

# ADDRESSING LEGAL RESOLUTION TO HOMELESSNESS IN THE CONTEXT OF CONTEMPORARY MORAL PHILOSOPHY

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## ABSTRACT<sup>1</sup>

*Homelessness remains a national crisis in the United States. In the post-COVID-19 world, the nation faces a sharp increase in evictions and foreclosures, similar to what was seen after the 2008 financial collapse. This has led to an increase in homelessness, a rise which disproportionately impacts communities of color.*

*Traditional moral philosophy cannot establish the radical obligation to the other needed to address the homelessness crisis. This Article proposes ways to mitigate homelessness through legal advocacy and policy reforms. In so doing, this Article engages with the radical obligation to the other, as expressed in contemporary moral philosophy.*

*A public policy that fails to adequately address extreme poverty, suffering, and homelessness in society is morally bankrupt. This Article confronts the ethical and political commitments necessary to compassionately end homelessness in the United States.*

It's torn on the right and it's torn on the left  
It's torn in the center, which few can accept  
It's torn where there's beauty, it's torn where there's death  
It's torn where there's mercy, but torn somewhat less

LEONARD COHEN<sup>2</sup>

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1. This Article builds upon my recent work, Geoffrey K. McDonald, *Homelessness in the COVID Era: Utilizing the Bankruptcy Solution*, 41 YALE L. & POL'Y REV. 122 (2022).

2. LEONARD COHEN, *It's Torn*, on THANKS FOR THE DANCE (Sony Music Ent. 2019).

She lit the rock and breathed in even though the tube of glass had been broken so short that it burned her lips and tongue when the rock was only half cooked; she breathed in because when she was eighteen her first husband had brought a two-by-four smashing down on the crown of her head, and after that she'd never had very good balance; that was twenty years ago now. And one of her daughters (she'd been very little then) had said: Mama, don't *ever* worry about falling, 'cause I'll always be next to you, and if I see you start to go down, I'll throw myself right down on the sidewalk so you can fall on me! – It made her cry sometimes to remember that. Her daughter didn't walk beside her anymore, and so she smoked crack . . . There were two roaches on the wall, and she got them both with her shoe in a slamming blow like the one three months ago that had left her permanently blind in her right eye when she was being raped; now she couldn't read a menu anymore.

WILLIAM T. VOLLMANN<sup>3</sup>

But I'll get back on my feet again someday  
 The good Lord willin'  
 If He says I may  
 I know that the life I'm livin's no good  
 I'll get a new start, live the life I should  
 I'll get up and fly away,  
 I'll get up and fly away, fly away

GRATEFUL DEAD<sup>4</sup>

If I ruled the world, was king on the throne  
 I'd make peace in every culture, build the homeless a home

KURTIS BLOW<sup>5</sup>

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3. WILLIAM T. VOLLMANN, THE ATLAS 171-72 (1996).

4. GRATEFUL DEAD, *Wharf Rat*, on SKULL & ROSES, 50TH ANNIVERSARY EXPANDED EDITION (Warner Recs. Inc. 2021) (1971).

5. KURTIS BLOW, *If I Ruled the World*, on AMERICA (Mercury Recs. 1985).

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## INTRODUCTION

Homelessness remains a national crisis in the United States.<sup>6</sup> This Article proposes legal advocacy and policy reforms based on moral philosophy's concept of the radical obligation to the other to mitigate this nationwide emergency. This Article also focuses on the moral bankruptcy of a public policy that fails to adequately address extreme poverty, suffering, and homelessness and discusses the ethical and political commitments necessary to compassionately end homelessness in the United States.

Part I addresses the ongoing epidemic of homelessness in the United States, paying special attention to how the COVID-19 pandemic has impacted the homelessness crisis. Part II reviews traditional schools of moral philosophy, including those of Aristotle, Kant, and John Stuart Mill, that wrestle with our moral obligations to the least well-off. Part III introduces a critique of traditional moral philosophy, as expressed in the contemporary moral philosophical writings of Emmanuel Levinas and Jacques Derrida. This section of the Article demonstrates traditional moral philosophy's inability to establish the radical obligation to the other that the crisis of homelessness demands. Part IV suggests that legal advocacy and policy changes could be employed to end homelessness in the United States, in light of contemporary moral philosophy.

### I. THE ONGOING EPIDEMIC OF HOMELESSNESS IN THE U.S.

This part of the Article addresses the ongoing crisis of homelessness in the United States with particular attention to the COVID-19 pandemic's impact on homelessness.

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6. Homelessness is a crisis around the world, but this Article focuses on the crisis of homelessness in the United States. *See generally* LINDA GIBBS ET AL., HOW TEN GLOBAL CITIES TAKE ON HOMELESSNESS: INNOVATIONS THAT WORK (2021); THE ROUTLEDGE HANDBOOK OF HOMELESSNESS (Joanne Bretherton & Nicholas Pleace eds., 2023). *See, e.g.*, Arthur Parashar, *Welcome to Sao Paulo's 'Crackland' How a Vibrant Area of Brazil's Largest City has Descended into a Slum with Drug Addicts Taking Over the Streets, Harassing Residents and Forcing Businesses to Close*, DAILY MAIL (June 25, 2023, 10:05 AM), <https://www.dailymail.co.uk/news/article-12231081/Sao-Paulos-downtown-takes-turn-worse-wandering-drug-addicts-harassing-residents.html> ("Sao Paulo's so-called 'Crackland' is visibly extending into surrounding areas, with wandering [homeless] drug addicts harassing residents and leaving them terrified about muggings.").

In Los Angeles, local government has declared homelessness a state of emergency.<sup>7</sup> There are now a record 75,518 people who are homeless in Los Angeles County.<sup>8</sup> New York City has reached a record 100,000 people in homeless shelters.<sup>9</sup> In addition, there are at least an additional 4,042 people “sleeping rough”<sup>10</sup> on the streets and in the subways of New York City.<sup>11</sup> This latter group is notoriously hard to count, and, as a result, the figures for

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7. See, e.g., Hope Sloop, *Newly Appointed Los Angeles Mayor Karen Bass Officially Declares a State of Emergency Over Homeless Crisis Less Than 24 Hours into Office*, DAILY MAIL (July 3, 2023, 5:44 PM), <https://www.dailymail.co.uk/news/article-11530147/Los-Angeles-Mayor-Karen-Bass-officially-declares-emergency-homeless-crisis-hours-office.html> (“After less than 24 hours in office, Los Angeles Mayor Karen Bass has declared a state of emergency over the homeless crisis in the Southern California big city.”).

8. See, e.g., Times Staff, *Here’s What Parts of L.A. County Saw Biggest Rise in Homelessness*, L.A. TIMES (June 29, 2023, 10:57 AM), <https://www.latimes.com/california/story/2023-06-29/la-los-angeles-homeless-crisis-unhoused-people-by-the-numbers> (“The homeless count for Los Angeles County is in, and officials say the numbers are discouraging. The annual point-in-time count released Thursday by the Los Angeles Homeless Services Authority found a 9% increase in Los Angeles County and a 10% increase in the city of Los Angeles.”).

9. See, e.g., Andy Newman, *A Record 100,000 People in New York Homeless Shelters*, N.Y. TIMES (June 28, 2023), <https://www.nytimes.com/2023/06/28/nyregion/nyc-homeless-shelter-population.html> (“New York City passed a woeful milestone this week, spurred by an influx of migrants from the nation’s southern border: For the first time, there are now over 100,000 people in homeless shelters here, city officials said on Wednesday. Days earlier, the city said that the number of migrants in shelters had passed 50,000 and that, for the first time, they made up the majority of people in homeless shelters in the city.”).

10. See, e.g., STEPHANIE SOUTHWORTH & SARA BRALLIER, *HOMELESSNESS IN THE 21ST CENTURY: LIVING THE IMPOSSIBLE AMERICAN DREAM* 176 (2023) (“Sleeping rough: . . . People who are homeless and not living in a homeless shelter . . . .”) (emphasis omitted). See also TRACY KIDDER, *ROUGH SLEEPERS: DR. JIM O’CONNELL’S URGENT MISSION TO BRING HEALING TO HOMELESS PEOPLE* 19 (2023) (“Jim was sometimes asked how he came to be a doctor to homeless people, and what kept him going. At one public lecture, he answered the question this way: ‘Most of the patients I’ve been close to over these thirty-two years are dead. So there’s a certain sadness and moral outrage that I can’t get rid of. But when you work with people who’ve had so little chance in life, there’s a lot you can do. You try to take care of people, meet them where they are, figure out what they need, how you can ease their suffering. I was drafted into this job, I didn’t pick it, but I lucked into the best job I can imagine.’”).

11. See, e.g., James Gordon, *NYC’s Homelessness Crisis GROWS: Rough Sleepers Rocket 18% in Just ONE YEAR (Despite Eric Adams Vowing to Fix the Blight on the Big Apple)*, DAILY MAIL (July 4, 2023, 2:38 PM), <https://www.dailymail.co.uk/news/article-12261127/New-York-City-homelessness-18-just-one-year-despite-Mayor-Eric-Adams-try-fix-problem.html> (“The number of homeless on the streets of the Big Apple has risen by almost 18 percent in the space of a year, despite the mayor pledging to tackle the problem. The annual Homeless Outreach Population Estimate (HOPE) survey that was conducted in January revealed a total of 4,042 people sleeping rough in the subways or on the streets of New York City compared with 3,439 in 2022. The rise comes despite Mayor Eric Adams administration’s pursuing aggressive measures to tackle the problem including enforcement, sweeps, and outreach initiatives.”).

those homeless individuals living outside of shelters are likely to be underestimates.<sup>12</sup>

In the United States, Los Angeles and New York City receive significant attention concerning their homeless populations, as New York City has the highest number of homeless people overall, and Los Angeles has the highest number of unsheltered homeless people.<sup>13</sup> At the state level, New York State has the highest rate of homelessness, but California has the highest overall number of homeless people.<sup>14</sup> Homelessness is also an issue in rural states like Vermont,<sup>15</sup> which has the tenth-highest rate of homelessness in the United States.<sup>16</sup>

Evictions and foreclosures, which contribute to the crisis of homelessness,<sup>17</sup> have been increasing in the wake of COVID-19 across the United States.<sup>18</sup> This is similar to trends following the 2008 financial

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12. *See, e.g.*, Dan Treglia & Dennis Culhane, *Defining and Counting Homelessness*, in THE ROUTLEDGE HANDBOOK OF HOMELESSNESS, *supra* note 6, at 35, 40-41 (“[T]he unsheltered count can fail to find people who are out of sight or in areas unknown to homelessness officials. A 1990s survey of formerly homeless people, for example, found that 59% of people who experienced literal homelessness had spent time living in their cars and 25% were in other ‘makeshift housing’ arrangements like boxcars or caves . . . . Another study, examining deaths among the street homeless population, found that many who died were in areas not routinely served by street outreach teams and, resultantly, were unknown to homeless support systems.”) (citations omitted).

13. *See, e.g.*, STEPHEN EIDE, HOMELESSNESS IN AMERICA: THE HISTORY AND TRAGEDY OF AN INTRACTABLE SOCIAL PROBLEM 10 (2022) (“In twenty-first-century America, New York [City] and Los Angeles lay claim to the title of the homeless capitals of the United States. New York [City] is home to the largest homeless population, while Los Angeles is home to the largest unsheltered population.”).

14. *Id.* at 45.

15. *See generally* ELIZABETH CARPENTER-SONG, FAMILIES ON THE EDGE: EXPERIENCES OF HOMELESSNESS AND CARE IN RURAL NEW ENGLAND (2023) (ethnographic study of homeless families in rural Vermont). *See, e.g.*, Paul Farrell, *Crazed Homeless Woman ‘Beats Shelter Coordinator to Death with an Ax’ in Vermont, Days after Posting Video of Herself Making Frozen Cocktail by STABBING it with a Huge Knife*, DAILY MAIL (Apr. 6, 2023, 9:24 AM), <https://www.dailymail.co.uk/news/article-11943829/Crazed-homeless-woman-beats-homeless-shelter-coordinator-death-ax-Vermont-shelter.html> (“A crazed homeless woman who was living in a Vermont shelter pleaded not guilty in court Wednesday after she was accused of beating to death a coordinator with an ax and a knife.”).

