted opportunities. *Id.* at vii-x. Instead, urban poverty results from the dynamic interplay between ghetto-specific characteristics and the market economy. *Id.* Distinguishing himself from "culture of poverty" theorists such as Oscar Lewis and Charles Murray, Wilson advocates programs that focus on the social and economic situations—not the cultural traits—of the ghetto underclass. *Id.* at ix-x; C. MURRAY, *supra* note 32; cf. Lewis, *The Culture of Poverty*, *SCI. AM.*, Oct. 1966, at 19-25. For an interesting critique of Wilson's analysis, arguing that Wilson shares the vice of those whom he criticizes by applying middle-class conceptions of normalcy to the poor, see Reed, *The Liberal Technocrat*, *THE NATION*, Feb. 6, 1988, at 167.

54. See generally Ellickson, *supra* note 19 (arguing that many homeless people have opted for homelessness).

55. See W. WILSON, *supra* note 19, at viii-ix.

to maximize the satisfaction of his wants.⁵⁶ This is the image depicted by Ellickson in his portrayal of the homeless person who chooses to move into a shelter upon declaring that move to be in her best interest.⁵⁷ Ellickson's problem with this "rational" decision is that it will not be in the person's long-term interest.⁵⁸ For Ellickson, a sounder long-term plan would be to double-up, strive to meet rent, and subsequently begin a search for adequate employment.⁵⁹ The fault for the homeless person's unsound decision, Ellickson notes, lies with flawed federal housing policies that encourage people to enter shelters, rather than become self-sufficient.⁶⁰ His conclusion is that homeless people respond rationally to the incentives created by social policy.⁶¹ In other words, Ellickson argues that governmental policies have encouraged the poor to become homeless by disregarding sound alternatives.

The logic in Ellickson's portrayal of the homeless person's choice reflects the modern conservative notion that social-welfare policies since the 1960's have actually harmed those that they were designed to help.⁶² The argument begins with a premise of what would be in

56. See, e.g., Ellickson, *supra* note 19, at 50 (arguing that one who lives in a free shelter chooses to stay because they will not have to work to pay for housing).

57. See source cited *supra* note 48 (noting that Ellickson espouses two inconsistent views with respect to the irrational/rational behavior of homeless persons).

58. Cf. C. MURRAY, *supra* note 32, at 9 (arguing that the poor act in ways which are destructive in the long term).

59. Ellickson, *supra* note 19, at 59-60.

60. *Id.* at 47; see C. MURRAY, *supra* note 32 (arguing that governmental social policies have made the plight of the poor worse).

61. See Ellickson, *supra* note 19, at 53-54. The claim that all people, including those in danger of becoming homeless, are rational utility maximizers fails to grasp the dynamics of the emergency housing population. For most homeless families, becoming homeless is not a matter of rational planning or of manipulating the system. Most families on the economic edge become homeless due to an unforeseen economic event, such as a medical bill. When these emergency situations arise, governmental benefit levels are not high enough to cushion those who have been just getting by. See Strauss & Tomback, *Homelessness: Halting the Race to the Bottom*, 3 YALE L. & POL'Y REV. 551 (1985) (arguing that those who become homeless cannot be thought of as "rational utility maximizers"). Ellickson himself appears to have rejected, at least in its pure form, the claim of classical free-market economists that all people are rational utility-maximizers. See Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23, 55 (1989) ("The mark of a true economist is not fealty to the classical rational-actor model, but rather openness to any technique that would improve understanding of complex human behavior.") In rejecting this claim, Ellickson purported to adopt Arthur Leff's assertion that economists need to display a more realistic view of human cognitive processes and a more accurate picture of social and cultural influences on human behavior. *Id.*; see also Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451 (1974).

62. Following the same line of argument as Ellickson, Charles Murray warns against the "moral hazard" created by social-welfare policies. See C. MURRAY, *supra* note 32, at 9. According to Murray, the current behaviors of the poor are rational adaptations to the shift social-welfare policies took in the 1960's. *Id.* Murray summarizes his argument as follows:

The first effect of the new rules was to make it profitable for the poor to behave in

society's best interest, which is defined as not having to pay for the homeless person's stay in a shelter.⁶³ Then, the argument characterizes the behavior that will bring about this end—a homeless person's decision not to move into the shelter—as good behavior in the long run.⁶⁴ This argument transforms the tension between individual and societal interests into a conflict between an individual's immediate needs and her own long-term best interests. The issue of self-care, that is, whether the person would be better off moving into the shelter in the long run, clouds the issue of whether she *needs* to do so at the time of the decision.

