FOURTH AMENDMENT CHALLENGES TO "CAMPING ORDINANCES": A LEGAL STRATEGY TO FORCE LEGISLATIVE SOLUTIONS TO HOMELESSNESS

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I. INTRODUCTION

Municipal "camping ordinances" typically regulate or prohibit camping or sleeping in parks and other public areas.[1] From a public safety perspective, such statutes safeguard a locality's public spaces from nocturnal criminal activity.[2] Under contrary views, camping ordinances prohibit life-sustaining activities to redirect members of a city's homeless population away from certain public areas.[3]

Irrespective of their legislative intent, camping ordinances raise serious concerns about the constitutional rights of homeless and shelterless citizens.[4] By proscribing the act of sleeping, city councils jeopardize intentionally or incidentally homeless individuals' rights of privacy, travel, and equal protection.[5] Constitutional challenges to anti-camping legislation invoke the Fourth, Eighth, and Fourteenth Amendments, as well as various judicial doctrines and precepts of

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1. *See, e.g.*, VANCOUVER MUN. CODE § 8.22.040 (2002), *available at* http://www.cityofvancouver.us/MunicipalCode.asp ("It shall be unlawful for any person to camp, occupy camp facilities for purposes of habitation, or use camp paraphernalia in the following areas . . . : (1) any park; (2) any street; or (3) any publicly owned or maintained parking lot or other publicly owned or maintained area . . . .")

2. *See* Andrew J. Liese, Note, *We Can Do Better: Anti-Homeless Ordinances as Violations of State Substantive Due Process Law*, 59 VAND. L. REV. 1413, 1421 (2006).

3. *See* Paul Ades, Comment, *The Unconstitutionality of "Antihomeless" Laws: Ordinances Prohibiting Sleeping in Outdoor Public Areas as a Violation of the Right to Travel*, 77 CAL. L. REV. 595, 596 (1989); Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 647 (1992).

4. *See* Ades, *supra* note 3, at 596-97; Robert C. McConkey III, Comment, *"Camping Ordinances" and the Homeless: Constitutional and Moral Issues Raised by Ordinances Prohibiting Sleeping in Public Areas*, 26 CUMB. L. REV. 633, 637 (1996).

5. *See* Gregory Townsend, *Cardboard Castles: The Fourth Amendment's Protection of the Homeless's Makeshift Shelters in Public Areas*, 35 CAL. W. L. REV. 223, 229 (1999) (citing *People v. Thomas*, 45 Cal. Rptr. 2d 610 (Cal. Ct. App. 1995)); Ades, *supra* note 3, at 617.

criminal and constitutional law.[6] Homeless plaintiffs have sought to invalidate anti-sleeping and vagrancy laws on these grounds.[7]

Undergirding such constitutional challenges, questions remain: In what ways would the invalidation of camping ordinances help solve the dual problems of homelessness and poverty? Should public recreational areas become de facto living spaces for the homeless? Lawyers advocating for the homeless should not rely merely on constitutional arguments challenging individual city ordinances. Rather, they should examine legal challenges to anti-sleeping and camping legislation that will force legislative solutions to the problem of homelessness.[8]

This Article argues that Fourth Amendment challenges to camping ordinances can prompt legislative efforts to solve the problem of homelessness in U.S. cities. By properly employing the Supreme Court of the United States' judicial standard for privacy rights, courts should consider the efforts of individual cities' efforts to curb poverty when asking the following question: does society view a homeless person's expectation of privacy as reasonable?

II. CONSTITUTIONAL CHALLENGES TO "CAMPING ORDINANCES"

A. "Camping Ordinances" as Cruel and Unusual Punishment

1. Punishing Mere Status

The Eighth Amendment mandates that "cruel and unusual punishments [shall not be] inflicted."[9] Among the many judicial doctrines resulting from this prohibition, the Supreme Court has held that legislation punishing mere status is unconstitutional.[10] In *Robinson*, the Court invalidated a California law criminalizing addiction to narcotics regardless of whether the addict actually used narcotics or

6. *See, e.g.*, Johnson v. City of Dallas, 860 F. Supp. 344, 349, 351, 358 (N.D. Tex. 1994); Pottinger v. City of Miami, 810 F. Supp. 1551, 1571, 1576-77 (S.D. Fla. 1992); Tobe v. City of Santa Ana, 892 P.2d 1145, 1164 (Cal. 1995).

7. *See, e.g.*, Amezquita v. Hernandez-Colon, 518 F.2d 8, 9 (1st Cir. 1975); Joyce v. City of San Francisco, 846 F. Supp. 843, 853 (N.D. Cal. 1994).

8. *See* McConkey, *supra* note 4, at 667.

9. U.S. CONST. amend. VIII.

10. *See* Robinson v. California, 370 U.S. 660, 667 (1962).

committed other crimes associated with the addiction.[11] According to *Robinson*, statutes are unconstitutional when they punish status alone and not the acts derivative of a person's status.[12] Courts later clarified the definition of status under the Eighth Amendment as applied to homeless individuals.[13]

Courts rarely invalidate "camping ordinances" for being punitive of status alone.[14] Because camping and anti-sleeping laws do not mention the homeless population, it is difficult to argue that such legislation explicitly bans the very condition of being homeless. In *Tobe*, the city of Santa Ana, California enacted an ordinance that banned "camping" and storing personal property on public streets and other public areas.[15] The police strictly enforced the ordinance by confiscating makeshift living materials, removing the homeless from public areas and missions, and implementing a sweep against homeless residents in the city's civic center.[16] A group of Santa Ana taxpayers challenged the statute's constitutionality to bar enforcement.[17] The California Court of Appeal held that the ordinance criminalized the involuntary status of homelessness and constituted "a transparent manifestation of Santa Ana's policy... to expel the homeless."[18] Thus, the law's punitive measure constituted cruel and unusual punishment under the Eighth Amendment.[19] The Supreme Court of California reversed the decision, however, and upheld the camping ordinance because it did not facially or explicitly punish the mere status of homelessness.[20] The court rules that trespassing, storing personal property in public areas, and camping were all acts "derivative" of homelessness.[21] *Tobe*'s distinction between "status" and "acts derivative of status" not only relied on language in *Robinson*,[22] but also parroted lower court decisions rendered just one

