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The Right to Housing: An Effective Means for Addressing Homelessness?

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THE RIGHT TO HOUSING: AN EFFECTIVE MEANS FOR ADDRESSING HOMELESSNESS?

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INTRODUCTION

In December of 2006, a group called the Sons of Don Quixote set up hundreds of tents along the Canal St. Martin in the heart of Paris to call attention to the growing problem of homelessness and housing affordability in France. At the heart of the group's very visible social action was the desire to see the establishment of an enforceable right to housing as a means to address homelessness. As the group's founder Jean-Baptiste Legrand explained, "We must end the system that has been in place for years and years . . . it's all well to distribute meals or offer a roof for a night . . . but now we are asking for radical measures to address the roots of the problem".[1] Several months later in March 2007, due in no small part to the actions of the Sons of Don Quixote, French lawmakers passed emergency legislation creating a legally enforceable right to housing, known as DALO—an abbreviation of the French phrase *droit au logement,* meaning "right to housing".[2]

While the actions of the Sons of Don Quixote may have been novel, the concept of housing as a fundamental right is not. A number of international human rights instruments establish a right to housing, with the most important being the 1948 Universal Declaration of Human Rights[3] and the 1966 United Nations International Covenant on Economic, Social, and Cultural Rights (ICESCR).[4] These two documents

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[1] Stéphane Mazzorato, *Quelles solutions immédiates pour les sans-logis? [What immediate solutions for the homeless?]*, LE MONDE, Jan. 2, 2007, *available at* http://www.lemonde.fr/web/imprimer_element/0,40-0@2-3224,50-851302,0.html.

[2] Loi 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale [Law 2007-290 of March 5, 2007 creating the enforceable right to housing and various measures in favor of social cohesion], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE [OFFICIAL GAZETTE OF FRANCE], Mar. 6, 2007, p. 4, *available at* http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000271094&dateTexte= [hereinafter *DALO*].

[3] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter *Universal Declaration of Human Rights*].

[4] International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/6316 (Dec. 16, 1966) [hereinafter *ICESCR*].

provide much of the framework for the discourse on international human rights, and likewise form the basis of international human rights law. In terms of the key provisions establishing a right to housing, the two documents are quite similar. The Universal Declaration of Human Rights states in Article 25 (1), "[e]veryone has the right to a standard of living adequate for health and well-being of himself [or herself] and his [or her] family, including food, clothing, housing and medical care and necessary social services."[5] In the ICESCR, Article 11(1) deals most directly with housing rights:

> The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.[6]

The notable difference between these two documents is that while the Universal Declaration of Human Rights places no binding obligations on nations, the ICESCR requires states that have ratified it to "take appropriate steps to ensure the realization" of a right to housing.[7] In other words, by ratifying the ICESCR, states not only accept the principle of a right to housing, but also have a binding obligation to uphold and promote this right. As we will see, this is an important distinction in understanding the extent to which a housing rights framework factors into the discourse around homelessness and housing issues in a given country.

The key documents which establish a right to housing are now many decades old, demonstrating the long history of a conceptual right to housing. Despite this lengthy history, instances where the conceptual right to housing has been used to obtain or provide housing to those who would seem to benefit from it most directly—namely persons experiencing homelessness—remain rare. In light of this fact, the overarching aim of this paper is to explore the concept of housing rights and the potential application of a rights-based framework as a mechanism for addressing homelessness. We will do so largely by comparing and contrasting the European experience, where a right to housing framework exists and is part of the homelessness discourse, with the experience in the United States, where such a framework does not exist, and by and large does not factor into discussions on how to address homelessness. From the European experience, we are able to identify the benefits and limitations of applying a rights-based approach to homelessness, while from the experience in the United States we are able to discuss what exists in the absence of such a framework.

Intended mainly as an introduction and overview of the concept of a "right to housing," this paper will proceed in three parts. First, we will address the question of what is meant by a "right to housing." To answer this question we focus more on how homelessness can or should be understood in relation to the concept of housing rights, and do not wade too deeply into the philosophical and moral underpinnings of housing rights or the inherent validity of the concept itself. Next, this paper will discuss the concept of a right to housing in the European context, where the ICESCR and a number of Europe specific instruments have established a strong right to housing framework. Here, it becomes clear that the viability and success of applying a right to housing approach to the problem of homelessness is in no small part a function of the degree to which a right is legally enforceable. Even then, the effectiveness of such an approach hinges on additional factors. Finally, we will shift attention to the United States where there is no real precedent for

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[5] Universal Declaration of Human Rights, *supra* note 3, at art. 25, para. 1.