Advocates' assessments of homelessness as a condition that befalls certain types of individuals and families have diverted attention from the specific needs of homeless people.⁶⁵ This is not to say, however, that new governmental assistance programs will provide attention to the specific needs of the homeless. The creation of new categorical assistance programs⁶⁶ is likely merely to distinguish the "truly homeless" from the "not really homeless."⁶⁷ As in other cate-

the short term in ways which were destructive in the long term. Their second effect was to mask these long term losses—to subsidize irretrievable mistakes. We tried to provide more for the poor and produced more poor instead. We tried to remove the barriers to escape from poverty and inadvertently built a trap.

Id.

Federal programs, according to Murray, are responsible for the increase in the number of families headed by women since the 1960's. *Id.* at 7-9. He claims that these programs have also caused the rise of divorce rates, unemployment, welfare dependency, and homelessness. *Id.* For Murray, the social pathologies of the poor are the result of the increase in governmental services. *Id.*

Murray treats welfare recipients as rational agents who, after accounting for their possibilities and pursuing the most advantageous course of action, have decided to sign onto the welfare rolls. *Id.* Thus, the poor have become the victims not of a socio-economic system, but of their own actions and the policies which encourage them to seek federal aid. *Id.* For a persuasive critique of Murray's analysis, see Jencks, *How Poor Are the Poor?*, N.Y. REV. BOOKS, May 9, 1985, at 41. One of the most convincing refutations of Murray's portrayal of welfare recipients as rational agents—who rely on benefits or have children after calculation—has been provided in S. SHEEHAN, *A WELFARE MOTHER* (1976).

63. Ellickson, *supra* note 19, at 45.

64. *Id.* at 50 (criticizing persons who choose to enter shelters).

65. *Id.* at 60.

66. Peter Rossi has proposed subsidizing families that support a homeless relative. "Aid to Families with Dependent Adults" would act as a cushion against emergency difficulties, allowing families to provide emergency assistance to the needy. P. ROSSI, *supra* note 41, at 208; Rossi, *supra* note 16, at 299-300.

67. One pair of housing policy writers has proposed focusing assistance on those who are persistently or permanently poor, instead of temporarily poor. See Newman & Struyk, *Housing and Poverty*, 65 REV. ECON. & STATISTICS 243, 243 (1987). According to this proposal, permanently poor families are the most needy. They dwell in inadequate housing at substantially higher rates than the temporarily poor. *Id.* at 249. For example, 40% of the permanently poor, as contrasted with 20% of the temporarily poor, live in dwellings failing HUD's basic quality test. *Id.*

gorical assistance programs, these new classifications will likely have the effect of denying assistance to individuals for reasons not directly related to their circumstances.

Ellickson correctly criticizes advocates who refer to the homeless as a "population."⁶⁸ Use of the term "population" implies a group of people sharing the same condition. This type of categorization does not effectively help individuals because it attempts to meet the needs of the population generally, rather than the individual specifically.⁶⁹ The homeless are a varied group that includes people who are chronically mentally ill, physically disabled, substance abusers, unemployed and underemployed, and single mothers with children.⁷⁰ Moreover, their housing needs are similarly diverse.⁷¹ Advocates for the homeless should try to take a practical approach to assisting inadequately housed poor people by focusing on poverty, housing costs, the availability of affordable housing, and social service needs that undermine one's ability to find, pay for, and keep adequate housing. It is through focusing on the precise nature of the needs of individual homeless persons, rather than on some abstract conception or theory of homelessness, that advocates can be most effective in alleviating the problems the homeless face on a daily basis.