16. EIDE, *supra* note 13, at 45.

17. *See, e.g.*, McDonald, *supra* note 1, at 134-35 (describing how evictions and foreclosures contribute to the homelessness crisis).

18. *See, e.g.*, Jon Kamp & Shannon Najmabadi, *Homeless Numbers Rise in U.S. Cities*, WALL ST. J. (June 19, 2023, 12:00 AM), <https://www.wsj.com/articles/homeless-numbers-rise-in-u-s-cities-fd59bc7b> (“The number of homeless people counted on streets and in shelters around the U.S. has broadly risen this year, according to a Wall Street Journal review of data from around the nation. The Journal reviewed data from 150 entities that count homeless people in areas ranging from cities to entire states. More than 100 places reported increases in early 2023 counts compared with 2022, and collectively, their numbers indicate the U.S. might see a sharper climb than in recent years. Most major urban areas reporting data so far have seen increases, including Chicago, Miami, Boston and Phoenix. *The increases underscore what advocates for the homeless say is pressure from high housing costs and the end of temporary pandemic-era protections, such as eviction moratoriums.*”) (emphasis added).

collapse.<sup>19</sup> Sadly, evictions and foreclosures can turn deadly as people become desperate when facing the prospect of losing their homes.<sup>20</sup> Homelessness disproportionately impacts communities of color.<sup>21</sup> Specifically, “[o]ut of about 3.5 million people across the country who are unhoused, 42% are Black, 20% are Latinx, 4% are Native American or Indigenous, and 2% are Asian.”<sup>22</sup> The corresponding levels of representation for these groups in the U.S. population are as follows: “Black people make up 12% of the total population, Latinx people 12%, and Native American or Indigenous people and Asian communities each make up 1% of the total population.”<sup>23</sup> Historically, immigrants did not significantly increased the homeless population in the United States.<sup>24</sup> This trend has changed in recent years with many more newly-arrived immigrants being housed in homeless shelters and other facilities (e.g., in New York City).<sup>25</sup>

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19. See, e.g., Maria Foscarinis, *Historic and Societal Underpinnings of Homelessness Today*, in HOMELESS ADVOCACY 3, 18 (Laura Riley ed., 2023) (“In late 2007, the ‘great recession’ and foreclosure crisis precipitated large increases in homelessness, rivaling the initial explosion in the 1980s.”).

20. See, e.g., Kamal Sultan, *PICTURED: Suburban Mom who Shot Dead her Husband and Two Daughters, 9 and 6, Before Turning Gun on Herself in Horrific Murder-Suicide as Local Sheriffs Arrived to Evict Family from Their New Jersey Home*, DAILY MAIL (Jan. 20, 2024, 9:45 AM), <https://www.dailymail.co.uk/news/article-12986321/new-jersey-mother-fatally-shot-husband-daughters-murder-suicide.html> (“Authorities have identified the New Jersey mother who fatally shot her husband and two young daughters before turning the gun on herself as the family were being evicted from their suburban home. . . . Sheriffs arrived at the home to serve an eviction notice at around 10:30 a.m. when they discovered all four family members dead on the floor with gunshot wounds. . . . The family had been living in the property for 15 years but it was sold for \$322,000 in November at Sheriff’s [sic] sale and they had 60 days to leave.”).

21. See, e.g., Foscarinis, *supra* note 19, at 34 (“Homelessness disproportionately affects people of color, more so even than poverty generally does: African Americans comprise 28% of the poverty population, compared to [approximately] 40% of the houseless population.”).

22. Laura Riley, *Addressing the Impact of Homeless on Diverse Communities*, in HOMELESS ADVOCACY, *supra* note 19, at 71, 73.

23. *Id.*

24. See, e.g., EIDE, *supra* note 13, at 90 (“Stronger social cohesiveness probably accounts for the low levels of homelessness among otherwise poor immigrant cohorts.”).

25. See, e.g., Carl Campanile & Craig McCarthy, *NYC Homeless Shelter Population Surges 53% During Migrant Crisis: Mayor’s Report*, N.Y. POST (Jan. 30, 2024, 8:56 PM), <https://nypost.com/2024/01/30/metro/nyc-homeless-shelter-population-surges-53-amid-migrant-crisis-mayors-report/> (“The number of homeless people in New York City’s shelter system skyrocketed 53% over the past year—driven by the unrelenting surge of migrants, according to Mayor Eric Adams’s preliminary management report released Tuesday. The report compares data and performance of city agencies for the first four months of the fiscal year—July through October of 2023—with the same period in 2022. ‘During the first four months of Fiscal 2024, the average number of individuals in shelter per day increased by 53 percent compared to the same period in Fiscal 2023, driven by the unprecedented increase in entrants, primarily asylum seekers who made up over half of all entrants during the period,’ the Department of Homeless Services said [in] its quarterly assessment of its shelter system included in the 432-page report. There was an average of 83,985 people in city-run shelters per day during the quarterly period compared to 54,738 individuals in 2022.”).

Homelessness is a crisis for the unhoused as well as society as a whole.<sup>26</sup> Some homeless individuals pose a danger to themselves and others.<sup>27</sup> Not only that, but the state of homelessness is itself precarious and can result in untimely death.<sup>28</sup> In 2023, over 2,000 homeless people perished in Los

26. LINDA GIBBS ET AL., HOW TEN GLOBAL CITIES TAKE ON HOMELESSNESS: INNOVATIONS THAT WORK 137 (2021) (“City residents have a deep compassion for those who are homeless and want them to be treated fairly and humanely. . . . At the same time, residents value quality of life in their community and places of work. They don’t want to navigate their children around people sleeping in the street, avoid parks that have become de facto open-air shelters, or fear for their safety in passing large street encampments known for drug trade.”) (footnote omitted). See, e.g., Alex Hammer, *Hollywood’s Homeless Takeover: Filthy Encampment Full of Mentally Ill Drug Users Who Run Around Naked’ Gets Bigger-as Despairing Tax Payers Plead for Help*, DAILY MAIL (July 25, 2023, 9:09 AM), <https://www.dailymail.co.uk/news/article-12332875/Hollywood-residents-fume-homeless-encampment-near-schools-grows-tents-needles-trash-lining-blocks-council-member-charge-problem-refuses-them.html> (provides an example of how the presence of unhoused people can create a crisis for other members of the community) (“Hollywood citizens are complaining about a homeless encampment that’s surfaced near Selma Park—along with an array of tents, needles, and trash that have left residents at a loss.”)

27. See, e.g., EIDE, *supra* note 13, at 123 (“Homeless people are victimized at a very high rate. According to one recent survey of the literature, compared with the general population, homeless adults are assaulted eleven times more often, robbed twelve times more often, and stolen from more than twenty times as often . . . Often left out of discussions of the victimization of homeless people is how much of it is perpetrated by other homeless people.”) (footnotes omitted); Valerie Edwards, *Four Homeless Men are Randomly Battered to Death in Their Sleep in New York’s Chinatown by 24-Year-Old [Homeless] Man with a Three-Foot Long Metal Pipe*,’ DAILY MAIL (Oct. 5, 2019, 2:40 PM), <https://www.dailymail.co.uk/news/article-7540719/Four-homeless-people-killed-sleep-battered-head-man.html> (“New York City authorities said four men, who are believed to be homeless, were beaten to death with a ‘metal pipe’ while they were sleeping in what appears to be ‘random attacks.’ . . . The suspect is also believed to be homeless and reportedly has 14 past arrests, including an assault charge from earlier this year.”).

28. See Wayne Winegarden, *Squandered Opportunities: How Homelessness Hurts the Economy*, in NO WAY HOME: THE CRISIS OF HOMELESSNESS AND HOW TO FIX IT WITH INTELLIGENCE AND HUMANITY 9, 13 (Kerry Jackson ed., 2021) (“[H]omelessness is an important risk factor for many adverse health outcomes. In part due to these health risks, the unsheltered homeless population die, on average, 20 years earlier than people who are sheltered.”) (footnote omitted). See, e.g., Marijke Rowland, *Family of Modesto Woman Run Over by Landscaping Crew Seeks Answers, Compassion for Homeless*, MODBEE (July 15, 2023, 2:32 PM), <https://www.modbee.com/news/local/article277303628.html> (“[T]he 27-year-old Modesto woman was found dead last Saturday after being mowed over by a local landscaping crew cutting the grass at Beard Brook Park.”). See also Joe Hutchison, *Sleeping in Seattle: Shocking Photos Show Homeless People Slumped Over After Shooting Up on Sidewalks Across the City-as Woke Officials Choose NOT to Make Public Drug Use Illegal*, DAILY MAIL (Aug. 11, 2023, 5:09 PM), <https://www.dailymail.co.uk/news/article-12230349/Seattle-homeless-shooting-streets-officials-choose-NOT-ban-public-use-illegal.html> (“Overall violent crime has remained persistently high in the city, with 2022 marking the deadliest year for the homeless population in King County, which encompasses Seattle. The year saw 310 deaths in the homeless community, a 65 percent spike from 2021, including at least 18 homicides and 160 fentanyl-related overdoses, according to the King County Medical Examiner’s Office.”); Claudia Aoraha, *Homeless Woman, 41, Who Was Eaten by 14-Foot Alligator Was Arrested Three Months Ago for Trespassing in Wetlands*, DAILY MAIL (Sept. 24, 2023, 1:00 PM), <https://www.dailymail.co.uk/news/article-12554891/Florida-Alligator-body-attack-Sabrina-Peckham.html> (“A homeless Florida woman who was mauled to death and dragged into a waterway by a huge alligator had been arrested just months ago for trespassing in wetlands. . . . ‘No matter how you put it, no one deserves to die like this,’ her daughter wrote on social media.”).

Angeles.<sup>29</sup> The life expectancy of those who are chronically homeless is approximately thirty years less than the life expectancy of their housed counterparts.<sup>30</sup> This is due, in part, to lack of access to adequate medical care.<sup>31</sup> The environment homeless people inhabit can be unhygienic.<sup>32</sup> There

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29. Sam Levin & Will Craft, *Revealed: 300% Surge in Deaths of Unhoused People in L.A. Amid Fentanyl and Housing Crises*, THE GUARDIAN (Feb. 22, 2024, 1:32 PM), <https://amp.theguardian.com/us-news/2024/feb/22/los-angeles-unhoused-deaths-increase-housing-crisis-fentanyl-overdoses> (“More than 2,000 unhoused people died in Los Angeles in 2023, meaning an average of nearly six deaths a day of people living on the street or in shelters in the nation’s most populous county. The numbers reveal an escalating humanitarian emergency as the housing crisis and drug addiction epidemic collide, with victims found in tents, encampments, vehicles, parks, alleys, vacant lots, underpasses, bus stops and train stations. . . . In 2023, 2,033 people died, a staggering 291% increase from the 519 cases recorded in 2014 and an 8% increase from the 1,883 fatalities in 2022. The data is an undercount as the medical examiner only has jurisdiction over deaths considered violent, sudden or unusual, or where the deceased has not recently seen a doctor, meaning the scale of the crisis is greater than what’s captured in the data.”).

30. SOUTHWORTH & BRALLIER, *supra* note 10, at 93 (“The average life expectancy for someone who experiences chronic homelessness is about fifty years, thirty years earlier than the life expectancy of someone who is securely housed. Women who are housed tend to live longer than men, but the life expectancy between men and women who are homeless is about the same. The lower life expectancy of people experiencing homelessness pertains to both people who are sleeping in shelters and those who are sleeping rough.”) (footnotes omitted).

31. See generally *id.* (“A 2010 national survey of individuals who were homeless found that most respondents had several health incidents in the prior year and did not have access to regular health care.”). See, e.g., Mackenzie Tatananni, *Shocking Police Bodycam Footage Reveals Final Moments of Emaciated Oregon Man*, 26, *Who was Discharged from Hospital by Doctors Before Dying Less Than an Hour Later: Staff Dismissed Him as a Drug Addict Despite Officers’ Warnings*, DAILY MAIL (Jan. 15, 2024, 6:27 PM), <https://www.dailymail.co.uk/news/article-12952353/police-bodycam-jean-descamps-providence-hospital-discharge-death.html> (“An Oregon man died less than an hour after he was discharged from a local hospital by doctors who claimed there was ‘no medical reason’ for him to be there anymore. . . . His gaunt legs were covered in scabs and sores, and he was nearly unresponsive. The hospital had called local police that night to remove the man after he refused to leave when offered a ride to a homeless shelter.”).