[6] ICESCR, *supra* note 4, at art. 11, para 1.

[7] *Id.*

applying a right to housing framework in efforts to address homelessness, largely because the United States has not ratified the ICESCR. However, in the absence of such a framework, alternative guiding principles have emerged. We will discuss the track record of the United States in adhering to these principles.

I. WHAT DOES A "RIGHT TO HOUSING" MEAN?

Any attempt to answer the question of what is meant by a right to housing must also consider the more fundamental issue of *why* housing should be considered a social and economic good to which all persons ought to have access. A full treatment of this question must delve into the political, historical, philosophical, and moral foundations upon which the modern understanding of rights is built. While not wishing to belittle the importance of these foundations, a full discussion as to why it is reasonable to understand housing as something to which all humans should have access is beyond the scope of this paper. Thus, it is perhaps sufficient for our purposes to simply state that the concept of a right to housing draws legitimacy from a strong consensus that housing is a fundamental necessity to which all persons need access in order to maintain a basic level of dignity and have an opportunity to achieve their full potential as human beings. While we are aware there is room for debate on the issue of the validity of treating housing as a right, the absence of a more thorough discussion of this issue does not detract greatly from the primary objective of this paper, which is to examine the application of a right to housing as a mechanism to address homelessness.

Beyond the rationale for a right to housing, there is much room for ambiguity in defining the concept. Even different interpretations as to what sort of residential arrangement qualifies as housing can lead to drastically different meanings of a right to housing. This potential for ambiguity is not a trivial matter, because having a clear definition of a right to housing is crucial for identifying circumstances in which such a right is being actively violated or otherwise denied. This point underscores what are ultimately the most important questions of how a right to housing is defined. These questions must be answered in order to understand the extent to which a rights-based approach can be used as a viable mechanism for addressing homelessness. First, can homelessness be understood as the absence, violation, or denial of a right to housing under the prevailing definition of the concept? Second, and arguably more importantly, if homelessness is viewed as the deprivation of a right to housing, is there an avenue by which this right can be legally enforced?

In response to the first question, advocates and other stakeholders are unequivocal in their position that any serious or valid definition of a right to housing must view homelessness as the deprivation of this right.[8] While the human rights documents providing the basis for housing rights do not explicitly address homelessness, under their definition of a right to housing, homelessness cannot be viewed as anything other than a violation of this right. The UN Human Rights Council's Special Rapporteur on adequate housing has described homelessness as "the most visible and most severe symptom of the lack of respect for the right to adequate housing."[9] Therefore, in discussing what is meant by a right to housing, it is clear that homelessness is best understood as a deprivation of this right.

Perhaps a more important issue for understanding homelessness in relation to the concept of a right to housing is assessing whether such a right can be actively exercised in practice to address homelessness. Many stakeholders vehemently argue that a right to housing means that such a right is legally enforceable. Consequently, persons experiencing homelessness should have a viable course of action to remedy any

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[8] *See generally* THE MAGAZINE OF FEANTSA, Autumn 2008, *available at* http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

[9] OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, THE RIGHT TO ADEQUATE HOUSING: FACT SHEET NO. 21 (2009).

violation of this right through the provision of housing.[10] However, the more commonly accepted meaning of a right to housing is more abstract, and less concrete in terms of the recourse that it offers to individuals. In large part this is due to the somewhat abstract obligations that are placed on nations having ratified the ICESCR.

Under the ICESCR, nations are required to respect, protect, and fulfill the housing rights of their citizens.[11] States must refrain from activities such as forced evictions and also ensure that third parties do not impede access to adequate housing.[12] Nonetheless, these requirements do not compel nations to engage in proactive efforts to promote access to housing. It is primarily the obligation to fulfill housing rights that requires governments to engage in positive policy, budgetary, judicial and other forms of actions to realize the right to housing. It is this obligation to fulfill that is most relevant for understanding how housing rights might be employed as a mechanism to address homelessness. Yet, the obligation to protect housing rights only requires states to progressively engage in efforts to prevent and end homelessness, and only to the extent that available resources allow. Under this obligation, countries are not required to provide housing to each person lacking adequate housing. In other words, the housing rights framework established by the ICESCR does not provide a legally enforceable right that can be exercised on an individual level to obtain housing.