III. ADVOCACY FOR THE HOMELESS

In attempting to satisfy the immediate needs of their clients, advocates frequently are caught in a bind between meeting these needs and assessing long-term policy objectives. Some advocacy efforts may, by choice or necessity, implement social policies that do not properly address the causes of the problem they confront. The

68. Ellickson, *supra* note 19, at 60.

69. *Id.* at 59-60. Peter Marcuse warns both against generalism and specialism in housing policy. Marcuse, *The Pitfalls of Specialism: Special Groups and the General Problem of Housing*, in *HOUSING ISSUES OF THE 1990's*, at 67 (S. Rosenberry & C. Hartman eds. 1989). Generalism, he explains, ignores the special problems affecting particular groups. *Id.* Specialism utilizes a cataloguing approach to housing problems by listing particular groups as those who are having housing problems and is equally dangerous because it leads to policies directed at victims, rather than at the system. *Id.* Marcuse argues that in order to begin resolving our housing crisis, we need to reconcile specialism and generalism so that the problems facing particular groups, such as the extreme poor, will be addressed. *See id.* at 67-68.

70. Ellickson, *supra* note 19, at 60.

71. Homeless families' needs would be effectively met by small apartment complexes, single family houses, or townhouses. The needs of homeless single persons with no family would be effectively met by single room occupancy units. Finally, the needs of homeless persons with mental or physical disabilities would be met effectively by group homes or shared living arrangements. For a description of various housing needs for the homeless, see Salsich, *Nonprofit Housing Organizations*, 4 NOTRE DAME J.L. ETHICS & PUB. POLICY 264 (1989).

Yale Law School Clinical Program (the "Clinical Program"), discussed below, illustrates three different forms of advocacy efforts utilized by students and clinical faculty as well as the controversy surrounding these approaches.

The first method that the Clinical Program uses in combating homelessness is the filing of affirmative class actions by the Yale Law School Homelessness Clinic that seek to change conditions in existing housing or to force government to provide effective housing assistance. The latter strategy was that used in the trial of *Savage v. Aronson*,⁷² the welfare motel case discussed in the introduction to this Article.⁷³ In *Savage*, the Connecticut Supreme Court took note of evidence that there were three hundred vacant public housing units in New Haven at the time of the trial, enough to accommodate every New Haven family in emergency housing.⁷⁴ What the court failed to acknowledge, however, was that those three hundred vacant public housing units are boarded-up and uninhabitable. The local public housing authority has failed to keep them in repair, has allowed them to be vandalized, and has failed to renovate them for occupancy.⁷⁵ Thus, although the advocates' victory in the trial court potentially could have housed virtually all of New Haven's homeless, that victory was short-lived and now requires new creative solutions to attempt to force the public housing authority to restore those vacant housing units to public use.

In an earlier attempt to remedy the homelessness problem in urban Connecticut, the Clinical Program filed a lawsuit styled *Concerned Tenants Association v. Pierce*⁷⁶ in the Bridgeport Housing Court in 1987 on behalf of a Bridgeport tenants' association and individual tenants of the largest public housing project in Connecticut. The complaint named as defendants the Executive Director of the Bridgeport Housing Authority and the Secretary of the United States

72. 214 Conn. 256, 571 A.2d 696 (1990).

73. See *id.*; *supra* notes 1-8 and accompanying text.

74. See *Savage*, 214 Conn. at 281-83, 571 A.2d at 710. The dissent would have remanded the case with instructions to the trial court to join additional defendants and fashion a remedy that would have transferred the affected families from emergency to public housing. See *id.* at 288-92, 571 A.2d 713-15 (Glass, J., dissenting).

75. It is unclear whether homeless families, especially those who are not on a public housing waiting list, would have a legally cognizable claim against the housing authority to force renovation of uninhabitable units. See *id.* at 281 n.31, 571 A.2d at 710 n.31. Similar to the welfare motel case, advocates would have to stretch legal theory to create a claim. If they prevailed, advocates would be again subject to the criticism of social policy theorists that such zealous advocacy has the effect of perpetuating a socially undesirable program in the form of large, high rise, inner city, public housing ghettos. See Ellickson, *supra* note 19, at 54 (arguing that advocacy is making homelessness worse and more visible).

76. 685 F. Supp. 316 (D. Conn. 1988).