32. See Winegarden, *supra* note 28, at 14 (“Shigella and other infectious diseases have been diagnosed in California’s unsheltered homeless population and create health risks and large health costs for both the homeless and general populations. As an indication of how large these costs have become, many of these illnesses, like typhus, are commonly referred to as *medieval diseases* because they thrive in the unsanitary conditions that were prevalent long ago. As the unsanitary conditions on the streets of California now replicate those from the Middle Ages, the same adverse health outcomes are arising.”). See also Claudia Aoraha, *Highly-Contagious Infection Spread by Feces Breaks Out in Portland as Homeless Crisis Sparks Disease Common in Third World*, DAILY MAIL (Dec. 31, 2023, 12:19 PM), <https://www.dailymail.co.uk/news/article-12914469/Shigella-infection-Portland-homeless-crisis.html> (“A highly contagious infection that is spread through tiny particles of fecal matter has broken out in Portland—with officials warning that the homeless population are most at risk of catching the illness. Shigella is a bacteria that spreads through human feces. People transmit the infection after getting the microbes on their hands and then touching their mouths. People can also spread the intestinal infection through sexual intercourse.”).

is also a high incidence of drug use within certain homeless populations.<sup>33</sup> While many homeless people struggling with addiction<sup>34</sup> may benefit from treatment rather than incarceration,<sup>35</sup> the decriminalization of so-called “hard drugs” has been an unmitigated disaster.<sup>36</sup> Nevertheless, mandatory treatment in lieu of custodial sentences may better serve homeless people

33. See Christopher F. Rufo, *Compassionate Enforcement: Balancing Public Services and Public Order*, in NO WAY HOME: THE CRISIS OF HOMELESSNESS AND HOW TO FIX IT WITH INTELLIGENCE AND HUMANITY, *supra* note 28, at 130, 132 (“The facts . . . are simple: 75 percent of the unsheltered homeless have a serious addiction, 78 percent have a mental illness, and, as a group, they are nearly 100 times more likely to commit crimes and get booked into jail than the average citizen.”) (footnote omitted). See, e.g., James Gordon, *Grim Photos Show ‘Tranq’ Addicts Shooting Up in Broad Daylight on the Sidewalks of Philadelphia where Fentanyl and ‘Tranq’ Overdoses Run Rampant*, DAILY MAIL (Dec. 27, 2023, 9:08 AM), <https://www.dailymail.co.uk/news/article-12902125/Unhappy-holidays-Grim-photos-tranq-addicts-shooting-broad-daylight-sidewalks-Philadelphia-fentanyl-tranq-overdoses-run-rampant.html> (“In 2022, Philadelphia reported 1,413 overdose deaths, an 11 percent increase from 2021.”).

34. See, e.g., Laura Riley, *Hurdles to Housing and Interim Solutions Part I: Employment Barriers*, in HOMELESS ADVOCACY, *supra* note 19, at 181, 188 (“The statistics for substance abuse are also high for unhoused populations. In 2017, it was estimated that 38% of unhoused people are alcohol dependent, and 26% are dependent on other harmful chemicals.”).

35. See, e.g., EIDE, *supra* note 13, at 113 (“One traditional solution, made famous by Alcoholics Anonymous (AA), is to connect people who want recovery with people in recovery. AA has not ‘ended’ alcoholism and this model does not do much to help people who policymakers want to help but themselves don’t want to be helped. But the lesson to draw from AA’s persistent appeal is that government should do all it can to facilitate the formation of communities centered around shared goals of sobriety and true recovery. That could be done through housing programs.”).

36. See, e.g., Lewis Pennock, *So Much for an Emergency! Portland Piously Sounded Alarm on Fentanyl Crisis Promising a Crackdown—but the Reality is Junkies on Every Corner and Paramedics Taking Over 20 Minutes to Respond to ODs*, DAILY MAIL (Feb. 11, 2024, 2:00 AM), <https://www.dailymail.co.uk/news/article-13066619/So-emergency-Portland-piously-sounded-alarm-fentanyl-crisis-promising-crackdown-reality-junkies-corner-paramedics-taking-20-minutes-respond-ODs.html> (“The explosion in drug deaths and fentanyl addiction in Portland has been linked by critics to the decision to essentially decriminalize all drugs in 2021. In November of the previous year, Oregon’s voters back[ed] Ballot Measure 110, which altered the law so that instead of arresting drug users, police issued citations which compelled them to seek treatment. Far from reducing drug use and helping addicts, deaths surged as fentanyl swept through the state. Law enforcement officials have said as few as one percent of people who were given citations actually received treatment. The policy is also blamed for allowing public drug taking to proliferate. Users no longer fear arrest or punishment—in fact, their lethal substances won’t even be confiscated.”). See also James Farrell, *Here’s Why Oregon Is Walking Back Its Drug Decriminalization Law*, FORBES (Apr. 17, 2024, 02:48 PM), <https://www.forbes.com/sites/jamesfarrell/2024/04/02/heres-why-oregon-is-walking-back-its-drug-decriminalization-law/> (“Oregon reversed course on its high-profile three-year-long experiment to decriminalize drugs, as Democratic Gov. Tina Kotek signed a bill Monday adding new criminal penalties for drug possession amid increases in public drug use and opioid-related deaths.”).

suffering from addiction.<sup>37</sup> With respect to drug use, Jacques Derrida remarked: “[I]t leads to suffering and to the disintegration of the self . . .”<sup>38</sup>

## II. TRADITIONAL MORAL PHILOSOPHY AND DUTIES TO THE LEAST WELL-OFF

This part of the Article reviews traditional schools of moral philosophy, including those of Aristotle, Kant, and John Stuart Mill, concerning moral obligations to the least well-off. Moral philosophy is concerned with the study of “morals,” i.e., what constitutes good and righteous conduct.<sup>39</sup> The moral philosophical theories of Aristotle, Kant, and John Stuart Mill are among the most influential in the Western tradition. Each of these three philosophers had a distinctive view on the subject of moral philosophy. Aristotle was concerned with the character of moral agents (virtue ethics), Kant was concerned with moral duty based on reason (deontology), and Mill was concerned with the consequences of actions (utilitarianism or consequentialism).<sup>40</sup> In the following review of these schools of Western moral philosophy, I will address their relative strengths and shortcomings. All three of the traditional schools of moral philosophy considered in this

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37. See, e.g., Conrad Wilson, *Oregon Pioneered a Radical Drug Policy. Now it's Reconsidering.*, NPR (Feb. 7, 2024, 3:20 PM), <https://www.npr.org/2024/02/07/1229655142/oregon-pioneered-a-radical-drug-policy-now-its-reconsidering> (“Some treatment providers have testified that if lawmakers recriminalize drugs it will just take Oregon back to a different system that wasn’t working. ‘Arrest records—it impacts people looking for employment, it impacts their housing, it perpetuates a cycle of poverty,’ testified Shannon Jones Isadore, CEO of the Oregon Change Clinic, a recovery program that specializes in working with African American and veteran communities in Portland. ‘A better solution is to dramatically increase our street services and outreach where there can be adequate care available for everyone,’ she said . . . Oregon Senate Majority Leader Kate Lieber—who co-chaired the legislature’s addiction committee—told Oregon Public Broadcasting that she’s not advocating for Measure 110 to be repealed. But she and other top lawmakers have said they support recriminalizing drug possession so long as there are ways for the criminal justice system to direct people into the treatment programs Measure 110 has helped to expand.”).

38. Jacques Derrida, *The Rhetoric of Drugs*, in POINTS . . . : INTERVIEWS, 1974-1994 228, 250 (Elisabeth Weber ed., Peggy Kamuf et al. trans., Stanford Univ. Press 1995) (1992).

39. See, e.g., PETER A. ANGELES, DICTIONARY OF PHILOSOPHY 179 (“morals. 1. The manner of behaving of groups or individuals according to what is regarded as good, right, virtuous, proper, correct. 2. The study of what is to be considered right conduct.”).

40. See, e.g., Roger Crisp, *Introduction* to ARISTOTLE, NICOMACHEAN ETHICS vii, xvii (Roger Crisp ed. & trans., Cambridge Univ. Press, rev. ed. 2014) (330 BCE) (“According to utilitarianism, what makes actions right is their producing the largest amount of well-being overall. According to Kantianism, what makes actions right is their being in accordance with the law of reason. We might understand Aristotle, and a pure virtue ethics, as claiming that what makes actions right is their being virtuous.”).

Article may come to similar conclusions on many ethical questions.<sup>41</sup> Yet none provide the moral basis for the radical action needed to end the scourge of homelessness. The ultimate thesis of this Article is not that traditional moral philosophy is without merit but rather that the insights of contemporary moral philosophy should supplement it in order to ground radical obligation to the other. Such a joining is necessary to undertake the herculean task of ending homelessness in the United States.

#### A. Aristotle's *Ethics of Virtue*

For Aristotle, political science includes both ethics and politics.<sup>42</sup> Political science concerns the state of happiness for the whole of society and for individuals.<sup>43</sup> Aristotle writes: “[L]et us say what we claim to be the aim of political science . . . Most people, I should think, agree about what it is called, since both the masses and sophisticated people call it happiness, understanding being happy as equivalent to living well and acting well.”<sup>44</sup> “Happiness” is a translation of *eudaimonia*, which also carries the sense of “flourishing” and “well-being.”<sup>45</sup> Therefore, the goal of ethics and the goal of politics, i.e., the goal of political science, is human flourishing. As Aristotle stresses, this includes both “living well and acting well.”<sup>46</sup>

Moreover, political science, including both ethics and politics, is concerned with producing good people.<sup>47</sup> Political science is concerned with producing good citizens.<sup>48</sup> Aristotle considers “the end of political science to be the chief good, and [that] political science is concerned most of all

41. *Id.* (“The two main modern competitors to virtue ethics are utilitarianism and Kantianism. It is important to recognize that these three theories may largely converge in their practical conclusions. They may all, for instance, recommend that one be generous, or just. But the reasons that the theories offer differ greatly.”).

42. See, e.g., ARISTOTLE, NICOMACHEAN ETHICS, *supra* note 40, at 4 (“Knowledge of the good would seem to be the concern of the most authoritative science, the highest master science. And this is obviously the science of politics . . . For while the good of an individual is a desirable thing, what is good for a people or for cities is a nobler and more godlike thing. Our enquiry, then, is a kind of political science, since these are the ends it is aiming at.”).

43. *Id.*

44. *Id.* at 5.

45. Roger Crisp, *Glossary to ARISTOTLE, NICOMACHEAN ETHICS*, *supra* note 40, at 202, 203 (“[E]udaimonia happiness. Alternative translations: ‘flourishing’; ‘well-being’. A broad term, roughly equivalent to ‘whatever makes a human life good for the person living it.’ Happiness must not be understood to be a contented state of mind, as in, ‘I feel happy today.’”) (emphasis omitted).

46. ARISTOTLE, *supra* note 42, at 5.

47. *Id.* at 24 (“The branch of philosophy we are dealing with at present is not purely theoretical like the others, because it is not in order to acquire knowledge that we are considering what virtue is, but to become good people—otherwise there would be no point in it.”).

48. *Id.* at 15.

with producing citizens of a certain kind, namely, those who are both good and the sort to perform noble actions.”<sup>49</sup>

To better understand what happiness means to a human being, Aristotle looks to the *ergon* or “characteristic activity of a human being.”<sup>50</sup> It is the characteristic activity of a human being to be guided by reason and to live according to virtue.<sup>51</sup> Aristotle writes: “[T]he human good turns out to be activity of the soul in accordance with virtue, and if there are several virtues, in accordance with the best and most complete.”<sup>52</sup> “Virtue” is a translation of *aretē*, which can also be translated as “excellence,” in both a moral and an intellectual sense.<sup>53</sup> Again, Aristotle writes: “Some virtues we say are intellectual, such as wisdom, judgment and practical wisdom, while others are virtues of character, such as generosity and temperance.”<sup>54</sup>

Aristotle famously claims that the correct ethical path is found in the mean between extremes.<sup>55</sup> The idea of the mean between extremes is easily misunderstood. Specifically, one might misinterpret it as meaning that the virtuous person always has an even temperament. Instead, Aristotle has in mind the virtuous person responding in the correct manner under all circumstances, including with severity, when appropriate. With respect to the virtue of courage, for example, “the person who avoids and fears everything, never standing his ground, becomes cowardly, while he who fears nothing, but confronts every danger, becomes rash.”<sup>56</sup> In other words, the virtue of courage is a mean between the extremes of cowardice and rashness.<sup>57</sup>

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49. *Id.*

50. *Id.* at 11.