Even though homelessness is one of the most flagrant violations of the right to housing, the right to housing is somewhat limited in terms of its ability to protect individual rights. Rather than a legal right whose violation can be rectified via the judicial system, in most cases, a right to housing is perhaps better described as a mechanism for "programmatic rights,"[13] that compel states to engage in some broader, more abstract form of action to address homelessness. In the next section, we will see what the implications of the existence of a "programmatic" right to housing have been in European countries. Additionally, we will examine two instances of countries that have gone beyond the embracing a "programmatic rights" approach and have created a legally enforceable right to housing.

II. THE RIGHT TO HOUSING IN EUROPE

In Europe, the concept of a right to housing has a fair amount of support, and forms a meaningful part of the dialogue among stakeholders focused on enacting the most effective strategies to address homelessness. In fact, a recent publication by the European Federation of National Organizations Working with the Homeless (FEANSTA) notes that, "FEANTSA and its member organizations have long been advocating for housing rights, and promote a rights-based approach to tackling homelessness."[14] The right to housing framework in Europe draws its strength not only from the ICESCR, which has been ratified by all countries in the European Union, but also from additional European-wide documents that establish a right to housing. For example, the 2000 European Union Charter of Fundamental Rights[15] and the 1996 Revised European Charter of Social Rights[16] both include provisions that recognize housing as a right. State constitutions for a number of European countries, including Belgium, Finland, Portugal, Spain and Sweden,

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[10] PADRAIC KENNA, HOUSING RIGHTS AND HUMAN RIGHTS 8 (FEANTSA 2005).

[11] *The Right to Adequate Housing*, *supra* note 9, at 33.

[12] *Id.*

[13] Suzanne Fitzpatrick & Beth Watts, *'The Right to Housing' For Homeless People*, *in* HOMELESSNESS RESEARCH IN EUROPE 105 (Eoin O'Sullivan et al. eds., 2010).

[14] *Editorial*, THE MAGAZINE OF FEANTSA, Autumn 2008, at 2, *available at* http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

[15] Charter of Fundamental Rights of the European Union, art. 34, 2000 O.J. (C 364) 01.

[16] COUNCIL OF EUROPE: EUROPEAN CHARTER OF SOCIAL RIGHTS 4 (1996).

either articulate a right to housing or refer in more general terms to the state's responsibility to ensure that citizens have adequate housing.[17]

Yet, while there is clearly a strong housing rights framework in European nations, it remains difficult to enforce the right to housing as a viable strategy for addressing homelessness. This is due in no small part to the fact that the documents and constitutional articles upon which the right to housing rests do not compel states to follow narrowly articulated criteria in order to uphold or guarantee a right to housing, and certainly do not provide homeless individuals with the possibility of obtaining housing by exercising a legally enforceable right to housing. Instead, in terms of adhering to the right to housing, countries are only bound to make progress towards addressing homelessness on a larger scale. However, given the inherent ambiguity of such a requirement, it is quite difficult to monitor progress and consequently, to determine whether states truly respect housing rights and are meeting their obligations to promote a right to housing. In other words, it is difficult to assess whether the existence of a "programmatic" right to housing in European countries has any impact on the problem of homelessness in the aggregate. In most countries it is clear that, at the individual level, the existence of such a right does not provide much recourse to individuals experiencing homelessness. There are, however, two important exceptions to this latter point, and the experiences in these countries provide some insight as to what results when countries move to adopt a legally enforceable right to housing.