11. *Id.*, *see also* McConkey, *supra* note 4, at 641 (placing *Robinson* as the first in a line of cases addressing criminalized status with respect to the Eighth Amendment).
12. *Robinson*, 370 U.S. at 666.
13. *See* Joel v. City of Orlando, 232 F.3d 1353, 1362 (11th Cir. 2000).
14. *See* McConkey, *supra* note 4, at 640-41.
15. *Tobe*, 892 P.2d at 1150-51.
16. *Id.* at 1151.
17. Tobe v. City of Santa Ana, 27 Cal. Rptr. 2d 386, 387 (Cal. Ct. App. 1994), *rev'd*, 892 P.2d 1145 (Cal. 1995).
18. *Id.* at 393, 395.
19. *Id.* at 393.
20. *Tobe*, 892 P.2d at 1150.
21. *Id.* at 1166-67.
22. *Id.* at 1166 (citing *Robinson*, 370 U.S. at 664, 666).

year earlier.[23] Needless to say, plaintiffs challenging camping ordinances on Eighth Amendment grounds faced an uphill battle.[24]

2. Involuntary Homelessness: Judicial Assessment of Legislative Efforts

While *Robinson* and *Tobe* stand for the proposition that a locality may punish acts derivative of status, neither court addressed the more difficult issue of whether cities can punish "involuntary [conduct] or [conduct] occasioned by a compulsion."[25] A federal court in Florida explored the notion of involuntary homelessness as constitutionally unpunishable in *Pottinger v. City of Miami*.[26] In *Pottinger*, homeless plaintiffs challenged a Miami ordinance that made it "unlawful for any person to sleep on any of the streets, sidewalks, public places or upon the private property of another without the consent of the owner thereof."[27] The court's treatment of the plaintiffs' Eighth Amendment claim is particularly instructive. The court determined that the plaintiffs, as homeless residents of Miami, were involuntarily compelled to sleep in public.[28] Moreover, the very state of homelessness was involuntary "due to various economic, physical or psychological factors that are beyond the homeless individual's control."[29] Most importantly, the *Pottinger* court examined Miami's past efforts to shelter its homeless residents:

> [T]he City does not have enough shelter to house Miami's homeless residents. Consequently, the City cannot argue persuasively that the homeless have made a deliberate choice to live in public places or that their decision to sleep in the park as opposed to some other exposed place is a volitional act. ...Avoiding public

23. *See generally Joyce*, 846 F. Supp. 843 (rejecting homeless plaintiffs' Eighth Amendment challenge of a San Francisco ordinance that prohibited, among other activities, camping or sleeping in public parks); Powell v. Texas, 392 U.S. 514, 533 (1968) (upholding a public drunkenness statute against an Eighth Amendment challenge and noting that "criminal penalties may be inflicted only if the accused has committed some *actus reus*), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995). In *Tobe*, the Santa Ana statute prohibited the *actus reus* of camping *Tobe*, 892 P.2d at 1150-51.

24. *Id.* at 1166-67 (citing *Joyce*, 846 F. Supp. 843 at 857).

25. *Powell*, 392 U.S. at 533.

26. 810 F. Supp. 1551 (S.D. Fla. 1992).

27. *Id.* at 1559-60 n.11 (*citing* MIAMI, FLA. CODE § 37-63 (1990) (current version at MIAMI, FLA. CODE § 37-3 (2007), *available at* http://www.municode.com/resources/gateway.asp).

28. *Id.* at 1563 ("[T]he record in the present case amply supports the plaintiffs' claim that their homeless condition compels them to perform certain life-sustaining activities in public.").

29. *Id.*

> places when engaging in this otherwise innocent conduct is also impossible. As long as homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances... effectively
>
> punish them for something for which they may not be convicted under the Eighth Amendment—sleeping, eating and other innocent conduct.[30]

After considering Miami's lack of available shelter space for the homeless, the *Pottinger* court concluded that the city's camping ordinance violated the Eighth Amendment by prohibiting innocent conduct that was not a volitional act.[31] In other words, the Miami ordinance did not punish any *actus reus*, or act derivative of status.[32] Sleeping and living in public were not acts in the normal sense of the word, but non-volitional conditions of necessity.[33]

It is critically important that the *Pottinger* court considered the city's lack of commitment to ending poverty and homelessness as a factor in adjudicating the constitutionality of its laws.[34] This judicial method could motivate cities and localities to make greater efforts to solve their problems of poverty legislatively, instead of simply criminalizing the symptoms of homelessness. As discussed in Part III. C, *infra*, Eighth Amendment challenges are not the only way courts have assessed legislative efforts to end homelessness.[35] Indeed, in Fourth Amendment jurisprudence, at least one court has factored the local provision of homeless shelters when applying governing Supreme Court precedent.[36]

B. Equal Protection Challenges to Camping Ordinances

The Equal Protection Clause of the Fourteenth Amendment prohibits any state from "deny[ing] to any person within its jurisdiction the equal

30. *Id.* at 1564-65.
31. *Id.* at 1565.
32. *See Tobe*, 892 P.2d at 1166.
33. *See Pottinger*, 810 F. Supp. at 1562.
34. *See id.* at 1564-65.
35. *See* discussion *infra* Part III. C.
36. *See* States v. Dias, 609 P.2d 637, 640 (Haw. 1980).

protection of the laws."[37] In other words, all persons similarly situated must be treated alike under the law.[38] Despite this limitation on state law, the Supreme Court of the United States has held "that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest."[39] Camping ordinances should be construed as rationally related to the legitimate state interests of public safety, crime prevention, and public sanitation. If state or municipal legislation, however, discriminates on the basis of a suspect classification, or infringes upon constitutionally protected fundamental rights, then courts will apply strict scrutiny.[40]

1. Suspect Class

A legal classification is suspect if it is "directed to a 'discrete and insular minority.'"[41] The Supreme Court, however, has consistently held that classifications based on monetary wealth are neither suspect nor subject to judicial strict scrutiny.[42] In that regard, poverty and homelessness do not possess the attributes that generally warrant added constitutional protection and are not suspect classes for equal protection purposes.[43] As a class, the poor are not "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[44] Thus, laws that discriminate on the basis of homelessness or poverty must only be rationally related to a legitimate state interest and are not required to be "suitably tailored to serve a compelling state interest."[45]

2. Fundamental Right to Travel

The Supreme Court has consistently upheld the right of interstate

37. U.S. CONST. amend. XIV, § 1.

38. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985).