51. *Id.* at 12.

52. *Id.*

53. Crisp, *supra* note 45, at 202 (“[A]retē virtue. Alternative translation: ‘excellence.’ Covers non-moral as well as moral characteristics, as in, *e.g.*, ‘This book has many virtues.’ Aristotle usually has in mind either moral excellences of character or intellectual excellences when using the term. It is related to the notion of ‘characteristic activity’ (*ergon*): The virtue of something consists in its capacity to perform well its characteristic activity (the virtue of an eye, for example, is to see well). Analogously, a vice (*kakia*) may be seen as a defect or flaw.”).

54. ARISTOTLE, *supra* note 42, at 22.

55. *Id.* at 30 (“I am talking here about virtue of character, since it is this that is concerned with feelings and actions, and it is in these that we find excess, deficiency and the mean. For example, fear, confidence, appetite, anger, pity, and in general pleasure and pain can be experienced too much or too little, and in both ways not well. But to have them at the right time, about the right things, towards the right people, for the right end, and in the right way, is the mean and best; and this is the business of virtue.”).

56. *Id.* at 25.

57. *Id.* at 32 (“In fear and confidence, courage is the mean. Of those who exceed it, . . . the one who exceeds in confidence is rash. He who exceeds in being afraid and is deficient in confidence is a coward.”).

The mean for Aristotle is the correct response, given the totality of the circumstances: “For example, fear, confidence, appetite, anger, pity, and in general pleasure and pain can be experienced too much or too little, and in both ways not well.”<sup>58</sup> The courageous person is not fearless. Rather, the courageous person experiences the proper level of fear given the situation and responds as appropriate despite the fear.

Propriety guides Aristotle’s conception of the mean: “But to have [feelings of fear, confidence, appetite, anger, pity, etc.] at the right time, about the right things, toward the right people, for the right end and in the right way, is the mean and best; and this is the business of virtue.”<sup>59</sup> The virtuous person may become very angry when suffering great harm but will not become very angry when merely slighted.<sup>60</sup> As such, “[t]here is praise for someone who gets angry at the right things and with the right people, as well as in the right way, at the right time, and for the right length of time.”<sup>61</sup>

Generosity, for example, applies to the question of how individuals and society should treat the least well-off. Like all virtues for Aristotle, generosity exists as a mean between extremes.<sup>62</sup> As a mean, generosity threads the excess and deficiency of the virtue: “wastefulness and stinginess.”<sup>63</sup> The generous person will give money (but one can also be generous with one’s time and other resources)<sup>64</sup> in a manner that is always seemly and appropriate. According to Aristotle, giving too much would be wasteful and giving too little, or not at all, would be stingy.<sup>65</sup> He writes: “[A]nyone can get angry, or give and spend money—these are easy; but doing them in relation to the right person, in the right amount, at the right time, with the right aim in view, and in the right way—that is not something anyone can do . . .”<sup>66</sup> Excellence in these matters is thus “rare, praiseworthy and noble.”<sup>67</sup> A generous person may be inclined to give too much away so that not enough remains for their own subsistence.<sup>68</sup> This excessive giving is not praiseworthy, nor is it despicable, according to Aristotle—it is foolish.<sup>69</sup>

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58. *Id.* at 30.

59. *Id.*

60. *Id.* at 72.

61. *Id.*

62. *Id.* at 32.

63. *Id.*

64. I am indebted to Jacques Derrida on this point (private conversation).

65. ARISTOTLE, *supra* note 42, at 32.

66. *Id.* at 35.

67. *Id.*

68. *Id.* at 60 (“It is very typical of the generous person to be excessive in giving, so that too little is left for himself, since it is characteristic of him not to look to his own interests.”).

69. *Id.* at 62.

For a person to be truly happy and flourishing, in Aristotle's sense, they must have external goods in addition to good moral character.<sup>70</sup> External goods are necessary insofar as "it is impossible, or at least no easy matter, to perform noble actions without resources."<sup>71</sup> Regardless of one's material prosperity, or lack thereof, however, the choice to be good or bad is ours alone. Aristotle writes: "Now if it is in our power to do noble and shameful actions, and the same goes for not doing them, and if, as we saw, being good and bad consists in this, then it is in our power to be good or bad."<sup>72</sup>

There is a certain intuitive, even common sense, truth to Aristotle's claim about the connection between human flourishing and virtuous activity. The person who is truly flourishing is not a monster; they are not petty, cruel or trifling, but courageous, kind and generous. What is problematic, from the critical ethical point of view to follow, is the focus on virtuous action for the sake of the one acting and not for the sake of the one who receives the benefit.<sup>73</sup> When I assist someone in distress, I do not do it for the sake of any benefit I might receive in return. Instead, such action results from my ethic and responsibility.<sup>74</sup>

In what follows, I maintain that the operation of a just society must reflect the ethical obligations of individuals. If there is an individual obligation to tend to the poor and house the homeless, which I submit there is, so too is there a societal obligation to do so. As Aristotle states in *The Politics*: "Thus, the courage, justice, and wisdom of a state have the same form and nature as the qualities which give the individual who possesses them the name of just, wise or temperate."<sup>75</sup>

Also, in *The Politics*, we find the following: "[P]overty is the parent of revolution and crime."<sup>76</sup> The clear implication here is that the state should avoid poverty among its citizens because poor people may resort to revolution and criminality. The Aristotelian argument against poverty focuses not on the suffering of the individuals, nor the moral obligation to address that suffering, but rather on finding what is expedient for the state to avoid problems with its citizenry. As Aristotle confirms: "[T]o secure gentle treatment for the poor is not an easy thing, since a ruling class is not

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70. *Id.* at 14.

71. *Id.*

72. *Id.* at 45.

73. See, e.g., Crisp, *supra* note 40, at x-xi ("[T]here is nothing in Aristotelian ethics inconsistent with the idea that all your reasons for action, or for living a certain kind of life or for being a certain kind of person, ultimately rest on the advancement of your own good. Nowhere in Aristotle is there a recommendation of any kind of genuine self-sacrifice.").

74. I am indebted to Jean-François Lyotard on this point (private conversation).

75. ARISTOTLE, THE POLITICS AND THE CONSTITUTION OF ATHENS 167 (Stephen Everson ed., Cambridge Univ. Press, 1996) (330 BCE).

76. *Id.* at 41.

always humane.”<sup>77</sup> Moreover, he writes: “Yet the true friend of the people should see that they are not too poor, for extreme poverty lowers the character of the democracy; measures therefore should be taken which will give them lasting prosperity . . . .”<sup>78</sup> And elsewhere: “I do not think that property ought to be common, as some maintain, but only that by friendly consent there should be a common use of it; and that no citizen should be in want of subsistence.”<sup>79</sup>

Aristotle is correct when he states that “no citizen should be in want of subsistence.”<sup>80</sup> Even so, the philosophical justification for this ethical conclusion, based on concern for the smooth functioning of society (and virtue for the sake of yourself, rather than those enjoying the benefits of it), may not go far enough to eradicate homelessness if and when, for example, society finds another “not always humane”<sup>81</sup> way to deal with poor people.

### B. Immanuel Kant’s Deontology

For Kant, reason guides human beings (and all rational beings)<sup>82</sup> to understand their duty to follow the moral law.<sup>83</sup> Many refer to Kant’s moral philosophy as “deontological” because it concerns duty.<sup>84</sup> Human beings are duty-bound to follow the moral law by what Kant calls the “categorical imperative.”<sup>85</sup> He writes: “There is therefore only a single categorical imperative, and it is this: *act only according to that maxim through which you can at the same time will that it become a universal law.*”<sup>86</sup> A “categorical imperative” is one that commands absolutely, as compared to

77. *Id.* at 111.

78. *Id.* at 160.

79. *Id.* at 180.

80. *Id.*

81. *Id.* at 111.

82. IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 5 (Mary Gregor & Jens Timmermann, eds. & trans., Cambridge Univ. Press, rev. ed. 2012) (1785) (“Everyone must admit that a law, if it is to hold morally, i.e. as the ground of an obligation, must carry with it absolute necessity; that the command: [T]hou shalt not lie, does not just hold for human beings only, as if other rational beings did not have to heed it; and so with all remaining actual moral laws; hence that the ground of the obligation here must not be sought in the nature of the human being, or in the circumstances of the world in which he is placed, but a priori solely in concepts of pure reason, and that any other prescription that is founded on principles of mere experience—and even a prescription that is in some certain respect universal, in so far as it relies in the least part on empirical grounds, perhaps just for a motivating ground—can indeed be called a practical rule, but never a moral law.”).

83. See, e.g., Crisp, *supra* note 40, at xvii (“According to Kantianism, what makes actions right is their being in accordance with the law of reason.”).

84. ANGELES, *supra* note 39, at 60 (“[D]eontology . . . the study of the concept of DUTY (obligation, responsibility, commitment) and its related concepts.”).

85. KANT, *supra* note 82, at 34.

86. *Id.*

a “hypothetical imperative,” which is for the sake of some other end.<sup>87</sup> Kant explains: “Now, if the action would be good merely as a means to *something else*, the imperative is *hypothetical*; if the action is represented as good *in itself*, hence as necessary in a will that in itself conforms to reason, as its principle, then it is *categorical*.<sup>88</sup> An example of a hypothetical imperative would be the following: “If you would like to pass the bar exam, then study for the bar exam.” A categorical imperative is different because there is no wherefore or additional end in view. An example of a categorical imperative would be the following: “[T]hou shalt not lie.”<sup>89</sup>

Kant is very serious about not lying, come what may.<sup>90</sup> This duty to tell the truth under all circumstances does not change, according to Kant, regardless of the expected benefits that lying could achieve or whatever horrors lying may avert.<sup>91</sup> Kant arrives at this understanding by asking whether the maxim (or principle) of the action could be willed as a universal law.<sup>92</sup> As for a lying promise, Kant writes: “I ask myself: would I actually be content that my maxim (to extricate myself from a predicament by means of an untruthful promise) should hold as a universal law (for myself as well as for others)?”<sup>93</sup> Kant continues: “[A]nd would I be able to say to myself: everyone may make an untruthful promise when he finds himself in a predicament from which he can extricate himself in no other way?”<sup>94</sup>

Kant reasons that this could not be willed as a universal law because, if it were, no one would ever be believed; therefore, he concludes, “[M]y maxim, as soon as it were made a universal law, would have to destroy

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87. *Id.* at 28 (“Now, all *imperatives* command either *hypothetically*, or *categorically*. The former represent the practical necessity of a possible action as a means to achieving something else that one wants (or that at least is possible for one to want). The categorical imperative would be the one that represented an action as objectively necessary by itself, without reference to another end.”).

88. *Id.*

89. *Id.* at 5.

90. See, e.g., IMMANUEL KANT, *On a supposed right to lie from philanthropy*, in PRACTICAL PHILOSOPHY 611, 612 (Mary J. Gregor ed. & trans., Cambridge Univ. Press 1996) (1797) (“Truthfulness in statements that one cannot avoid is a human being’s duty to everyone, however great the disadvantage to him or to another that may result from it; and although I indeed do no wrong to him who unjustly compels me to make the statement if I falsify it, I nevertheless do wrong in the most essential part of duty *in general* by such falsification, which can therefore be called a lie (though not in a jurist’s sense); that is, I bring it about, as far as I can, that statements (declarations) in general are not believed, and so too that all rights which are based on contracts come to nothing and lose their force; and this is a wrong inflicted upon humanity generally.”) (footnote omitted).