A. *The Benefits and Limitations of a Legally Enforceable Right to Housing: The English and French Experience*

Both England and France have adopted a legally enforceable right to housing, and the experiences in these countries underscore the benefits and limitations inherent in the application of such a right to housing once it has been established. In England, the legally enforceable right to housing was initially created by the Homeless Persons Act 1977, which was later superseded by the Housing Act 1985, the Housing Act 1996 and the Homelessness Act 2002.[18] The English legislation requires local authorities to provide "settled" (i.e. permanent) housing to certain "priority need" groups of homeless persons (e.g. households with children, elderly adults, adults with disabilities, or those made homeless as a result of an emergency), who are determined not to be intentionally homeless.[19] Under this legislation, households can exercise their right to housing by applying directly to a local housing authority. If denied, applicants can then request a review of their application by the local housing authority and file an appeal with the judicial system, which has the power to overturn a denial of an application.[20] Importantly, responsibility for providing housing to eligible priority groups of homeless persons is highly decentralized, with local authorities charged with locating permanent housing, whether in their available stock of social housing or in the private market.[21]

In France, the emergence of an enforceable right to housing, known as DALO, is a relatively new development, and was created by legislation passed in March of 2007.[22] French citizens or persons lawfully residing in France who cannot access and remain in housing using their own resources, and who also meet

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[17] *The Right to Adequate Housing*, *supra* note 9, at 14.

[18] *See* Marie Loison-Leruste & Deborah Quilgars, *Increasing Access to Housing: Implementing the Right to Housing in England and France*, 3 EUR. J. HOMELESSNESS 75, 82 (2009).

[19] *Id.*

[20] *Id.* at 83.

[21] *Id.*

[22] DALO, *supra* note 2.

eligibility criteria for placement in social housing, can enforce the right to housing.[23] In contrast to the English situation, under the French system, persons need not literally be homeless in order to appeal to have their right to housing enforced. Applicants can include those who have applied for social housing but have not received such housing after an extended period of time, those who are homeless or living in doubled-up situations, those facing homelessness due to imminent eviction, those living in emergency shelter or temporary accommodations for extended periods of time, those living in substandard or overcrowded housing situations, and those who have applied for placement in emergency housing but have not been placed.[24] Thus, the legally enforceable right to housing in France covers a fairly broad swath of unstable residential situations, meaning that persons with an equally broad range of housing needs are covered by the legislation.

Unlike the English right to housing, the responsibility for enforcement in France lies primarily with the central government.[25] Those wishing to exercise their right to housing make an appeal to social committees comprised of stakeholders from the government, landlord and tenant organizations, shelter providers, and other non-profit agencies that exist in each of France's administrative units, known as departments.[26] While these committees do not have power to grant a housing placement to applicants, they provide a recommendation to administrators from the central government about whether a household should be approved for housing, and how their housing needs should be met.[27] If an applicant disagrees with the decision of the social committee, the committee's decision can be challenged in the judicial system.[28] Likewise, households that have not been offered housing within three to six months of the social committee's decision can file a judicial appeal to force the government to act on the committee's decision and provide housing to the applicant.[29]

While functionally different in each country, the French and English cases underscore the benefits and limitations to the application of a legally enforceable right to housing as a mechanism for addressing homelessness. On the one hand, as the English case demonstrates, the existence of such a right can contribute to a paradigm shift in how a nation addresses the problem of homelessness. On the other hand, the French case shows that caution must be exercised in assuming that an enforceable right to housing will serve as a panacea to homelessness, as the effectiveness of such an approach depends on a number of additional factors including an adequate stock of available housing and the relative ease with which individuals are able to navigate the administrative procedures necessary to access and exercise their right to housing.

Since 2002, there has been a concerted emphasis on implementing interventions designed to prevent homelessness in England. Part of the impetus for the shift towards a prevention-based system of homeless assistance was the pressure local authorities faced to house the rapidly growing number of people who qualified for housing placement under the right to housing legislation.[30] In addition, there was concern that the placement in social housing of persons qualifying as members of one of the "priority need" homeless groups, was limiting the availability of housing slots for other households with pressing housing needs.[31]

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[23] *Id.*

[24] *Id.* at ch. 2, art. 51, sec. 5.

[25] *Id.* at ch. 1, art. 1.

[26] *Id.* at ch. 1, art. 7.

[27] *Id.*

[28] DALO, *supra* note 2, at ch. 1, art. 9.

[29] *Id.*

[30] Volker Busch-Geertsema & Suzanne Fitzpatrick, *Effective Homelessness Prevention? Explaining Reductions in Homelessness in Germany and England*, 2 EUR. J. HOMELESSNESS 69, 82-83 (2008).