39. *Id.* at 440.

40. *See id.*

41. *Pottinger*, 810 F. Supp. at 1578 (quoting United States v. Carolene Prod. Co., 304 U.S. 144, 152 n.4 (1938)).

42. *See, e.g.*, Maher v. Roe, 432 U.S. 464, 470–71 (1977).

43. *See id.* at 471; Kreimer v. Bureau of Police, 958 F.2d 1242, 1269 n.36 (3d Cir. 1992) (stating that the homeless do not constitute a suspect class).

44. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).

45. *Cleburne*, 473 U.S. at 440.

travel as a fundamental right for equal protection purposes.[46] In *Shapiro v. Thompson*, the Court held that any statute directly penalizing the exercise of the right to travel from state to state should be invalidated if it does not pass a heightened scrutiny standard.[47] Thus, such laws are unconstitutional unless they are "suitably tailored to serve a compelling state interest."[48] Accordingly, the Court in *Edwards v. California* invalidated a state law that punished state residents for bringing indigent persons within California borders.[49] Although *Edwards* was ultimately decided on interstate commerce grounds,[50] Justice Douglas' concurrence alternatively provided the rationale for preserving the fundamental right to travel.[51] Douglas reasoned that statutory barriers to travel violated the right to migrate, stating that such laws "would prevent a citizen because he was poor from seeking new horizons in other states."[52] The Supreme Court has since adopted this reasoning at least once,[53] though the Court has failed to address whether the fundamental right to travel includes intrastate movement.

Because most homeless individuals do not have access to transportation,[54] a fundamental rights approach to challenging anti-sleeping ordinances is effective only if the right to travel includes intrastate travel. Arguably, camping ordinances limit a homeless individual's ability to travel within a state or locality by prohibiting life-sustaining activities in various parts of a city, rendering such areas off-limits. Such state impositions, however, do not implicate the right to migrate referred to by Justice Douglas in *Edwards*. Not surprisingly, only one judicial decision implied that the fundamental right to travel covers intrastate activity. In *King v. New Rochelle Municipal Housing Authority*, a local government agency required that families reside in Rochelle, New York for five years before they could apply for state-subsidized housing.[55] The Second Circuit held that the regulation's

46. Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 902-03 (1986); United States v. Guest, 383 U.S. 745, 757 (1966).

47. 394 U.S. 618, 634 (1969).

48. *See Cleburne*, 473 U.S. at 440.

49. Edwards v. California, 314 U.S. 160, 173 (1941).

50. *Id.*

51. *See id.* at 181 (Douglas, J., concurring).

52. *Id.* ("It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity.").

53. *See* Ades, *supra* note 3, at 614 n.149 (citing Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982) ("[The right to travel] protect[s] persons against the erection of actual barriers to interstate movement.")).

54. *Id.* at 609.

55. 442 F.2d 646, 647 (2d Cir. 1971).

durational residence requirement violated the plaintiffs' right to travel.[56] While some plaintiffs hailed from New York cities other than Rochelle, other plaintiffs in *King* were new arrivals from North Carolina.[57] Thus, it is difficult to determine whether the regulation was invalidated because it abridged the right of New York residents to travel interstate, or because the law's residency requirement inhibited lower-class out-of-state residents from moving to New York. Even if we assume that the *King* court subscribed to the former rationale, the case only stands for the proposition that local law may not discourage intrastate travel between cities.[58] Most camping ordinances could only be characterized as limiting intrastate, intra-city travel.

The fundamental right to intrastate, intra-city travel is tenuous at best and generally not recognized by courts. Arguments that camping ordinances unconstitutionally limit a homeless resident's fundamental right to move within a city, therefore, will likely fail.

C. Procedural Due Process: Vagueness

The Due Process Clause of the Fourteenth Amendment requires criminal statutes to be clear and precise enough to give potential offenders fair notice of prohibited conduct.[59] Accordingly, many homeless plaintiffs have challenged camping and anti-sleeping ordinances on the ground that they are unconstitutionally vague. For example, in *Kolender v. Lawson*, the Supreme Court invalidated a California statute that required loitering individuals to "account for [their] presence" and to produce "credible and reliable identification."[60] The Court agreed with the plaintiffs' arguments that the statutory language was too vague to enforce predictably and affirmed the long-standing judicial standard for such laws under the Fourteenth Amendment.[61] By requiring legislatures to define criminal statutes

56. *Id.* at 648.

57. *Id.* at 647.

58. *Id.* at 648.

59. U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law."); *see* Lanzetta v. New Jersey, 306 U.S. 451, 457-58 (1939) (defining the void-for-vagueness doctrine in invalidating a state law that used imprecise statutory terms such as "gangster").

60. 461 U.S. 352, 357, 361 (1983) (internal quotation marks omitted).

61. *Id.* at 357 ("[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.").

clearly and precisely, the Due Process Clause prevents excessive and limitless enforcement of indefinite offenses. As the *Kolender* court explained, a statute's clarity is held to an "ordinary intelligence" standard. [62] Whether a potential offender knows exactly what type of conduct the law prohibits is relatively unimportant and practically impossible.[63] Rather, the Court recognized:

> that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement." Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."[64]

Most courts have rejected void-for-vagueness claims as applied to camping or anti-sleeping ordinances. For instance, in *Tobe*, plaintiffs claimed that the Santa Ana ordinance's vague definitions of "camp" and "camp paraphernalia," and its failure to define "temporary shelter," created ambiguity regarding what conduct was prohibited.[65] The court dismissed this argument outright, observing that those terms did not necessarily apply to the specific criminal conduct of which the petitioners were accused.[66] In *Joyce*, homeless plaintiffs challenged a San Francisco anti-sleeping ordinance stating that: "every person who commits any of the following acts is guilty of disorderly conduct... lodg[ing] in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof."[67] The plaintiffs specifically argued that the words "lodg[ing] [in] public" were unconstitutionally vague,

62. *See id.* at 357. Potential offenders of loitering, camping, or vagrancy laws likely do not have access to the statutory text of a locality's ordinances. Thus, the Court concluded that theoretical notice of the crimes proscribed and limitations on arbitrary enforcement would likely sustain a law against a void-for-vagueness challenge.