91. KANT, *supra* note 82, at 18 (“Now, to be truthful from duty is something quite different from being truthful from dread of adverse consequences; as in the first case, the concept of the action in itself already contains a law for me, whereas in the second I must first look around elsewhere to see what effects on me this might involve.”).

92. *Id.*

93. *Id.*

94. *Id.*

itself.”<sup>95</sup> The example above mentions an untruthful promise, but Kant maintains that the same prohibition holds for any type of lying. In his famous essay, *On a supposed right to lie from philanthropy*, Kant writes: “Every individual, however, has not only a right but even the strictest duty to truthfulness in statements that he cannot avoid, though they may harm himself or others.”<sup>96</sup>

An action, according to Kant, only has moral worth when it is done solely because it is one’s duty: “For in the case of what is to be morally good it is not enough that it [the action] *conform* with the moral law, but it must also be done *for its sake* . . .”<sup>97</sup> Kant explains: “[I]f not, that conformity is only very contingent and precarious, because the immoral ground will indeed now and then produce actions that conform with the law, but in many cases actions that are contrary to it.”<sup>98</sup>

Kant considers a shopkeeper who deals honestly with all his customers, including those who are inexperienced and naive.<sup>99</sup> Kant notes that the actions of the shopkeeper conform to duty, but they are not done for the sake of duty because the shopkeeper has a “self-interested purpose” in being honest with all his customers.<sup>100</sup> Presumably, that purpose is to remain in business, which is possible because he has cultivated a reputation for being honest. This is, of course, better than being dishonest with the customers, but it is not, strictly speaking, a moral course of action, according to Kant, because self-interest, rather than duty, motivates it.<sup>101</sup>

As to ethical obligations to the least well-off, Kant mentions the duty to be beneficent.<sup>102</sup> He writes: “To be beneficent, that is, to promote according to one’s means the happiness of others in need, without hoping for something in return, is everyone’s duty.”<sup>103</sup> Kant then queries, in sum and substance, how far one should go in terms of one’s duty to be beneficent.<sup>104</sup> He responds: “Surely not to the extent that he himself would finally come to need the beneficence of others.”<sup>105</sup> Similar ideas are operative for

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95. *Id.*

96. KANT, *supra* note 90, at 614.

97. KANT, *supra* note 82, at 5-6.

98. *Id.* at 6.

99. *Id.* at 13.

100. *Id.*

101. *Id.*

102. *Id.*

103. IMMANUEL KANT, *The metaphysics of morals*, in PRACTICAL PHILOSOPHY, *supra* note 90, at 365, 572 (“For everyone who finds himself in need wishes to be helped by others. But if he lets his maxim of being unwilling to assist others in turn when they are in need become public, that is, makes this a universal permissive law, then everyone would likewise deny him assistance when he himself is in need, or at least would be authorized to deny it.”).

104. *Id.*

105. *Id.*

Aristotle: “[G]oing to excess in giving and not taking is characteristic not of a wicked or despicable person, but of a foolish one.”<sup>106</sup>

According to Kant, the individual obligation to assist the least well-off can be enforced through taxation.<sup>107</sup> He writes: “For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs.”<sup>108</sup> Beneficent acts (e.g., giving to those in need) are only properly moral acts when one does them for the sake of duty, and not from any other motivation, including compassion. Kant explains:

Suppose, then, that the mind of that friend of humanity were beclouded by his own grief, which extinguishes all compassion for the fate of others; that he still had the means to benefit others in need, but the need of others did not touch him because he is sufficiently occupied with his own; and that now, as inclination no longer stimulates him to it, he were yet to tear himself out of this deadly insensibility, and to do the action without any inclination, solely from duty; not until then does it have its genuine moral worth. . . . It is just there that the worth of character commences, which is moral and beyond all comparison the highest, namely that he be beneficent, not from inclination, but from duty.<sup>109</sup>

This may sound harsh because someone who is compassionate and inclined to aid those in distress would appear to be a moral person. Kant’s concern, however, is that these compassionate emotions can fade and, perhaps, one day, be insufficient to determine the will. The moral will must universalize its maxims and thereby become sublime and cold but consistent. Kant’s concern with the motivation for action is understandable, as one who delights in assisting others may, in the future, find pleasure in some other pursuit. The one who acts from duty alone, however, views their inclinations with a certain suspicion and endeavors to purify their will—as much as is possible—and act without concern for external influences.

Neither does the moral worth of an action depend on its consequences, either expected or unforeseeable.<sup>110</sup> With respect to the categorical imperative of morality, “[i]t concerns not the matter of the action or what is

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106. ARISTOTLE, *supra* note 42, at 62.

107. KANT, *supra* note 103, at 468.

108. *Id.*

109. KANT, *supra* note 82, at 14.

110. *Id.* at 16 (“Thus the moral worth of the action does not lie in the effect that is expected from it, nor therefore in any principle of action that needs to borrow its motivating ground from this expected effect.”).

to result from it, but the form and the principle from which it does itself follow; and the essential good in it consists in the disposition, let the result be what it may.”<sup>111</sup>

Thus, according to Kant, we are to do our duty, as understood through reason, under all circumstances, come what may. This is the case now, at this moment, for all human beings, no matter how they may have acted in the past: “However evil a man has been up to the very moment of an impending free act . . . it was not only his duty to have been better [in the past], it is *now* still his duty to better himself. To do so must be within his power . . .”<sup>112</sup> Here we find the famous idea that *ought implies can* in Kant: If it is our duty to do something, it must be possible for us to do it as well. This is a powerful message of freedom and hope for all, including the least well-off. Even unfortunate people, born into the most difficult circumstances, have a choice to strive for a better life.<sup>113</sup>

Kant was right to stress one’s duty to be beneficent, and this obligation can be applied to the task of ending homelessness today. Nevertheless, Kant also maintained that the duty to be beneficent is limited in its scope. He never arrived at the radical obligation to the other that is needed to end the crisis of homelessness, as only the radical obligation to the other goes beyond the limits of reason and can be excessive, even unreasonable, as we shall see in the works of Levinas and Derrida.

### C. John Stuart Mill’s Utilitarianism

In response to Kant, Mill maintains that the morality of an action can be judged only by its consequences or, in other words, its utility; hence,

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111. *Id.* at 30.

112. IMMANUEL KANT, RELIGION WITHIN THE LIMITS OF REASON ALONE 36 (Theodore M. Greene & Hoyt H. Hudson, eds. & trans., Harper & Row 1960) (1793).

113. See, e.g., Ruth Walker, *Woman Who was Left Homeless at 17 After Fleeing Alcoholic Mom’s Home Where She was Sexually Abused Reveals How She Turned Her Life Around to Become a Successful College Graduate and Home Owner—Who Now Works in One of America’s Most Violent Schools*, DAILY MAIL (Feb. 17, 2024, 11:16 AM), <https://www.dailymail.co.uk/femail/article-13083595/Sexually-abused-homeless-17-college-graduate.html> (“At just 17, Taylor was homeless and alone. She’d witnessed her mom’s beatings at the hands of one of her stepfathers, as she cowered in the bathtub until the cops arrived. No one had protected her as one of her mom’s many boyfriends sexually abused her. She’d lived in a car because her mom chose alcohol instead of paying rent, and gone hungry for days because there was no food. In summer, she’d wear jackets to hide her bruises. Taylor is one of the success stories in a terrifying epidemic of homeless youth in America. Despite being pulled out of school to care for her younger siblings (her mom had five children to three different fathers) and missing her sophomore year, she was determined to graduate high school and be the first in her family to graduate from college. Today, she is not just a college graduate, she’s a homeowner, and working in one of the most violent schools in Florida.”).

utilitarianism.<sup>114</sup> This type of ethical theory is categorized as consequentialist. Consequentialism has been defined as “the doctrine that the moral value of any action always lies in its consequences, and that it is by reference to their consequences that actions, and indeed such things as institutions, laws and practices, are to be justified if they can be justified at all.”<sup>115</sup>

Mill insists that “Utility, or the Greatest Happiness Principle” is the basis for morality.<sup>116</sup> He writes: “[A]ctions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.”<sup>117</sup> Happiness, according to Mill, means “pleasure, and the absence of pain.”<sup>118</sup> As such, Mill’s view of happiness is not as expansive as that of Aristotle, whose notion of happiness, or *eudaimonia*, has the further sense of total human flourishing or living well.<sup>119</sup> Nevertheless, Mill claims that not all pleasures are equal, such that a continuum of pleasures exists.<sup>120</sup> He famously writes: “It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied.”<sup>121</sup>

Importantly, Mill is not advocating for a selfish hedonism. Instead, he claims “that the happiness which forms the utilitarian standard of what is right in conduct is not the agent’s own happiness, but that of all concerned.”<sup>122</sup> Mill takes the opposite view to Kant in terms of how the motive determines the morality of an action. Kant holds that only actions that are done for the sake of duty are moral.<sup>123</sup> For Mill, the morality of actions derives from their consequences: “He who saves a fellow creature from drowning does what is morally right, whether his motive be duty, or the hope of being paid for his trouble . . .”<sup>124</sup>

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114. See, e.g., Crisp, *supra* note 40, at xvii (“According to utilitarianism, what makes actions right is their producing the largest amount of well-being overall.”).

115. J.J.C. SMART & BERNARD WILLIAMS, UTILITARIANISM: FOR AND AGAINST 79 (1973).

116. JOHN STUART MILL, UTILITARIANISM 9 (Cambridge Univ. Press 2014) (1864).

117. *Id.* at 9-10.

118. *Id.* at 10.

119. Crisp, *supra* note 45, at 203 (“A broad term [*eudaimonia*], roughly equivalent to ‘whatever makes a human life good for the person living it.’ Happiness [*eudaimonia*] must not be understood to be a contented state of mind, as in, ‘I feel happy today.’”).

120. See, e.g., SMART & WILLIAMS, *supra* note 115, at 13 (“[Mill] held that there are higher and lower pleasures. This seems to imply that pleasure is a necessary condition for goodness but that goodness depends on other qualities of experience than pleasantness and unpleasantness.”).

121. MILL, *supra* note 116, at 14.

122. *Id.* at 24.

123. See, e.g., KANT, *supra* note 82, at 5-6 (“For in the case of what is to be morally good it is not enough that it [the action] conform with the moral law, but it must also be done *for its sake*; if not, that conformity is only very contingent and precarious, because the immoral ground will indeed now and then produce actions that conform with the law, but in many cases actions that are contrary to it.”).

124. MILL, *supra* note 116, at 26.

Whereas Kant finds a firm prohibition against lying,<sup>125</sup> Mill maintains that lying is permissible, given the right circumstances.<sup>126</sup> Mill writes, with respect to the rule against lying: “[It] admits of possible exceptions, [as] is acknowledged by all moralists [sic]; the chief of which is when the withholding of some fact . . . would save an individual . . . from great unmerited evil, and when the withholding can only be effected by denial.”<sup>127</sup> Mill is simply wrong in his historical claim about “all moralists,” as Kant does, most emphatically, deny that there are any legitimate exceptions to the prohibition against lying. Kant writes, with respect to this exact question of lying to save an innocent person, the following: “To be *truthful* (honest) in all declarations is therefore a sacred command of reason prescribing unconditionally, one not to be restricted by any conveniences.”<sup>128</sup>

Mill is prepared not only to condone lying but every manner of crime and atrocity when the resulting consequence would likely be preferable to the alternative.<sup>129</sup> He writes: “Thus, to save a life, it may not only be allowable, but a duty, to steal, or to take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner.”<sup>130</sup> Present-day consequentialist Michael Walzer supports the utilitarian position while conceding that this type of consequentialist reasoning leads to “dirty hands”<sup>131</sup> (i.e., real moral guilt).<sup>132</sup> Mill, in contrast, makes no such concession, but rather celebrates these vile crimes

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125. See, e.g., KANT, *supra* note 90, at 612 (“Truthfulness in statements that one cannot avoid is a human being’s duty to everyone, however great the disadvantage to him or to another that may result from it; and although I indeed do no wrong to him who unjustly compels me to make the statement if I falsify it, I nevertheless do wrong in the most essential part of duty *in general* by such falsification, which can therefore be called a lie (though not in a jurist’s sense); that is, I bring it about, as far as I can, that statements (declarations) in general are not believed, and so too that all rights which are based on contracts come to nothing and lose their force; and this is a wrong inflicted upon humanity generally.”) (footnote omitted).