[31] Hal Pawson, *Local Authority Homelessness Prevention in England: Empowering Consumers or Denying*

Thus, prevention efforts in England have largely focused on persons likely to fall into one of the "priority need" categories, for whom local housing authorities would be required to re-house if they were to become homeless.[32] These efforts have been quite successful, as homelessness has declined markedly in England since 2003.[33]

While the English experience suggests that one of the primary benefits of having a legally enforceable right to housing is that it can be an important driver of a shift towards more effective policies and strategies addressing homelessness, the French experience highlights some of the challenges that come with establishing an enforceable right to housing. These challenges fall primarily into one of two categories: the availability of housing and procedural issues.

First, as noted by the leading housing advocacy organization in France, the effectiveness of the right to housing relies in no small part on the availability of housing, and in areas where there is a limited availability of social or other forms of affordable housing, it will be difficult to guarantee that the right is upheld.[34] The organization argues that in order to uphold this right, there must be 500,000 units of housing produced for several years, a figure well above current levels of production, to ensure that the right to housing law can be implemented as intended and meet the presumed volume of applications.[35] Therefore, an enforceable right to housing can only be an effective solution to homelessness to the extent allowable by the supply of housing.

Second, the success of a legally enforceable right to housing depends in no small part on a number of procedural issues. Chief among these is the ability of eligible persons to access the right to housing and take advantage of the benefits that it confers. As Loison-Leruste and Quilgars argue, the low level of claims for the right to housing relative to the expected level of demand suggests that individuals and households are having difficulty accessing that right.[36] This could be due to a lack of awareness on the part of individuals, government officials, and key players in the social welfare system as to what the right to housing confers and to whom, or to the fact that "lodging a formal appeal is neither an easy nor routine task."[37] The relative complexity of the application process in France underscores a crucial point when it comes to assessing whether a right to housing can be an effective mechanism for addressing homelessness. To the extent that exercising an enforceable right to housing represents a burdensome and complicated administrative task, those among the homeless population who are most in need of the benefits provided by such a right may be the least well-positioned to exercise it.

While a legally enforceable right to housing has existed in France for less than three years, the experience thus far has highlighted some of the limitations that come with attempting to implement such a right. A recent review of the progress of the French right to housing law found that only 30,000 of the 144,000 households with approved claims had been housed,[38] underscoring the point that the mere existence of an enforceable right to housing is not enough to ensure that it will be successful in making progress

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Rights? 22 HOUSING STUDIES 867, 872-73 (2007).

[32] *Id.*

[33] Busch-Geertsema, *supra* note 30, at 70.

[34] FONDATION ABBÉ PIERRE, L'ETAT DU MAL-LOGEMENT EN FRANCE [THE STATE OF HOUSING EXCLUSION IN FRANCE] 139 (2011).

[35] *Id.* at 188.

[36] Loison-Leruste *supra* note 18, at 91.

[37] Bernard Lacharme, *Progress Report on the Right to Housing in France*, THE MAGAZINE OF FEANTSA, Autumn 2008, at 23, *available at* http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

[38] *France: Right to Housing "Not Universally Guaranteed,"* FEANTSA FLASH (Feantsa, Brussels, Belg.), Dec. 2010 at 6.

towards eliminating homelessness or housing instability.

Nonetheless, like the English experience, there is reason to believe that the primary benefit of the right to housing in France has occurred on a larger policy level, where the problems of homelessness and instability have garnered increased attention. The success of a legally enforceable right may be best measured not in terms of the number of persons that obtain housing as a result of its existence, but in terms of its ability to redirect the overall policy orientation of a country towards more effective solutions to homelessness. Indeed, the ultimate benefit of an enforceable right to housing is possibly best described by Lacharme, who argues:

> The DALO Act did not magic away all the problems, but it did engage an irreversible process: there is no going back from the performance obligation. The enforceability of the right to housing is a potent force for action by those enduring housing deprivation and those who work with them.[39]

III. THE AMERICAN PERSPECTIVE

Housing rights, whether legally enforceable or not, play a large and increasingly prominent role in the European homelessness discourse, but have been much less of a factor in the United States. The Obama Administration recently voiced support for a United Nations Human Rights Council recommendation that the United States "continue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society."[40] However, expressing support for this recommendation certainly does not convey support for viewing housing as a human right. In large part, the lack of a strong housing rights based framework in the United States can be attributed to the fact that our nation has not ratified the ICESCR, and therefore is not bound to uphold the provisions relevant to housing rights contained in that document. Indeed, traces of a rights based approach to homelessness can be seen in only a few places in the United States.