Department of Housing and Urban Development.⁷⁷

The complaint alleged that the Bridgeport Housing Authority, which was receiving federal financial assistance, was violating state and federal law by failing to maintain the housing project in a decent, safe, and sanitary condition.⁷⁸ The tenants' association charged that conditions in the project, including a failure to repair, an absence of security, and a lack of sanitation, coupled with a deliberate refusal to rent vacant units as part of a plan to depopulate, and eventually shut down, the project, amounted to a constructive demolition in violation of federal law.⁷⁹

The United States District Court for the District of Connecticut agreed, and mediated a settlement that required the Housing Authority to repair and renovate the units, provide additional security, including paid tenant patrols, and rent the vacant apartments.⁸⁰ As a result, the Clinical Program has helped to preserve one thousand units of affordable housing.

Both *Savage v. Aronson*,⁸¹ the welfare motel case, and *Concerned Tenants Association* demonstrate the profound tension that exists between the responsibilities placed on advocates for the homeless or near-homeless by the immediate needs of their clients, and broad questions of social policy and legal theory. The critics of federal housing policy have made a strong case that public housing projects, like the one involved in the *Concerned Tenants Association* lawsuit, do not provide adequate low-income housing for the poor.⁸² Public housing projects *do* ghettoize the poor, result in racial segregation, and often create unsafe and unsanitary living conditions for tenants.⁸³ They are also very expensive to build and to maintain.⁸⁴ Nevertheless, it is difficult to accept the conclusion drawn by many critics of public housing⁸⁵ that we would be better off without public housing

77. See *id.* Secretary Pierce and the United States Attorney's office, apparently believing that the Secretary could not receive a fair trial in a local state housing court, removed the case to federal court. *Id.* at 318.

78. *Id.*

79. *Id.* at 319.

80. See *id.* at 321 (stating that plaintiffs had established a cause of action for constructive demolition). The settlement provides for a reduction in the total number of units from over one thousand to approximately five hundred, with the concurrent development of an equivalent number of scattered-site units of public housing. The remaining units will be demolished and rebuilt without common entrances.

81. 214 Conn. 256, 571 A.2d 696 (Conn. 1990).

82. See generally C. MURRAY, *supra* note 32 (criticizing welfare state policies as doing more harm than good).

83. *Id.*

84. *Id.*

85. *Id.*

projects. The Clinical Program's Bridgeport clients are now safely housed; the clients could have become one thousand homeless families.

Legal defense of poor tenants in eviction cases is a second method that advocates for the homeless use to combat homelessness. In the Yale Law School Landlord/Tenant Clinic, dubbed the "pre-homelessness clinic," Yale students and faculty defend a substantial number of indigent tenants in eviction proceedings. The proceedings generally consist of evictions for failure to pay rent, tenancy expiration, or some form of nuisance. Eviction proceedings in Connecticut, as in virtually every other state, follow summary procedures.⁸⁶ Because summary process affords landlords a speedy remedy for evicting tenants,⁸⁷ courts require strict compliance with procedural provisions and substantive requirements of summary procedure statutes.⁸⁸ Thus, effective tenant representation involves highly technical motion and pleading practice. The tenant's advocate must effectively raise the issue of improper service of process, failure to provide services to tenants, and non-compliance with local housing codes.⁸⁹

Needless to say, landlords do not like it when tenants they seek to evict are represented by competent counsel. Summary process becomes, in such cases, a complex, and *non*-summary series of technical and creative motions and pleadings, court appearances, negotiations, evidentiary hearings, stays of execution, and other time-consuming procedures.⁹⁰ In the course of such proceedings, landlords often will enter into settlements that allow tenants time to relocate, waive unpaid back rent, return security deposits, grant several months of future reduced-rent or free occupancy, pay moving expenses, or even reinstate tenants in good standing.⁹¹

Social policy and legal theorists have criticized the practice of vigorously defending poor tenants in eviction proceedings on several grounds. Critics claim that eviction defense has the long-term effects of causing landlords to increase rents, to upgrade rental properties to avoid leasing to poor people, and to abandon their buildings.⁹² Legal critics have accused tenants' lawyers of over-representing a few ten-

86. See Note, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495, 1496 (1973) (explaining legal aid services' handling of eviction suits).