126. MILL, *supra* note 116, at 33.

127. *Id.* (emphasis added).

128. KANT, *supra* note 90, at 613.

129. MILL, *supra* note 116, at 95.

130. *Id.*

131. See, e.g., MICHAEL WALZER, *JUST AND UNJUST WARS* 323 (5th ed. 2015) (“The deliberate killing of the innocent is murder. Sometimes, in conditions of extremity (which I have tried to define and delimit), commanders must commit murder or they must order others to commit it. And then they are murderers, though in a good cause. In domestic society, and particularly in the context of revolutionary politics, we say of such people that they have dirty hands. I have argued elsewhere that men and women with dirty hands, though it may be the case that they had acted well and done what their office required, must nonetheless bear a burden of responsibility and guilt.”) (footnote omitted).

132. See, e.g., TIMOTHY P. JACKSON, *LOVE DISCONSOLED: MEDITATIONS ON CHRISTIAN CHARITY* 213 (1999) (“The inability of Walzer’s account of political justice to put limits on what might be done to preserve justice itself suggests why terrorism, for instance, is such an intractable problem today. Without empathy for others and a basic honoring of the sanctity of all human lives, even unjust or burdensome or strategically ‘useful’ lives, justice will license endless retaliation . . . ‘Justice’ may finally enjoin mass murder.”).

(kidnapping is explicitly endorsed, torture is implied, and murder can't be far off) and calls them "justice." Mill writes: "In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that principle, not just in the particular case."<sup>133</sup> It was not only Kant, Aristotle too suggested that there are certain things that we must not do, come what may: "But some things perhaps we cannot be compelled to do, and rather than do them we ought to die after the most terrible suffering . . ."<sup>134</sup>

The problem with Mill's Utilitarianism, with respect to solving the homelessness crisis, is the absence of absolute ethical rules that cannot be violated under any circumstances. If a society determined that, in order to maximize happiness for the majority, the homeless would need to be put in camps (or worse), Mill's Utilitarianism would provide no guardrail to avert these atrocities.

### III. CONTEMPORARY MORAL PHILOSOPHY AND THE RADICAL OBLIGATION TO THE OTHER

This part of the Article introduces a critique of traditional moral philosophy, as expressed in the contemporary moral philosophical writings of two of the most important philosophers of the twentieth century, Emmanuel Levinas and Jacques Derrida, whose work demonstrates that traditional moral philosophy alone cannot establish the radical obligation to the other which is requisite for adequately addressing the crisis of homelessness, even though Levinas and Derrida were not specifically focused on the homelessness crisis.

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133. MILL, *supra* note 116, at 95.

134. ARISTOTLE, *supra* note 42, at 38.

### A. *Emmanuel Levinas and Ethics as First Philosophy*

For Emmanuel Levinas,<sup>135</sup> ethics takes priority, in every possible sense,<sup>136</sup> over other philosophical modes of inquiry.<sup>137</sup> Levinas' conception of ethics is not based on virtue, reason, or utility, as we have seen in Aristotle, Kant, and Mill, respectively.<sup>138</sup> For Levinas, ethics emanates from a radical obligation to the other person: "Responsibility for the Other, for the naked face of the first individual to come along."<sup>139</sup> The obligation to "the first individual to come along" suggests that the duty is not based on any prior relationship.<sup>140</sup>

Levinas continues: "A responsibility that goes beyond what I may or may not have done to the Other or whatever acts I may or may not have committed, as if . . . I had to answer for the other's death even before *being*."<sup>141</sup> This responsibility does not arise because of something that one might have done. Levinas does not have in mind a contractual notion of responsibility that arises because of an agreement between the parties.<sup>142</sup> The radical obligation is created prior to any agreement. Similarly, this duty does not concern the kind of obligation that arises because of someone's negligence (e.g., tort liability); nor does it implicate the kind of obligation

135. MICHAEL L. MORGAN, THE CAMBRIDGE INTRODUCTION TO EMMANUEL LEVINAS 1-2 (2011) ("Emmanuel Levinas's life spans the twentieth century. He was born in 1906 and lived his youth in Kovno in Lithuania; he died in 1995 in Paris. . . . The rise of National Socialism and its twelve-year reign had intellectual and personal effects on Levinas. He lost many members of his family in the death camps and the Nazi advance into the east. His own wife and children had to go into hiding in France – his friend Maurice Blanchot arranged for them to be hidden in a monastery – when the Nazis took control and while he [Levinas] was in a prisoner-of-war camp for nearly five years after 1940. And intellectually, it was Martin Heidegger's role as rector of Freiberg University and his commitment to Nazism that provoked, in 1933, Levinas's lifelong struggle with Heidegger's philosophy and his drive to rethink the character of the human condition and its ethical foundations."). *See also* ROZEMUND ULIJÉE, THINKING DIFFERENCE WITH HEIDEGGER AND LEVINAS: TRUTH AND JUSTICE (2020) (study of the intellectual relation between Heidegger and Levinas around the questions of truth and justice).

136. *See, e.g.*, ANGELES, *supra* note 39, at 226 ("[P]rior . . . Preceding in order of time . . . Preceding in order of (a) knowledge, (b) classification, (c) hierarchy (rank, order), (d) source (origin), (e) cause, or (f) privilege.") (emphasis omitted).

137. *See, e.g.*, EMMANUEL LEVINAS, *Ethics as First Philosophy*, in THE LEVINAS READER 75-87 (Seán Hand ed., Blackwell Publishers 1989) (1984).

138. *See, e.g.*, Crisp, *supra* note 40, at xvii ("According to utilitarianism, what makes actions right is their producing the largest amount of well-being overall. According to Kantianism, what makes actions right is their being in accordance with the law of reason. We might understand Aristotle, and a pure virtue ethics, as claiming that what makes actions right is their being virtuous.").

139. LEVINAS, *supra* note 137, at 83.

140. *Id.*

141. *Id.*

142. *See, e.g.*, EMMANUEL LEVINAS, *God and Philosophy*, in THE LEVINAS READER, *supra* note 139, at 166, 180 ("Responsibility for the neighbour is precisely what goes beyond the legal and obliges beyond contracts; it comes to me from what is prior to my freedom, from a non-present, an immemorial.").

that arises because of actions that cause intentional harm to another (e.g., tort or criminal liability). Again, Levinas writes: “Prior to any act, I am concerned with the Other, and I can never be absolved from this responsibility.”<sup>143</sup> This is a “guiltless responsibility.”<sup>144</sup> Presumably, this responsibility is “guiltless” because it does not arise from any prior action. This responsibility does not result from anything I might have done or failed to do; it does not originate in my actions or abstentions but by virtue of the face of the other person.

Levinas combats consequentialist reasoning (e.g., Mill and Walzer) by reminding us of what it means to be human. He declares: “The human *is* the return to . . . its capacity to fear injustice more than death, to prefer to suffer than to commit injustice, and to prefer that which justifies being over that which assures it.”<sup>145</sup> Aristotle maintains that the person who is excessive in giving is a foolish person.<sup>146</sup> It is precisely this type of “foolishness,” however, which characterizes the genuinely ethical, according to Levinas.<sup>147</sup> He writes: “To be good is a deficit, waste and *foolishness* in a being; to be good is excellence and elevation beyond being. Ethics is not a moment of being; it is otherwise and better than being, the very possibility of the beyond.”<sup>148</sup>

Levinas, however, does share a certain affinity with Kant.<sup>149</sup> When referring to Kant’s “practical,” or moral, philosophy, Levinas remarks that it is one “to which I feel particularly close.”<sup>150</sup> This affinity is undoubtedly due to the moral seriousness and steadfastness shared by the two philosophers. Even still, there is an important difference between them. Reason is the ground of ethics for Kant, and responsibility (for the other) is the basis of ethics, according to Levinas. This is important because a Levinasian radical ethics of obligation may be viewed as excessive, even unreasonable, from a sober Kantian perspective. Levinas writes: “The *only* absolute value is the human possibility of giving the other priority over oneself.”<sup>151</sup> Moreover, for Levinas, this responsibility is ultimately self-sacrificial: “The responsibility for the other . . . is, concretely, through all

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143. EMMANUEL LEVINAS, *Ethics and Politics*, in THE LEVINAS READER, *supra* note 139, at 289, 290.

144. LEVINAS, *supra* note 137, at 83.

145. *Id.* at 85 (emphasis added).

146. ARISTOTLE, *supra* note 42, at 62 (“[G]oing to excess in giving and not taking is characteristic not of a wicked or despicable person, but of a foolish one.”).

147. LEVINAS, *supra* note 142, at 179.

148. *Id.* (emphasis added).

149. EMMANUEL LEVINAS, ENTRE NOUS: ON THINKING-OF-THE-OTHER 10 (Michael B. Smith & Barbara Harshav trans., Columbia Univ. Press 1998) (1991).

150. *Id.*

151. *Id.* at 109 (emphasis added).

the modalities of *giving*, the acceptance of the ultimate gift of dying for the other.”<sup>152</sup> Kant is much more modest in regard to sacrifice, qualifying that “to be beneficent *where one can* is one’s duty . . .”<sup>153</sup>

Levinas is also very much concerned with justice and the responsibility to victims of wrong. He writes: “The fact that the other, my neighbour, is also a third party with respect to another, who is also a neighbour, is the birth of thought, consciousness, justice and philosophy.”<sup>154</sup> Elsewhere, Levinas writes: “But if your neighbour attacks another neighbour or treats him unjustly, what can you do? Then . . . we are faced with the problem of knowing who is right and who is wrong, who is just and who is unjust. There are people who are wrong.”<sup>155</sup>

One must deal with those who are *doing wrong* and do so firmly.<sup>156</sup> Again, Levinas writes: “[T]he ‘executioner’ is the one who threatens my neighbor and, in this sense, calls for violence and no longer has a Face.”<sup>157</sup> To proclaim that one “no longer has a Face”<sup>158</sup> means severing the radical moral obligation from which one otherwise benefits. Even the “executioner” deserves basic legal and human rights, but that higher, radical obligation to lay down one’s life for the other<sup>159</sup> no longer applies. Writing about the prosecution of the notorious war criminal, Klaus Barbie, Levinas remarks: “The defendant, deemed innocent [until proven guilty], has the right to a defense, to consideration.”<sup>160</sup>

Even under such a theory, violent individuals among us must be jailed, institutionalized, or otherwise removed, as appropriate, given the circumstances. The radical obligation to the other does not require any society to risk the safety of its own citizens by allowing them to fall prey to

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152. *Id.* at 186.

153. KANT, *supra* note 82, at 13 (emphasis added).

154. LEVINAS, *Substitution*, in THE LEVINAS READER, *supra* note 137, at 88, 118.

155. LEVINAS, *supra* note 137, at 294.

156. *But see* PHILIPPE LACOUE-LABARTHE, HEIDEGGER, ART AND POLITICS 31 (Chris Turner trans., Basil Blackwell 1990) (1987) (“To speak of *doing wrong* presupposes that there exists an ethics, or at least that an ethics is possible. Now it is probably the case today that neither of these conditions is fulfilled. Firstly because ethics, whatever the most sophisticated or the least simple-minded efforts expended in that direction (I am thinking of the efforts of Levinas), also suffers from the general exhaustion of philosophical possibilities and manifestly cannot claim to stand outside that exhaustion except at the cost of a certain blindness towards it and its origin. . . . We are, of course, forced to live and act according to the norms and prescriptions of ethics, i.e. norms and prescriptions derived from the old ethical systems, but no one can any longer be in any doubt, unless they wish simply to indulge in re-legitimizing the obsolete, that we are in this regard entirely without resources.”). To which the response must be that the source of ethics is found not only in reason but also in passion, compassion, and faith, as well as in the self-evident obligation to the other. Moreover, morality is most definitely not *passé*.

157. LEVINAS, *supra* note 149, at 105.

158. *Id.*

159. *See, e.g.*, *id.* at 173 (“Responsibility for the other to the point of dying for the other!”).