Most notable in this regard is the legally enforceable right to shelter that exists in New York City. This right to shelter was established in a 1981 New York State Supreme Court consent decree in a class action lawsuit brought on the behalf of homeless men in New York City, in which it was argued that provisions in the New York State Constitution established a right to shelter meeting certain minimum standards.[41] However, the legacy of this enforceable right to shelter in New York City has been mixed. Rather than providing stable housing situations for the homeless of New York City, this right to shelter has instead led to the creation of the largest and most expensive emergency shelter system in the United States.

Apart from the New York right to shelter, most discussion and litigation in the domain of rights and homelessness has focused on challenging city ordinances that prohibit individuals from sleeping in public places, with a number of challenges litigated in the federal court system.[42] The basis for challenges to these ordinances is that they represent a violation of the civil rights of homeless persons who have no other place to sleep. Yet, it is noteworthy that the aim of appeals to these ordinances is not to provide housing for

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[39] Lacharme, *supra* note 37, at 24.

[40] U.S. DEPARTMENT OF STATE, U.S. RESPONSE TO UN HUMAN RIGHTS COUNCIL WORKING GROUP REPORT (2011), *available at* http://wwww.state.govt./g/drl/upr/157986.ht.

[41] Callahan v. Carey, No. 42582-79 (N.Y. Sup. Ct. Dec. 5, 1979).

[42] *See, e.g.*, Pottinger v. City of Miami, 87 F.3d 1320 (9th Cir. 1996); Jones v. City of Los Angeles, No. CV 03-1142 ER (C.D. Cal. 2006); Richardson v. City of Atlanta, No. 97-CV-2468 (N.D. Ga. 1997); Clark v. City of Cincinnati, No. 1-95-448 (S.D. Ohio 1995).

homeless persons, but rather to simply preserve their right to remain visibly and publicly homeless without police harassment. As these cases and the right to shelter in New York City demonstrate, the only real legally enforceable housing related rights that exist in the United States are ones that do little more than contribute to continued homelessness. Clearly, these rights cannot truly be equated with the legally enforceable rights to housing that exist in France and England, where in both cases there is an explicit obligation to provide "settled" or permanent housing.

As we have seen, one of the primary benefits of the existence of a right to housing framework in European countries is that it obliges governments to take the problems of homelessness and housing instability seriously and at least in theory, to make a concerted effort towards providing for the housing needs of their citizenry. The fact that such an equivalent framework is largely nonexistent in the United States leads to the question of what then, exists in its absence. In other words, is there any framework in the United States that places some responsibility on the government to provide for the housing needs of vulnerable Americans? And if so, what has been the track record in upholding this responsibility? The remainder of this section will be dedicated primarily to addressing these two questions.

In response to the first question, on a national level, the nearest approximation of a right to housing in the United States can be found in the Housing Act of 1949, which calls for "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."[43] While strongly worded, the inclusion of this provision is not quite strong enough to be interpreted as establishing a right to housing for all American citizens. Instead, it is perhaps more appropriate to describe it, as Freeman does, as "an explicit social contract to provide adequate housing for [America's] entire population."[44] That there was an intent to make good on this contract seemed apparent in the initial decades following the passage of the Housing Act of 1949, as there were great expansions in public housing and a number of measures were introduced that made it possible for millions of Americans to purchase homes.[45] However, more recent experience indicates that the social contract created by the Housing Act is not a binding one, as progress has fallen sharply in providing for the housing needs of vulnerable Americans experiencing homelessness and housing instability.[46]

The degree to which progress towards the goal of providing a decent home for all Americans has stalled can be seen most clearly in the dwindling supply of affordable rental units for low-income individuals, who are most at risk of experiencing homelessness. Between 1995 and 2005, roughly 2.2 million low-cost rental units were lost from the nation's rental stock,[47] a figure that was twice as large as the loss of all other types of units combined. This trend has continued through the economic recession, and most of the losses in low-income units are permanent due to demolition, natural disasters or conversion to non-residential uses.[48]

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[43] United States Housing Act, 42 U.S.C. § 1441 (1949).

[44] Lance Freeman, *America's Affordable Housing Crisis: A Contract Unfulfilled*, 92 AM. J. PUB. HEALTH 709 (2002).