87. *Id.*

88. *Id.* at 1497-98.

89. *Id.*

90. *Id.*

91. This has been the experience in the Clinical Program. *But see id.* at 1498 (arguing that despite efforts by tenants' lawyers, landlords usually win judgments of possession).

92. *Id.* at 1501-02.

ants, rather than representing the needs of all poor tenants.⁹³ They also charge tenants' lawyers with abuse of the legal system by taking advantage of technicalities to gain time or tactical advantage for their clients.⁹⁴ Finally, in what is probably the most significant attack, critics contend that eviction defense fails to increase or improve the stock of affordable housing.⁹⁵

The low-income housing stock has decreased for several reasons. Many cities have revitalized their downtown centers and gentrified neighborhoods in the process.⁹⁶ Further, some landlords with apartment buildings that have fallen into disrepair have abandoned them in an attempt to avoid substantial property tax liens. Vigorous eviction defense for poor tenants, however, is not the cause of these developments. Even if it were, declining to represent fully indigent tenants would neither be an ethical nor appropriate option to combatting homelessness. Advocates cannot simply devote their efforts to the development of affordable housing, which may take years to begin to alleviate the housing crisis, while poor tenants become homeless people through improper eviction procedures.

Markets respond to *effective* demand. An increased demand for low-income housing does not necessarily result in an increased supply of such housing. When the poor lack sufficient financial resources to pay the rents demanded in the low-income housing market, low-income housing becomes an unprofitable investment.⁹⁷ As a result, many developers stop building affordable housing which, in turn, further decreases its availability. Markets tend toward allocative efficiency, but not toward any particular distribution. Thus, the market does not guarantee affordable, decent housing at every economic level.

Yale University has created the Workshop on Shelter for the Homeless (the "Yale Workshop") in an attempt to meet the criticism that advocacy does little to increase the amount of affordable housing in light of economic supply and demand cycles. The Yale Workshop responds to the homelessness problem without focusing on landlord-tenant litigation. It is a transactional workshop in which students from the Yale Law School and the School of Organization and Man-

93. *Id.* at 1499-501.

94. *Id.*

95. *Id.* at 1502.

96. Gentrification is a process by which poor, inner-city neighborhoods are upgraded into more affluent communities. The process leaves the poor displaced. Hopper, Susser & Connover, *Economics of Makeshift: Deindustrialization and Homelessness in New York City*, 14 URB. ANTHROPOLOGY 11, 12 (1985).

97. Other factors affecting the profitability of developers' investments include property taxes, building codes, health and safety regulations, repair costs, and real estate prices.

agement provide legal and other technical assistance to organizations developing and managing affordable housing for the poor. The Yale Workshop seeks to stimulate an increase in the low-income housing stock in the Greater New Haven area by incorporating and obtaining tax exemptions for non-profit housing corporations by assisting non-profit groups in fund-raising through preparation of grant applications to public agencies and private organizations, and by negotiating and closing real estate transactions.

Social policy critics from both the right and the left, however, have begun to argue that increasing the availability of affordable housing is not a long-term solution to homelessness.⁹⁸ What the homeless need, critics contend, are job training, employment, day care, counselling, and treatment programs for substance abusers and the mentally ill.⁹⁹ They argue that only social service programs designed to enable the homeless to cope with the world and assume responsibility for their lives will confront the core of the homelessness problem, which they define as the extreme poverty, unemployment, and social dislocation of the poor.¹⁰⁰

As Peter Rossi has argued persuasively in his book *Down and Out in America*,¹⁰¹ a direct relationship exists between extreme poverty and homelessness.¹⁰² Clearly, homelessness is a consequence not only of a low-income housing shortage, but also of poverty, unemployment, and social dislocation.¹⁰³ Yet, the essential and immediate symptom of the problem is lack of access to affordable housing.¹⁰⁴

98. See Ellickson, *supra* note 19, at 59.

99. *Id.* at 58-60.