160. *Id.* at 231.

the violent attacks of criminals or the mentally ill. As Aristotle also noted: “In all well-balanced governments there is nothing which should be more jealously maintained than the spirit of obedience to law . . . .”<sup>161</sup> Nevertheless, for Aristotle, ethics is ultimately self-serving, and one does not have an obligation to lay down one’s life for the other or to use violence in order to protect the other. In contrast, Levinas suggests that one has both the obligation to lay down one’s life for the other and to use violence against the “executioner” when necessary to save the other. As Levinas notes: “When I speak of Justice [sic], I introduce the idea of the struggle with evil, I separate myself from the idea of nonresistance to evil. . . . There is a certain measure of violence necessary in terms of justice . . . .”<sup>162</sup>

With respect to applying the principles in Levinas’s moral philosophy to ending the crisis of homelessness, it is necessary to “giv[e] the other priority over oneself.”<sup>163</sup> This radicality of obligation was not found in the moral philosophy of Aristotle, Kant, or John Stuart Mill.

#### *B. Jacques Derrida and Ethics as Hospitality*

For Jacques Derrida,<sup>164</sup> who was very much influenced by Levinas,<sup>165</sup> the obligation to the other is even more radical.<sup>166</sup> He writes: “Let us say yes to *who or what turns up*, before any determination, before any anticipation,

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161. ARISTOTLE, *supra* note 75, at 134.

162. LEVINAS, *supra* note 149, at 105.

163. *Id.* at 109.

164. BENOÎT PEETERS, DERRIDA: A BIOGRAPHY 3-4 (Andrew Brown trans., Polity Press 2013) (2010) (“Writing the life of Jacques Derrida means writing the story of a Jewish boy from Algiers, excluded from school at the age of twelve, who became the French philosopher whose works have been the most widely translated throughout the world; the story of a fragile and tormented man who, to the end of his life, continued to see himself as ‘rejected’ by the French university system. . . . It means retracing a series of courageous political commitments in support of Nelson Mandela, . . . immigrants, and gay marriage. It means relating the fortune of a concept – deconstruction – and its extraordinary influence that went far beyond the philosophical world, affecting literary studies, architecture, law, theology, feminism, queer studies, and postcolonial studies.”). See also DECONSTRUCTION IN A NUTSHELL: A CONVERSATION WITH JACQUES DERRIDA (John D. Caputo ed., 2021) (providing introduction to Derrida’s philosophy including, *inter alia*, the concepts of deconstruction and hospitality).

165. See, e.g., JACQUES DERRIDA, ADIEU TO EMMANUEL LEVINAS 12-13 (Pascale-Anne Brault & Michael Naas trans., Stanford Univ. Press 1999) (1997) (“The good fortune of our debt to Levinas is that we can, thanks to him, assume it and affirm it without regret, in a joyous innocence of admiration.”).

166. See, e.g., JACQUES DERRIDA, THE GIFT OF DEATH 71 (David Wills trans., Univ. of Chi. Press 1995) (1992) (“How would you ever justify the fact that you sacrifice all the cats in the world to the cat that you feed at home every morning for years, whereas other cats die of hunger at every instant? Not to mention other people? How would you justify your presence here speaking one particular language, rather than there speaking to others in another language? And yet we also do our duty by behaving thus.”).

before any *identification . . .*”<sup>167</sup> Derrida’s understanding of obligation is more expansive and inclusive than that of Levinas. Derrida continues: “[W]hether or not it has to do with a foreigner, an immigrant, an invited guest, or an unexpected visitor, whether or not the new arrival is the citizen of another country, a human, animal, or divine creature, a living or dead thing, male or female.”<sup>168</sup>

Indeed, Derrida understands ethics and hospitality to be “coextensive.”<sup>169</sup> This is particularly important when focusing on the issue of homelessness and, increasingly, the homelessness of immigrants. Derrida says: “It is always about answering for a dwelling place, for one’s identity, one’s space, one’s limits, for the *ethos* as abode, habitation, house, hearth, family, home.”<sup>170</sup> Elsewhere, he says: “[A]bsolute hospitality requires that I *open up my home* and that I give not only to the foreigner . . . but to the absolute, unknown, anonymous other . . . without asking of them either reciprocity (entering into a pact) or even their names.”<sup>171</sup>

Nevertheless, absolute hospitality becomes conditional and concrete in practice.<sup>172</sup> As Derrida explains, a concrete act of hospitality “presupposes . . . that it is possible for them [the recipients] . . . to be subjects in law, to be questioned and liable, to have crimes imputed to them, to be held responsible, to be equipped with nameable identities, and proper names.”<sup>173</sup> There is, therefore, a necessary antinomy between the absolute, unlimited hospitality and the conditional and the concrete one that can be made manifest in the world.<sup>174</sup> Derrida compares the two as follows: “[U]nlimited hospitality (to give the new arrival all of one’s home and oneself . . . without asking a name, or compensation, or the fulfilment of even the smallest condition), and on the other hand, the laws (in the plural), those rights and duties that are always conditioned . . .”<sup>175</sup> The two regimes, so to speak, imply and require each other.<sup>176</sup>

Derrida insists: “[T]he unconditional law of hospitality needs the laws, it *requires* them. This demand is constitutive. It wouldn’t be effectively

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167. JACQUES DERRIDA, *OF HOSPITALITY* 77 (Rachel Bowlby trans., Stanford Univ. Press 2000) (1997).

168. *Id.*

169. *Id.* at 149.

170. *Id.* at 149-51 (Derrida’s text is on odd numbered pages only).

171. *Id.* at 25 (emphasis added).

172. See, e.g., *id.* at 73 (“Hospitality is due to the foreigner, certainly, but remains, like the law, conditional, and thus conditioned in its dependence on the unconditionality that is the basis of the law.”).

173. *Id.* at 23.

174. *Id.* at 77.

175. *Id.*

176. See, e.g., *id.* at 79-81 (Derrida’s text is on odd numbered pages only) (“These two regimes of law, of the law and the laws, are thus both contradictory, antinomic, and inseparable. They both imply and exclude each other, simultaneously.”).

unconditional, the law, if it didn't *have to become* effective, concrete, determined. . . . It would risk being abstract, utopian, illusory, and so turning over into its opposite.”<sup>177</sup> So too, the conditional, concrete laws require the unconditional to provide their basis and support. Again, Derrida says: “And vice versa, conditional laws would cease to be laws of hospitality if they were not guided, given inspiration, given aspiration, required, even, by the law of unconditional hospitality.”<sup>178</sup>

In the next section, we turn to the concrete application, in legal advocacy and policy reform, of the radical obligation to the other, as found in the works of Levinas and Derrida. Only the radical obligation to the other provides the moral support for the tremendous work and sacrifice that is required to end the scourge of homelessness in the United States. Traditional moral philosophy has not been able to ground the radical obligation to the other as traditional moral philosophy has focused on self-serving virtue (Aristotle), duty based on reason alone (Kant), and the maximization of happiness (Mill). None of these foundations have proven to be sufficient to the task of ending homelessness in practice, which follows from the theoretical limitations discussed above.

#### IV. ENDING HOMELESSNESS IN THE U.S. THROUGH LEGAL ADVOCACY AND POLICY REFORM

This part of the Article suggests applications of legal advocacy and changes in current policies to end homelessness in the United States in light of contemporary moral philosophy.

When we conceptualize the radical obligation to the other as the very foundation of ethics, the crisis of homelessness in the United States becomes one that is eminently solvable. This is not to say that those homeless individuals who pose a real threat to themselves or to others should be left on the streets.<sup>179</sup> Indeed, those homeless individuals who are suffering from severe mental illness—and who pose an immediate threat to themselves or others—need to be committed to the appropriate facilities, whether

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177. *Id.* at 79.

178. *Id.*

179. See, e.g., Alex Oliveira, *Homeless Man, 23, is Indicted for Murder of Grandmother*, 77, in *Buckhead-as Atlanta's Wealthy Enclave Moves Closer to Seceding from Crime-Ridden City*, DAILY MAIL (Mar. 1, 2023, 5:08 PM), <https://www.dailymail.co.uk/news/article-11809175/Homeless-Atlanta-man-indicted-murder-grandmother.html> (“A homeless Georgia man accused of stabbing a grandmother to death at her home in one of Atlanta’s wealthiest suburbs was indicted for murder last week.”).

voluntarily or involuntarily.<sup>180</sup> Sadly, police sometimes kill mentally ill individuals.<sup>181</sup> At other times, homeless individuals, whether mentally ill or not, kill people going about their daily lives.<sup>182</sup>

It is axiomatic that jailing the criminals,<sup>183</sup> institutionalizing the mentally ill,<sup>184</sup> and removing the undocumented immigrants within the homeless

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180. Kerry Jackson & Wayne Winegarden, *Taking Action: Lessons Learned from Local Changemakers*, in NO WAY HOME: THE CRISIS OF HOMELESSNESS AND HOW TO FIX IT WITH INTELLIGENCE AND HUMANITY, *supra* note 28, at 103, 111 (“Involuntary institutional commitment might seem like a callous act, especially when it’s done in large numbers. But is it truly humane to allow people to waste away and pose a threat to others? Policy-makers would be more negligent than they already have been if they dismiss this option, which has more support than one might imagine, without thoughtful examination.”). See also David Oshinsky, *It’s Time to Bring Back Asylums: Recent Cases of Violence by the Mentally Ill Highlight the Need to Reconsider a Long-Maligned Institution that Now Offers a Promising Solution*, WSJ.com (July 21, 2023, 10:56 AM), <https://www.wsj.com/articles/its-time-to-bring-back-the-asylum-ec01fb2> (“The ongoing saga of the severely mentally ill in America is stirring attention again in a sadly familiar way. In Los Angeles in early 2022, a 70-year-old nurse was murdered while waiting for a bus, and two days later a young graduate student was stabbed to death in an upscale furniture store where she worked. That same week in New York City, a 40-year-old financial analyst was pushed onto the subway tracks as a train was arriving, killing her instantly. *All three assaults, random and unprovoked, were committed by unsheltered homeless men with violent pasts and long histories of mental illness.* In New York, the perpetrator had warned a psychiatrist during one of his many hospitalizations of his intention to commit that very crime. . . . The very word ‘asylum’ brings shivers to those old enough to remember its abuses. It has a disturbing cultural legacy to confront in the sadistic Nurse Ratched of ‘One Flew Over the Cuckoo’s Nest.’ Bringing it back in any form will face the twin obstacles of cost and image. But for the most vulnerable among us, who exist in a world of peril to themselves and to others, it is a far better option than the alternatives of homelessness and incarceration.”) (emphasis added).

181. See, e.g., Harriet Alexander, *Horrific Moment San Francisco Cops Fatally Shoot ‘Gun-Wielding, Mentally Ill’ Man In Latest Tragedy to Unfold on Bay Area Streets*, DAILY MAIL (July 27, 2023, 2:43 AM), <https://www.dailymail.co.uk/news/article-12342709/Horrific-moment-San-Francisco-cops-fatally-shoot-gun-wielding-mentally-ill-man-latest-tragedy-unfold-Bay-Area-streets.html> (“The shocking moment San Francisco police officers shot a man dead in a hail of bullets on Wednesday afternoon was caught on video—as it’s revealed the cops were in the area pursuing another man. The incident occurred in the Bayview section of the city. A local resident told KTVU the man who was shot suffered from mental illness. At the time of writing, his identity has not been made public. Social media footage showed him lying on the ground after he had been shot, with what appeared to be a handgun by his side.”).

182. See, e.g., Margaret Weaver, *California Woman Killed by Sledgehammer-Wielding Homeless Man on Christmas Eve as She Walked Her Dog*, THE MESSENGER (Dec. 27, 2023, 11:11 PM), <https://themessenger.com/news/california-woman-sledgehammer-attack-el-camino-college-homeless-man-christmas-eve> (“A California woman was beaten to death with a sledgehammer by a homeless man in a brutal attack on the morning of Christmas Eve while walking her dog on a college campus, authorities said Wednesday.”).

183. See Rufo, *supra* note 33, at 132 (“The facts . . . are simple: 75 percent of the unsheltered homeless have a serious addiction, 78 percent have a mental illness, and, as a group, they are nearly 100 times more likely to commit crimes and get booked into jail than the average citizen.”) (footnote omitted).