[45] *See generally* Charles J. Orlebeke, *The Evolution of Low-income Housing Policy, 1949 to 1999*,11 HOUSING POLICY DEBATE 489-520 (2000).

[46] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WORST CASE HOUSING NEEDS 2009: A REPORT TO CONGRESS vii (2011) [hereinafter WORST CASE HOUSING NEEDS], *available at* http://www.huduser.org /Publications/pdf/worstcase_HsgNeeds09.pdf.

[47] JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, AMERICA'S RENTAL HOUSING: THE KEY TO A BALANCED NATIONAL POLICY 13, 15 (2008) [hereinafter AMERICA'S RENTAL HOUSING].

[48] JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 25 (2010).

Over the past few decades, the decline in the availability of affordable housing and the corresponding failure to produce more units of affordable housing has contributed greatly to the problem of homelessness in the United States. Yet, within this broader context, it is important to recognize that progress has been made in certain targeted homeless assistance programs. The prime example of this progress has been the expansion of the provision of permanent supported housing—broadly defined as subsidized housing with accompanying supportive services—to chronically, or long-term homeless persons with serious mental illnesses or other disabilities. Here, roughly 70,000 units of supportive housing were created between 2002 and 2007, leading to a thirty percent decrease in chronic homelessness in the United States between 2005 and 2009.[49]

To be sure, the expansion of permanent supportive housing and the reductions in chronic homelessness are important steps towards fulfilling the goals established in the Housing Act of 1949. However, there still appears to be very little real intent to address the broader housing affordability crisis that is truly at the root of homelessness. The broader housing affordability crisis is evidenced by the drop in the availability of affordable housing units and the sharp increase in the number of low-income Americans who are facing severe rent burdens, defined as a household paying more than one half of its income on rent.[50] The number of households falling into this severe rent burden category has grown by forty-two percent since 2001, to the point that in 2009, forty-one percent of the roughly 17 million very low-income renters in the United States were severely rent burdened.[51] These statistics are sobering and indicate just what a tenuous position the United States is in with respect to the goal of providing a decent home for all Americans. Moreover, given that very low-income households with severe rent burdens are also those most likely to become homeless, it is clear that much work remains in order to rectify the widespread affordability problem that is primarily responsible for homelessness.

Clearly, the track record of adherence to the goal of providing a decent home for all Americans has been less than optimal in recent years. What then can or should be done to reorient policy towards achieving this goal? One area that certainly requires a remedy is the inequity inherent in the existence of the mortgage interest deduction. This policy, which allows homeowners to deduct interest paid on a mortgage from their income when filing taxes, comes at a cost of roughly $130 billion annually, an amount far greater than the $48 billion in outlays by the Department of Housing and Urban Development.[52] In effect, this represents a hugely expensive social welfare program that almost exclusively benefits middle and higher income Americans. There is no equivalent benefit for renters, resulting in a system that provides little assistance to help low-income renters and is consequently ill-equipped to address widespread affordability problems. Introducing some sort of equivalent tax benefit for renters would be a good first step towards rectifying the housing affordability problem.

A number of additional policy objectives might also help redirect policy in a direction that could tackle the structural causes of homelessness. First, it is important to focus on preserving the existing stock of low-cost units and stemming losses of additional affordable units that would place even greater strain on low-income renters. In addition, the Section 8 Housing Choice Voucher Program, a housing subsidy that is the primary federal form of housing assistance for low-income families, should be expanded. Currently, due to funding restrictions, only one in four households that are eligible for a Section 8 Voucher actually receive

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[49] CORPORATION FOR SUPPORTIVE HOUSING, REACHING THE GOAL OF 150,000 NEW UNITS: HOW CLOSE ARE WE? AN UPDATE PREPARED FOR THE 2008 SUPPORTIVE HOUSING LEADERSHIP FORUM 1 (2008).

[50] WORST CASE HOUSING NEEDS, *supra* note 46.