100. *Id.* One contemporary writer offers hard evidence that social service programs work effectively when they respond to a variety of needs. L. SCHORR, *WITHIN OUR REACH: BREAKING THE CYCLE OF DISADVANTAGE* (1988). The programs that work for children at risk of becoming homeless offer comprehensive and intensive services. *Id.* at xxi-xxii. Whether they are part of a health, mental health, social service, or educational system, these programs are successful because they provide a variety of services that are attuned to the distinct needs of high risk families. *Id.* at xxii. If the outstanding health, education, and social services described in Schorr's book were more widely available, fewer children would arrive at adulthood uneducated and unskilled.

101. See P. ROSSI, *supra* note 41.

102. See generally *id.* (analyzing the causes of homelessness and possible remedies for the problem). Rossi has five proposals to combat homelessness: (1) the enlargement of the urban, low-income housing stock; (2) the institutionalization of the severely disabled; (3) the recognition of certain non-physical disabilities; (4) the restoration of value to welfare payments in terms of purchasing power; and (5) the allowing of unattached, non-senior citizens to participate in welfare programs. Rossi, *supra* note 16, at 299.

103. Rossi, *supra* note 16, at 298-99.

104. See P. ROSSI, *supra* note 41, at 182; see also Stone, *Shelter Poverty in Boston: Problem and Program*, in *HOUSING ISSUES OF THE 1990'S*, at 337-41 (S. Rosenberry & C. Hartman eds. 1989) (arguing that nearly all of our nation's present housing problems result from the tension between inadequate incomes and the cost of providing affordable housing).

Homeless people simply cannot find appropriate housing at prices they can afford.

More low-income housing will not, in itself, end homelessness. Nevertheless, increasing the stock of affordable housing, as students are attempting to do through the Yale Workshop, is one necessary step in addressing the immediate needs of homeless individuals and families. Attacking homelessness means addressing both the short-term problem of how to ameliorate immediately the condition of being homeless, as well as devising long-term policy changes that will reduce the risk of becoming homeless.

IV. CONCLUSION

It is within the existing housing market that advocates work to meet the needs of their homeless clients. While it is unclear whether failures in this market require governmental intervention in the form of subsidies, taxation, regulation, or social welfare programs to assist the poor *in the long run*, there can be no realistic or humanitarian argument that such governmental actions are not necessary in the short run.¹⁰⁵ Poverty, a shortage of affordable housing, and ineffective governmental policies are realities that the homeless confront. Advocates must work within these realities to make the existing system better for their clients. Within the existing housing system, effective immediate actions might merely serve as short-term solutions, but do not reach extreme poverty, unemployment, and social dislocation—the roots of the homelessness problem. Nevertheless, creative advocacy efforts that focus on the immediate needs of homeless people must continue and should be developed further. Merely attempting to change the behavior of homeless people, or allowing the market to correct itself, does not provide solutions to the immediate needs of homeless individuals. Effective social policies should account for both the immediate and the long-term dimensions of the homelessness problem. Social decisions take place in response to a fluctuating, imperfect world. Often, these decisions respond best to crises. Social solutions must be based on the world we know, not on an ideal far removed from the everyday lives of people.

Welfare motels are inadequate. Government should not have to pay for them, and people should not have to live in them. Other

105. Compare A. PIGOU, *THE ECONOMICS OF WELFARE* (1938) (a classic work supporting governmental intervention) with Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) (arguing that governmental intervention is not needed to resolve externality issues). For a criticism of the prevailing interpretations of Coase's theories, see Ellickson, *The Case for Coase and Against Coaseanism*, 99 YALE L.J. 611 (1989).

short-term and short-sighted measures to address the immediate housing needs of poor people may be similarly flawed. Moreover, some variant of the moral hazard¹⁰⁶ argument may be right. More rational policies should be possible, and the search for them is a worthwhile—indeed an essential—endeavor. In the meantime, however, advocates for the homeless must deal with the problems confronting their clients today and tomorrow. If fulfilling ethical obligations to clients imposes excessive governmental costs, zealous advocacy may have the beneficial long-term effect of providing economic incentives to government to devise more rational policies.

106. There is another kind of moral hazard in all of this: that government will fail to acknowledge an obligation to ameliorate the effect on the poor of an increasingly deregulated housing market in which more and more poor people lack the financial resources to secure affordable housing.