63. *Id.* at 357-58.

64. *Id.* at 358 (quoting Smith v. Goguen, 415 U.S. 566, 574–75 (1974) (affirming vagueness doctrine in voiding a state law that prohibited flag desecration)).

65. *Tobe*, 892 P.2d at 1160.

66. *Id.* Because the *Tobe* petition was brought by demurrer, the exact conduct of the accused had not yet been determined. *Id.* Accordingly, the court declared the question of unconstitutional vagueness premature. *Id.*

67. *Joyce*, 846 F. Supp. at 862 n.11 (quoting CAL. PENAL CODE § 647(i)).

encouraging arbitrary and discriminatory enforcement against homeless persons.[68] The court rejected this position for two reasons: (1) the ordinance was not "impermissibly vague in *all* of its applications,"[69] and (2) the City introduced evidence that the police enforced the statute narrowly.[70]

Even if homeless plaintiffs could theoretically succeed in challenging camping ordinances on vagueness, city councils could mitigate the effects of such lawsuits by simply rewording the ordinances. Cities and localities may alter with legislation to avoid constitutional hurdles. Thus, homeless plaintiffs could face the problem of mootness or experience years of litigation producing little result. Other constitutional challenges to camping ordinances provide clearer inroads by which homeless plaintiffs can force legislative solutions to problems associated with poverty.[71]

III. FOURTH AMENDMENT CHALLENGES TO CAMPING ORDINANCES: AN UNEXPLORED OPTION

The Fourth Amendment mandates that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[72] While some courts characterize the amendment as conferring a general right to privacy, the Supreme Court of the United States has interpreted this constitutional text to protect "individual privacy against certain kinds of governmental intrusion. [B]ut its protections go further, and often have nothing to do with privacy at all."[73] Federal, state, or local statutes may be challenged or invalidated if they violate Fourth Amendment rights on their face or in application. Thus, Fourth Amendment challenges to anti-sleeping ordinances provide a unique

68. *See id.* at 862.

69. *Id.* (quoting Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982) (emphasis added)).

70. *Id.* at 862-63. The court cited a San Francisco police memorandum communicating to officers that "the mere lying or sleeping on or in a bedroll of and in itself does not constitute a violation." *Id.* at 863.

71. Note, however, that in one recent decision, a Washington Superior Court judge invalidated a Vancouver camping ordinance as constitutionally vague. The judge concluded that the statute's failure to define "camping" created a "hammer for police to regulate homelessness." THE OREGONIAN, November 1, 2005.

72. U.S. CONST. amend. IV.

73. Katz v. United States, 389 U.S. 347, 350 (1967).

opportunity to force legislative solutions. Properly applied, the Supreme Court's standard in *Katz* should measure a locality's efforts to solve problems of poverty and homelessness when determining the constitutionality of its anti-homeless legislation.

Municipal ordinances that sanction the destruction, removal, or gathering of homeless residents' personal property or makeshift homes constitute a "meaningful interference with [their] possessory interests in that property."[74] Furthermore, "such seizures undoubtedly have more than a '*de minimus* impact' on the property interests of the homeless," whose makeshift residences are partially or completely destroyed by the

government intrusion.[75] The more difficult issue, however, is whether a homeless person has a legitimate expectation of privacy when his property is searched, seized, or destroyed in a public area.[76]

A. *Katz* and the Reasonable Expectation of Privacy Doctrine

In *Katz*, the Supreme Court first recognized that Fourth Amendment protection against unreasonable searches and seizures could extend beyond traditional concepts of privacy.[77] The defendant was convicted of transmitting wagering information in a telephone booth in violation of a federal statute.[78] At trial, the Government introduced evidence of the defendant's telephone conversations, which were recorded by an electronic listening device that FBI agents attached to the booth.[79] The defendant appealed his conviction, arguing that the recordings were obtained in violation of his Fourth Amendment right to be protected from unreasonable searches and seizures.[80] Avoiding the issue of whether the telephone booth itself was a constitutionally protected private area, the Court of Appeals for the Ninth Circuit concluded that the Government had not violated the Fourth Amendment.[81] The FBI

74. United States v. Jacobsen, 466 U.S. 109, 113 (1984).
75. Pottinger v. City of Miami, 810 F. Supp. at 1571 (quoting *Jacobsen*, 466 U.S. at 125).
76. *Id.*
77. 389 U.S. at 350-53 (1967).
78. *Id.* at 348.
79. *Id.*
80. *Id.* at 349-50.
81. *Id.* at 348-49.

affected "no physical entrance into the area occupied by [the defendant]."[82] Importantly, both the Government and defendant's counsel still viewed the constitutional issue as whether a telephone booth was a private area protected by the Fourth Amendment.[83]

The Supreme Court wholly disagreed with this characterization of the right to privacy.[84] Writing for the majority, Justice Stewart noted that the parties'

> effort to decide whether or not a given area, viewed in the abstract, is constitutionally protected deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But *what he seeks to preserve as private*, even in an area accessible to the public, may be constitutionally protected.[85]

The Court's conception of the Fourth Amendment placed the limits of the right to privacy in the eye of the beholder. Thus, the Fourth Amendment potentially protected public areas if a person sought to preserve privacy within such places.Indeed, the Court concluded that "[w]herever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures."[86] Using this rationale, the Court reversed the Ninth Circuit, holding that the defendant's Fourth Amendment right to privacy in a public telephone booth prevented Government from admitting the recorded conversations at trial.[87]

The expansion of the right to privacy under *Katz* is considerable. In fact, the Court concluded that the right to privacy was a misnomer for the Fourth Amendment's protections, nothing that "the Fourth Amendment cannot be translated into a general constitutional 'right to

82. *Id.* at 349 (quoting Katz, 369 F. 2d at 134).