[51] *Id.*

[52] ERIC TODER ET AL., TAX POLICY CENTER, REFORMING THE MORTGAGE INTEREST DEDUCTION 1 (2010), *available at* http://www.taxpolicycenter.org/uploadedpdf/412099-mortgage-deduction-reform.pdf.

one, and as a result, long waiting lists for assistance are the norm.[53] Jill Khadduri outlines a plan for expanding and reforming the Section 8 program in a manner such that housing subsidies would be more effective mechanisms for reducing homelessness. The strategy relies largely on ensuring that subsidies are targeted towards those households most at risk of experiencing homelessness and those jurisdictions with the highest rates of homelessness.[54] In addition to preserving the existing stock of affordable housing and increasing the number of Section 8 Vouchers, more needs to be done on the supply side to add affordable rental units to the housing stock. Some have argued that this will entail easing local regulations such as zoning requirements and permitting processes that discourage investment in the creation of affordable housing.[55] Perhaps more important will be ensuring that the recently created National Housing Trust Fund (NHTF) receives adequate levels of investment. Created by legislation passed in 2008, the NHTF is intended to serve as a funding source for the creation of housing for persons with low-incomes.[56] The initial intent was for earnings from Fannie Mae and Freddie Mac to provide much of the capital for the NHTF.[57] However, contributions from Fannie Mae and Freddie Mac were suspended once they were taken over by the Federal Housing Finance Administration.[58] Thus, other revenue sources will need to be located to ensure that the NHTF is adequately capitalized, and some advocates have proposed that revenue for the NHTF come through reform of the mortgage interest deduction.[59] Whatever the funding source, the NHTF represents a potentially highly valuable mechanism for increasing the stock of affordable housing in the United States.

Finally, in May 2009, the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH Act), a reauthorization of the McKinney-Vento Homeless Assistance Act, established the goal of ensuring that households who became homeless would be returned to permanent housing within thirty days.[60] This goal, along with a growing emphasis on homeless prevention in the United States, as evidenced by the Homeless Prevention and Rapid Rehousing (HPRP) program, offer encouraging evidence that homeless assistance policy in the United States is moving towards a preference for housing placement as its primary intervention. Efforts should be made to ensure that such a policy shift is ultimately completed.

VI. CONCLUSION

The intent of this paper was to provide a brief overview of the concept of a right to housing and to examine how this concept might be used in efforts to address homelessness. In contrasting the European and American experiences, we were able to not only highlight the benefits and limitations of a housing rights based approach to homelessness, but also better understand what exists in the absence of a housing rights framework. While the European experience is mixed in regards to what it suggests about the success of a

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[53] DOUGLAS RICE & BARBARA SARD, CTR. FOR BUDGET & POLICY PRIORITIES, DECADE OF NEGLECT HAS WEAKENED FEDERAL LOW-INCOME HOUSING PROGRAMS: NEW RESOURCES REQUIRED TO MEET GROWING NEEDS 3-4 (2009), *available at* http://www.cbpp.org/files/2-24-09hous.pdf.

[54] Jill Khadduri, *Rental Subsidies: Reducing Homelessness, in* HOW TO HOUSE THE HOMELESS (Ingrid Gould Ellen & Brendan O'Flaherty eds., 2010).

[55] AMERICA'S RENTAL HOUSING, *supra* note 47, at 20.

[56] NATIONAL LOW INCOME HOUSING COALITION, NATIONAL HOUSING TRUST FUND: FREQUENTLY ASKED QUESTIONS 1 (2011), *available at* http://www.nlihc.org/doc/NHTF-FAQ.pdf.

[57] *Id.* at 1.

[58] *Id.* at 2.

[59] *Id.*

[60] NATIONAL ALLIANCE TO END HOMELESSNESS, SUMMARY OF HEARTH ACT 9 (2009), *available at* www.endhomelessness.org/files/2098_file_HEARTH_Act_Summary_FINAL_6_8_09.pdf.

rights based approach, it is nonetheless clear from the experiences of France and England that creating a legally enforceable right to housing has, at a minimum, the effect of forcing lawmakers to treat homelessness and housing instability as pressing policy problems. In addition, even in European nations without a legally enforceable right to housing, governments are, at least in principle, legally bound to make progress towards ensuring that homeless persons are housed. However, a comparable situation where the government is compelled to make concerted efforts towards addressing homelessness does not exist in the United States. In place of a housing rights based framework, the United States has a clearly articulated goal of providing a decent home for all Americans. However, while the goal of providing a decent home for all Americans is rather straightforward, the obligations and responsibilities that this goal creates are rather ambiguous. In short, as the piecemeal nature of our proposed policy objectives reflect, the best course of action for addressing homelessness in the United States has been through a largely hodgepodge approach that is likely rife with inefficiencies.