83. *See id.* at 351.

84. *Id.* at 350.

85. *Id.* at 351 (emphasis added). Justice Stewart acknowledged that, in prior decisions, the Court discussed the Fourth Amendment in terms of constitutionally protected areas, but that the Court "never suggested that [the] concept [could] serve as a talismanic solution to every Fourth Amendment problem." *Id.* at 351 n.9.

86. *Id.* at 359.

87. *See id.*

privacy.'"[88] Although the majority never explained how Fourth Amendment protections could extend to matters totally unrelated to privacy, Justice Harlan's concurrence may give some indication.[89] Justice Harlan solidifies the majority's eye of the beholder concept and formulates a two-pronged constitutional test based upon a person's subjective expectation of privacy:

[T]here is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as reasonable. Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, and statements that he exposes to the plain view of outsiders are not protected because *no intention to keep them to himself has been exhibited.*[90]

Justice Harlan's concurrence has become a prevailing standard in Fourth Amendment jurisprudence,[91] although it failed to address several issues in the test's application. Courts were left with little guidance on the following questions: should society be defined locally or federally? Does a society-approved reasonable expectation of privacy protect activities even if they are in plain view? And perhaps most importantly, how do courts evaluate whether a society has accepted an expectation of privacy as reasonable? In other words, how does a society manifest its recognition, or lack thereof, of individual expectations regarding the right to privacy?

B. Post-*Katz*: Legal Right to Occupy vs. Reasonable Expectation of Privacy

In the years following *Katz*, courts applied Justice Harlan's two-pronged test in cases where individuals asserted privacy rights in public places. In doing so, they were forced to classify certain expectations of privacy as reasonable or unreasonable in light of society's recognition thereof. These cases begin to answer the question of how courts appraise society's endorsement of an individual's expectation of privacy.

88. *Id.* at 350.

89. *See id.* at 360-62 (Harlan, J., concurring).

90. *Id.* at 361 (Harlan, J., concurring) (internal quotes omitted) (emphasis added).

91. *See, e.g.*, Rakas v. Illinois, 439 U.S. 128, 141, 143 (1978); Amezquita v. Colon, 518 F.2d 8 (1st Cir. 1975); Community for Creative Non-Violence v. Unknown Agents of the U.S. Marshals Serv., 791 F. Supp. 1 (D.D.C. 1992); State v. Cleator, 857 P.2d 306 (Wash. Ct. App. 1993).

1. Expectations of Privacy in Public Areas

Lower courts first extended Fourth Amendment protection to public areas such as dressing rooms and bathroom stalls in *State v. McDaniel* and *Kroehler v. Scott*, respectively. [92] These decisions, however, shed little light on the function of Justice Harlan's second prong. The court in *McDaniel* held that the defendant-shoplifters "had a reasonableexpectation of privacy or freedom from intrusion under the constitutional prohibitions of unreasonable searches" under the Fourth Amendment.[93] The court did not examine whether society viewed that expectation as reasonable. While the pervasive existence of private dressing rooms in retail stores suggests that society views an expectation of privacy therein as reasonable, the court never undertook such an analysis. In *Kroehler*, the court found that a defendant's expectation of privacy in a bathroom stall was reasonable; the private activity typically associated with a bathroom generated that expectation.[94] The opinion, however, never explicitly analyzed *Katz*'s second-prong; the court never mentioned society's recognition of expectations of privacy.

Perhaps the courts in *McDaniel* and *Kroehler* never applied *Katz*'s second prong because bathrooms and dressing rooms obviously created a widely accepted expectation of privacy. *Katz*'s second prong became critically important, however, when courts began to apply a Fourth Amendment analysis to cases in which homeless defendants challenged unreasonable searches and seizures of their makeshift living spaces. Cases involving temporary houses, boxes, or shacks on public property raised questions and provoked assumptions about Fourth Amendment jurisprudence: could an individual have a reasonable expectation of privacy in a makeshift home on public land? In dicta, *Katz* undeniably affirmed the long-standing principle that an individual's expectation of privacy was reasonable if he or she was "at home," but did not extensively define this concept. [95]

92. Kroehler v. Scott, 391 F. Supp. 1114, 1117 (E.D. Pa. 1975); State v. McDaniel, 337 N.E.2d 173, 176, 178 (Ohio Ct. App. 1975). *See* Gregory Townsend, *Cardboard Castles: The Fourth Amendment's Protection of the Homeless's Makeshift Shelters in Public Areas,* 35 CAL. W. L. REV. 223, 227 (1999).

93. *McDaniel*, 337 N.E.2d at 178.

94. *See Kroehler*, 391 F. Supp. at 118 n.4.

95. *Katz*, 389 U.S. at 359. Note that an individual's expectation of privacy at home may not be reasonable if he knowingly exposes himself to the public while in his home. For example, if a homeowner shouted his confession from his open front doorway, the right to privacy may not protect such an admission. *See id.* at 351 (citing Lewis v. United States, 385 U.S. 206, 210–11 (1966)). Still, "the home is accorded the full range of Fourth Amendment protections." *Lewis*, 385 U.S. at 211.

Whether Fourth Amendment protection could extend to makeshift homes required a more rigorous examination of the *Katz* test. A homeless litigant could easily satisfy the first prong; any homeless individual could assert a subjective expectation of privacy in a self-built structure used as living space. Justice Harlan's second prong, however, raised problematic concerns. Whether society viewed a homeless person's expectation of privacy in a makeshift home on public property as reasonable, legal, or socially desirable raised contentious issues in the dual problems of homelessness and poverty.

2. Illegal Occupation Theory

Several courts have treated homeless defendants' lack of legal rights to occupy public or private property as dispositive in denying their privacy rights under the Fourth Amendment. In those cases, local trespassing laws often operate to render a homeless individual's expectation of privacy unreasonable. In *Amezquita v. Hernandez-Colon*, the Land Authority of the Commonwealth of Puerto Rico attempted to evict squatters from government land.[96] When the eviction effort failed, the Authority and several police officers used bulldozers to destroy makeshift structures erected by the squatters.[97] The squatters obtained a preliminary injunction to stop the destructive action, arguing that the razing of their makeshift homes constituted a governmental intrusion in violation of their right to be free from illegal searches and seizures.[98] On appeal, however, the court rejected the squatters' claim outright, holding that they possessed no objectively reasonable expectation of privacy because they enjoyed no legal right to occupy the land:

Nothing in the record suggests that the squatters' entry upon the land was sanctioned in any way by the Commonwealth. The plaintiffs knew they had no colorable claim to occupy the land; in fact, they had been asked twice by Commonwealth officials to depart voluntarily. That fact alone makes ludicrous any claim that they had a reasonable expectation of privacy... Where the [squatters] had no legal right to occupy the land and build structures on it, [these actions] could give rise to no reasonable expectation of privacy. The conduct in which they have engaged is

96. 518 F.2d 8, 9 (1st Cir. 1975).
97. *Id.*
98. *See id.* at 10.

criminal under Puerto Rico law.[99]

Puerto Rican criminal law expressly forbade trespassing and building structures on public or private property.[100] According to the court, erecting and living in structures without the permission of the government could not give rise to an expectation of privacy that society views as reasonable.[101] The legal right to occupy a living space was necessary to trigger Fourth Amendment rights.

Because the squatters lacked a legal right to occupy the government land, the court viewed the fact that the structures were built as homes as immaterial. Acknowledging that "[w]ithout question, the home is accorded the full range of Fourth Amendment protections," the court distinguished between legal residences and makeshift homes constructed in contravention to local law. [102] "[W]hether a place constitutes a person's 'home' for [Fourth Amendment] purpose[s] cannot be decided without any attention to its location or the means by which it was acquired; that is, whether the occupancy and construction were in bad faith is highly relevant."[103] Thus, *Amezquita* stands for the proposition that, applying the language of *Katz*, a homeless individual's expectation of freedom from governmental intrusion is unreasonable when he lives in a makeshift home on private or public property. Although the court never explicitly mentions society in connection with privacy rights, *Amezquita* implicitly demonstrates that a statute, as a legislated reflection of the people's will, may serve as evidence of society's recognition—or lack thereof—of certain expectations of privacy. In a sense, the court in *Amezquita* did apply *Katz*'s second prong, even if subtextually.

Some cases have reached similar outcomes by applying different Fourth Amendment principles. In *United States v. Ruckman*, the Tenth Circuit held that a spelunker who lived in a natural cave for eight months had no reasonable expectation of privacy, since he was a trespasser on federal lands.[104] The rationale underlying the decision, however, sharply contrasted with that of *Amezquita*; the court decided the case on seemingly narrow grounds. Rather than finding the

99. *Id.* at 11–13.
100. *Id.* at 13 (citing 33 L.P.R.A. § 1442 (1972)).
101. *Id.* at 11.
102. *Id.* at 12 (citing *Lewis* 385 U.S. at 211).
103. *Id.*
104. 806 F.2d 1471, 1472 (10th Cir. 1986).

spelunker's lack of a possessory right to the cave dispositive, the court examined whether the cave could be characterized as Ruckman's residence.[105] Indeed, the court found the fact that Ruckman's counsel described him as "just camping out there for an extended period of time" persuasive.[106] The majority further concluded: "[T]he issue is whether the cave comes within the ambit of the Fourth Amendment's prohibition of unreasonable searches of '*houses.*'"[107] It is critically important that the majority tied the right to privacy to the house rather than to the spelunker's expectation of privacy. The court did *not* hold that society failed to recognize his expectation of privacy in a cave as reasonable. Rather, the court reasoned that the Fourth Amendment did not protect him against searches and seizures because his conception of the cave as his house was unjustified.[108] Presumably, if he had justifiably viewed the cave as his house, the court would have upheld his rights of privacy. This shift in judicial approach, even if a legal outlier, provides an opening in Fourth Amendment jurisprudence for homeless litigants. Under

Ruckman, a homeless individual could potentially prevent governmental intrusion upon his makeshift living space if he demonstrated that it served as his actual house.

Admittedly, the spelunker's lack of possessory rights to the land was not irrelevant in *Ruckman*. The dissent however, gave the issue comprehensive treatment. The majority simply noted that his actions were in violation of trespassing laws.[109] The dissent clearly indicted the rule advanced in *Amezquita*: the lack of a legal right to occupy necessarily deprives an individual of Fourth Amendment privacy rights.[110] The dissent argued that search and seizure jurisprudence is not concerned with notions of property ownership and possession: "[T]he principal object of the Fourth Amendment is the protection of privacy rather than property, and [we] have increasingly discarded fictional and procedural barriers rested on property concepts."[111] Reminding the

105. *Id.* at 1474.
106. *Id.* at 1473 (internal quotation marks omitted).
107. *Id.* at 1472 (emphasis added).
108. *See id.* at 1473-74.
109. *Id.*
110. *See*, *supra* note 99 and accompanying text.
111. *Id.* at 1477 (citing Warden v. Hayden, 387 U.S. 294, 304 (1967)).

majority of the Supreme Court's language in *Katz*, the dissent concluded that unlawful possession of an area does not *automatically* render defendants subject to warrantless searches and seizures.[112] An inquiry into the defendant's reasonable expectations must be undertaken:

> *Katz* held that capacity to claim the protection of the Fourth Amendment depends *not upon a property right in the invaded place* but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place. In other words, failing to have a legal property right in the invaded place does not, *ipso facto*, mean that no legitimate expectation of privacy can attach to that place.[113]

Despite the dissent's forceful reminder of Supreme Court precedent and Fourth Amendment principles, modern case law generally subscribes to a pure illegal occupation theory.[114] Indeed, such cases uphold the notion that Fourth Amendment rights are at their lowest ebb when an individual violates the law, even if the violation is concomitant with homeless status. For example, in the California case *People v. Thomas* a homeless defendant challenged the constitutionality of a police search of his cardboard box, which had been prepared as a living space.[115] Applying the two-pronged test from *Katz*, the California Court of Appeals implicitly conceded that the defendant had a subjective expectation of privacy while living in a makeshift cardboard home.[116] The court however, held that such an expectation was not objectively reasonable—or recognized by society as reasonable—because the defendant had no legal authority to live on the public property in question.[117] The court stated: "Where, as here, an individual 'resides' in a temporary shelter on public property without a permit or permission and in violation of a law which expressly prohibits what he is doing, he does *not* have an objectively reasonable expectation of privacy."[118]

112. *See Ruckman*, 806 F.2d at 1477 (McKay, J., dissenting).

113. *Id.* (citing Rakas v. Illinois, 439 U.S. 128, 143 (1978)).

114. *But see* State v. Mooney, 588 A.2d 145, 153–54 (1991) ("[F]actors such as whether the defendant was a trespasser and whether the place involved was public 'are, of course, relevant as helpful guides, but should not be taken mechanistically. They are not ends in themselves; they merely aid in evaluating the ultimate question in all fourth amendment cases—whether the defendant had a legitimate expectation of privacy, in the eyes of our society, in the area searched.'") (quoting *Ruckman*, 806 F.2d at 1476 (McKay, J., dissenting)).

115. 45 Cal. Rptr. 2d. 610, 611-12 (1995).

116. *See id.* at 612-13 (Focusing the entire holding on the objective expectation of privacy).

117. *Id.* (Defendant's temporary residence violated the Los Angeles Municipal Code).

118. *Id.* at 613.

Beyond simply stating the illegal occupation theory espoused in *Amezquita*, the court did not explain its underlying rationale. The court did not examine whether the law was widely enforced or whether society stood so firmly behind its trespassing ordinances that a homeless trespasser could not reasonably expect privacy while residing in his cardboard box.

Despite the scant constitutional explanation in *Thomas* and the irregularities of the *Ruckman* opinion, the above cases stand for the proposition that, under *Katz*'s second prong, society does not recognize expectations of privacy that contradict local property or trespassing laws as reasonable. When a locality legally prohibits occupation of a particular space, courts generally find that a homeless individual's expectation of privacy in a structure erected on such space is objectively unreasonable and therefore unprotected by the Fourth Amendment.[119]

3. Reasonable Expectations of Privacy in Homeless Shelters

Some courts have shed light on privacy rights questions for the trespassing homeless, or street-homeless, by distinguishing such legal claims from those of shelter residents. Indeed, the same constitutional arguments advanced to protect shelter residents against unreasonable searches and seizures can be employed to give privacy rights to the street-homeless. In *Community for Creative Non-Violence v. Unknown Agents of the U.S. Marshal Services*, ten to twenty federal marshals raided a Washington, D.C. emergency overnight homeless shelter, woke up nearly 500 sleeping homeless residents (many at gunpoint), and checked each resident against a photograph of a suspected fugitive.[120] A class of homeless plaintiffs brought suit for injunctive relief from such conduct in the future.[121] Recognizing the "necessity that the rights secured by our Constitution apply with equal force to this growing [homeless population]," the United States District Court for the District of Columbia held that people who stay at homeless shelters enjoy the freedom from unreasonable government intrusions as granted by the Fourth Amendment.[122] Needless to say, the court failed to address related issues, such as whether a homeless person forfeits privacy rights when he voluntarily or involuntarily leaves the shelter.

119. *See*, *supra* notes 114-18 and accompanying text.
120. 791 F. Supp.1, 3-4 (D.O.C. 1992). [Hereinafter *CCNV*].
121. *Id.* at 2, 5.
122. *Id.* at 5.

In applying the second prong of Justice Harlan's test in *Katz*, the *CCNV* court characterized shelter residents' expectations of privacy as objectively reasonable because, "the shelter was, for them, the most private place they could possibly have gone—the place most akin to their 'home'."[123] Importantly, the court anchored this characterization with a public policy concern:

> [The] expectation of privacy [in a shelter] is a reasonable one. To reject this notion would be to read millions of homeless citizens out of the text of the Fourth Amendment... Thus, the Constitution does not contemplate a society in which millions of citizens have no place where they can go in order to avail themselves of the protections provided by the Fourth Amendment.[124]

Although the holding is limited to shelter residents, the court's concern that homeless citizens could potentially be read out of the Fourth Amendment applies to the street-homeless as well.[125] Although the privacy rights of individuals residing in homeless shelters are largely uncontested, the judicial reasoning in *CCNV* should be extended to grant the street-homeless Fourth Amendment protection.

C. *Katz*'s Second Prong Revisited: The Government Acquiescence Doctrine

Most courts have not carefully considered whether society views a street-homeless citizen's expectation of privacy and freedom from warrantless searches as reasonable. Many courts immediately dispose of *Katz*'s second prong by employing the following reasoning: a society that chooses to legally prohibit trespassing on private property must not view a trespasser's expectation of privacy as reasonable.[126] At least one court, however, found this logical step too simplistic for a proper application of Fourth Amendments rights to homeless citizens.

In *State v. Dias*, the Supreme Court of Hawaii evaluated society's view of reasonable expectations of privacy in light of additional considerations. Most importantly, the court considered a local

123. *Id.* at 6.
124. *Id.*
125. *See* discussion *infra* Part II.
126. *See*, *supra* notes 114-18 and accompanying text.

government's acquiescence to the homeless trespasser's presence in its judicial calculus.[127] A group of homeless citizens established a makeshift residence in a structure built on stilts in an area of Hawaii known as "Squatters' Row."[128] Squatters' Row was situated on Sand Island, property exclusively owned by the State.[129] Thus, the homeless citizens lived in makeshift shelters in violation of Hawai'i law.[130] Upon hearing spoken words associated with gambling near the shelter, a police officer entered without prior announcement and arrested the homeless defendants on gambling charges.[131] The defendants challenged the constitutionality of the search and seizure under the Fourth Amendment, arguing that they possessed a subjectively and objectively reasonable expectation of privacy in Squatters' Row.[132]

The court first acknowledged that, under *Katz*'s second prong, homeless defendants could be foreclosed from asserting privacy claims under the Fourth Amendment when society viewed their expectation of privacy as unreasonable.[133] In the facts at bar however, the lack of a legal right to occupy Squatters' Row under Hawai'i law was not dispositive. Rather, the court took a hard, careful look at extra-statutory evidence when evaluating whether society viewed an expectation of privacy as reasonable. Specifically, the court examined whether Hawai'i's prohibition of squatters was actually or frequently enforced:

[W]e have taken judicial notice of the fact that 'Squatters' Row' on Sand Island has been allowed to exist by sufferance of the State for a considerable period of time. *And although no tenancy under property concepts was thereby created*, we think that this long acquiescence by the government has given rise to a reasonable expectation of privacy on the part of the defendants.... This, we think, is consistent not only with reason but also with our traditional notions of fair play and justice.[134]

Despite the fact that the homeless squatters possessed no legal right to their living space—that they occupied the space in direct contravention to Hawai'i law—the court held that society must have

127. 609 P.2d 637, 640 (Haw. 1980).
128. 609 P.2d at 639.
129. *Id.*
130. *Id.*
131. *Id.*
132. *See id.* at 639-40.
133. *See id.* at 640.
134. *Id.*

viewed expectations of privacy in Squatters' Row as reasonable because it tacitly allowed the area to exist as a makeshift neighborhood.[135] Thus, Fourth Amendment rights should apply wherever the government or society implicitly allows its citizens to establish residency. This reasoning is consistent with traditional principles in Fourth Amendment jurisprudence that rights of privacy extend to houses.[136]

IV. CONCLUSION

Illegal occupation theory is problematic for both constitutional and public policy reasons. The Supreme Court has long interpreted the Fourth Amendment to protect "people, not places."[137] Conceptions of property ownership should not operate to defeat a fundamental right granted to individuals; privacy rights are "right[s] of the people to be secure in their persons [and] houses... against unreasonable searches and seizures."[138] Local conceptions of property law and trespassing should not be wholly irrelevant. Rather, such factors should be weighed against the well-established notion that privacy rights attach to the individual regardless of where she resides. As Justice McKay observed in his dissent in *Ruckman*, whether the party asserting the privacy right was a trespasser and whether the place was public "are, of course, relevant... guides, but should not be undertaken mechanistically."[139] These factors merely aid courts in answering the fundamental constitutional questions they are required to address under *Katz*: "whether the defendant had a legitimate expectation of privacy, in the eyes of our society, in the area searched."[140]

In conducting this inquiry, most courts have erroneously assumed that the eyes of society are reflected by its laws alone. For example, the court in *Amezquita* found that Puerto Rico's criminal trespassing laws proved that society viewed its homeless citizens as undeserving of privacy in public areas.[141] Similarly, the court in *Thomas* found that a Los Angeles criminal law proved that society viewed its homeless citizens did not deserve the fundamental right of privacy while

135. *See id.*
136. *See Ruckman*, 806 F.2d at 1472.
137. *Katz*, 389 U.S. at 351.
138. U.S. CONST. amend IV.
139. *Ruckman*, 806 F.2d at 1476 (McKay, J., dissenting).
140. *Id.*
141. *See Amezquita*, 518 F.2d 8, 11–12 (1st Cir. 1975).

trespassing on public or private property.[142] These hasty conclusions do not strike at the real inquiry posed by *Katz*—an examination of society's view, not simply a cursory glance at the face of an enacted statute. In fact, the degree to which a law is enforced would seem like a more accurate barometer of society's sentiment toward the restriction.

Any true analysis of society's views on expectations of privacy is complicated and multi-faceted. Any inquiry should include a multitude of extra-textual factors, including public statements by city officials, enforcement of local statutes, and the municipal government's acquiescence of failure to enforce local statutes. In *Dias*, despite the fact that Squatters' Row was technically an illegal settlement, the Hawai'i government's acquiescence to the problem of homelessness—the fact that they had not provided enough shelter space for the homeless—was a dispositive indicator that a homeless person's expectation of privacy in Squatters' Row had been viewed by society as reasonable for years.[143] Homeless individuals must have a reasonable expectation of privacy in areas where society forces them to live; a locality's lack of shelter space amounts to a tacit acceptance of such expectations as reasonable.

If courts factored a city's shelter space when applying *Katz*'s second prong, camping ordinances in virtually every major city would be invalidated. In 2005, 32% of emergency shelter requests by homeless families went unmet; 88% of cities surveyed turned away homeless families from shelters due to a lack of resources.[144] Thus, establishing a living space on the streets is frequently a homeless individual's only option. Just as the court in *CCNV* characterized homeless shelters to uphold Fourth Amendment rights, the streets are "the most private place they could possibly [go]."[145] Indeed, in a city where homeless shelters are scant or nonexistent, homeless "citizens have no place where they can go to avail themselves of the protections provided by the Fourth Amendment."[146]

City councils and local governments must begin to take the difficult

142. *See* People v. Thomas, 45 Cal. Rptr. 610, 613 (Cal. Ct. App. 1995).

143. *See, supra* notes 114-18 and accompanying text.

144. EUGENE T. LOWE, THE UNITED STATES CONFERENCE OF MAYORS-SODEXHO, INC., HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 5 (2005), http://www.usmayors.org/uscm/hungersurvey/2005/HH2005FINAL.pdf

145. *Cmty. for Creative Non-Violence v. Unknown Agents of the U.S. Marshal Serv.*, 791 F. Supp. 1, 6 (D.D.C. 1992).

146. *Id.*

legislative steps toward ending poverty and homelessness. When faced with the constitutional failure of quick-fix, cleansing mechanisms such as camping and anti-sleeping statutes, legislatures will be motivated to take thorough steps to cure the problems of poverty. Otherwise they will face an electorate discontent with the criminal problems, aesthetic unpleasantries, and moral inequities associated with homelessness. Proper judicial adherence to *Katz* and application of Fourth Amendment principles should render camping ordinances unconstitutional, motivating local governments to begin this essential effort.