184. See EIDE, *supra* note 13, at 106 (“[I]t seems fair to say that 25 to 33 percent of the adult homeless population is somehow functionally impaired by serious mental illness.”).

population (e.g., in New York City),<sup>185</sup> would reduce the larger unhoused demographic, but I hasten to add some necessary provisos. As for those accused of non-violent crimes, the criminal justice system can divert them into much needed substance abuse treatment as well as occupational training programs.<sup>186</sup> Mentally ill individuals should only be forcibly taken off the streets when they pose a threat to themselves or others.<sup>187</sup> Also, the removal of innocent, non-violent, undocumented homeless immigrants (with no legal basis for remaining in the country), is proper only when it is safe to return them to their country of origin or practical to relocate them to a safe alternative country.<sup>188</sup> It is, however, understandable that citizens would

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185. See, e.g., Stephen M. Lepore, *NY Gov. Kathy Hochul Suggests DEPORTING Migrants Who Were Allowed to Walk Free on No Bail After Beating Cops in NYC's Times Square*, DAILY MAIL (Jan. 31, 2024, 8:46 PM), <https://www.dailymail.co.uk/news/article-13030497/ny-governor-kathy-hochul-deporting-migrants-times-square.html> ("New York Governor Kathy Hochul continued her U-turn on the crisis at the border as she said that the state should consider deporting a group of migrants who went free on bail after attacking two cops in Times Square. Four men were all charged with Assault on a Police Officer, Gang Assault, Obstructing Governmental Administration and Disorderly Conduct but were released without bail. . . . The city has a legal obligation to give shelter to those who make their way there, and mayor Eric Adams has desperately turned to a variety of city landmarks such as hotels, makeshift shelters and temporary housing as short-term solutions. The attack comes as New York City struggles under the weight of tens of thousands of migrants in need of places to stay and other accommodations. In 2023 alone, the city dealt with the arrival of more than 100,000 migrants.").

186. See, e.g., EIDE, *supra* note 13, at 130 ("With respect to some social problems related to homelessness, we should *increase* the use of the criminal justice system, due to the unique leverage it can bring to bear. One example is probation-style diversion programs. Judges, lawyers, and personnel who run mental health courts and drug courts have years of experience using the threat of imprisonment as a way to stabilize unstable individuals. Expanding the use of such programs requires a willingness to put people in prison, at least sometimes, when they fail to comply with the terms of their release.").

187. See, e.g., SOUTHWORTH & BRALLIER, *supra* note 10, at 37 ("The *O'Connor v. Donaldson* decision found that 'A finding of mental illness alone cannot justify a state locking a person up against his will and keeping him indefinitely in simple custodial confinement.' This decision found further that unless a person is considered an imminent threat to themselves or others, it is unconstitutional to institutionalize them without their consent.") (footnote omitted). *But see* EIDE, *supra* note 13, at 58 ("But civil commitment is a tightly regulated process. The eligibility bar, usually dangerousness to self or others, is far too high for the entire seriously mentally ill homeless population to meet."). To which the response must be that it is indeed right and meet that the civil commitment eligibility bar is high. The purpose of civil commitment is precisely to remove from the streets those likely to harm themselves or others. Such a serious infringement on individual freedom should never be taken lightly and should only be considered under the most desperate circumstances.

188. Cf. SLAVOJ ŽIŽEK, *TOO LATE TO AWAKEN: WHAT LIES AHEAD WHEN THERE IS NO FUTURE?* 120-21 (2023) ("What this means is something which may sound shocking, but it is worth insisting on it: you don't have to respect or love immigrants – what you have to do is to change the situation so that they will not have to be immigrants in the first place. The citizen of a developed country who wants to lower immigration levels, and is ready to do something so that migrants don't have to go to a country that they mostly don't even like, is much better than a humanitarian who preaches openness to immigrants while silently participating in the economic and political practices that brought to ruin the countries where the immigrants are coming from.").

object to preferential housing options for non-citizen new arrivals at the expense of homeless citizens sleeping in the streets.<sup>189</sup>

The radical obligation to the other does require that we each do our part to assist in re-housing homeless individuals and families. It also means preventing others from falling into homelessness. It is not always safe to re-house homeless individuals in one's own residence.<sup>190</sup> One sure way to both re-house homeless individuals (by expanding availability of homeless shelters) and prevent more people from falling into homelessness (by expanding affordable housing) is to combat "NIMBYism"<sup>191</sup> by welcoming homeless shelters and low-income housing in all neighborhoods, rather than

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189. See, e.g., James Reinl, *Outrage Over Democrat-Run Maine Town's Luxury Digs for Migrants: Asylum Seekers Live Rent-Free in 'Palace' Apartments with Balconies While Hundreds of US-Born Homeless Sleep Rough*, DAILY MAIL (Jan. 12, 2024, 11:09 AM), <https://www.dailymail.co.uk/news/article-12953637/Outrage-Democrat-run-Maine-towns-luxury-digs-migrants-Asylum-seekers-live-rent-free-palace-apartments-balconies-hundreds-born-homeless-sleep-rough.html> ("Social media users have reacted angrily to revelations that a town in Democrat-run Maine is lavishing millions of dollars on luxury apartments for asylum seekers, even as many US-born residents sleep rough. . . . [C]ommentators quickly slammed the decision to spend a reported \$3.5 million on 60 migrant families, when so many others struggle to pay rents or have to sleep rough in one of America's chilliest states. . . . Others complained that migrants were being 'put ahead of citizens' by getting as much as two-year stints living for free in a 'nice new building.'").

190. See, e.g., Andrew Levy & Laurence Dollimore, *Moment Homeless Killer Returned to Murder 83-Year-Old Widow Who Had Taken Him into Her Home—Just Minutes After the Terrified Pensioner Had Called Police*, DAILY MAIL (Mar. 24, 2023, 1:10 PM), <https://www.dailymail.co.uk/news/article-11898973/Homeless-man-killed-widow-83-taken-guilty-murder.html> (providing an example of why it is not always safe to re-house homeless individuals in one's own residence) ("This is the chilling moment a homeless killer returned to the house of his 83-year-old widow landlord before murdering her in cold blood—just minutes after being sent away by police for threatening her. . . . The [victim was a] keen gardener who attended local church social clubs [and] was a 'charitable woman concerned with people who were down on their luck and the homeless'.").

191. See generally MICHELE WAKIN, *HOMELESSNESS IN AMERICA* 357 (2022) ("NIMBY 'Not in my backyard.' This acronym symbolizes how many residents feel when homeless shelters [and/or affordable housing units] want to locate in their neighborhoods. The sentiment of NIMBYism has been strong enough to relegate shelters and service facilities to marginal city areas, far from other services.") (emphasis omitted). See, e.g., Stephen M. Lepore, *Neighbors Outraged Over Plan to Convert \$1 Million Church Property to Affordable Housing in Washington Community*, DAILY MAIL (Feb. 5, 2024, 2:09 AM), <https://www.dailymail.co.uk/news/article-13045531/Washington-neighborhood-1million-church-converted-affordable-housing.html> ("A community in Washington State is up in arms over the plans to convert a century-old church into affordable housing specifically for young adults. . . . People in the neighborhood are concerned with how the change in the facility could impact the area with dozens of new affordable housing units.").

vehemently opposing them.<sup>192</sup> From a policy perspective, state and federal governments must make funding available to directly pay the housing expenses for those who are homeless or at risk of losing their homes.<sup>193</sup> Additionally, legal advocacy is needed to stem the tide of evictions and foreclosures that are precipitating causes of homelessness.<sup>194</sup>

Immediately prior to joining legal academia, I worked as a public interest attorney in the South Bronx, where my practice was focused on preventing homelessness by providing free legal services to people facing eviction or foreclosure. During this time, I came to understand firsthand the necessity for both legal advocacy and policy reforms. In terms of legal advocacy, as a bankruptcy specialist, I was able to employ the bankruptcy process in order to temporarily halt evictions and foreclosures and open the space to find home saving solutions for my clients.<sup>195</sup> The bankruptcy process has been under-utilized as a tool for addressing homelessness.<sup>196</sup> There is also

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192. *See generally* RICHARD D. KAHLENBERG, EXCLUDED: HOW SNOB ZONING, NIMBYISM, AND CLASS BIAS BUILD THE WALLS WE DON'T SEE (2023) (arguing that the housing crisis in the United States is exacerbated by exclusionary zoning). *See, e.g.*, Richard D. Kahlenberg, *Liberal Suburbs Have Their Own Border Wall: Residents of Rich Blue Towns Talk About Inclusion, but Their Laws do the Opposite*, THE ATLANTIC (July 23, 2023), <https://www.theatlantic.com/ideas/archive/2023/07/wealthy-liberal-suburbs-economic-segregation-scarsdale/674792> ("The New York City suburb of Scarsdale, located in Westchester County, New York, is one of the country's wealthiest communities, and its residents are reliably liberal. In 2020, three-quarters of Scarsdale voters cast ballots for Joe Biden over Donald Trump. One can safely presume that few Scarsdale residents are ardent backers of Trump's wall on the Mexican border. But many of them support a less visible kind of wall, erected by zoning regulations that ban multifamily housing and keep non-wealthy people, many of them people of color, out of their community.").

193. *See, e.g.*, Alexa Lardieri, *Federal Government Will Start PAYING Off People's Rent in Two States Starting this YEAR Under New \$1.5 Billion Medicaid Pilot Program*, DAILY MAIL (Feb. 15, 2024, 7:33 AM), <https://www.dailymail.co.uk/health/article-13079135/Federal-Government-start-PAYING-peoples-rent-two-states-starting-YEAR-new-Medicaid-program-treat-homelessness-healthcare-problem.html> ("States will soon begin paying for residents' housing using federal healthcare funding in hopes it will help curb America's homelessness epidemic. . . . The rental assistance will come in several forms, including a one-time payment to help cover a security deposit or to pay for rent and utilities for up to six months. The first two states to roll out the program this fall, Arizona and Oregon, will target specific subpopulations of Medicaid beneficiaries who qualify under each states' specific guidelines—which includes people currently homeless or at risk of losing housing and people with mental illness.").

194. *See, e.g.*, McDonald, *supra* note 1, at 134-35 (describing how evictions and foreclosures contribute to the homelessness crisis).

195. *Id.* at 156.

196. *Id.* at 145-46 ("The automatic stay, which goes into effect at the time of filing a bankruptcy petition, can stop an eviction, at least for a short time (usually only thirty days if judgment of eviction has been entered), to allow the debtor an opportunity to catch up on the rental arrears. The landlord has the option of making a motion to lift the automatic stay. When a judgment of eviction has already been entered in a housing court, the debtor must deposit the future rent with the bankruptcy court. . . . The powerful automatic stay, which goes into effect upon the filing of a bankruptcy petition, can stop the sale of a debtor's home, even when the petition is filed on the same day that the foreclosure sale has been scheduled, if the bankruptcy petition is filed prior to the sale. The automatic stay would give the debtor an opportunity to attempt to save his or her home through the bankruptcy process.") (footnotes omitted).

still much to do to improve the bankruptcy system. A better bankruptcy system would more effectively stop evictions and foreclosures.<sup>197</sup>

I was also able to preserve my clients' homes in eviction and foreclosure cases without filing for bankruptcy protection. Specifically, I defended clients in eviction and foreclosure cases. In both types of cases, it was necessary to slow the eviction or foreclosure process in order to allow the clients time to obtain grant assistance and/or improve their own incomes so that they could afford their housing expenses going forward. My personal family ties to the desperately poor South Bronx, as well as my decades-long engagement with moral philosophy, motivated this work.

As a law professor and Chair of the Curriculum Committee, I worked with colleagues to bring a Housing and Eviction Defense Clinic to my law school. Clinics of this kind are useful to people facing homelessness across the country. Law students gain valuable experience from housing clinics that prepare them for careers in homelessness prevention with Legal Aid, Legal Services, and related organizations. Tenants facing eviction are more likely to remain in their homes when represented by counsel.<sup>198</sup> It is therefore essential that tenants be afforded a right to counsel in eviction cases,<sup>199</sup> as well as in foreclosure and bankruptcy cases where their housing is at risk.<sup>200</sup>

In terms of public policy, the radical obligation to the other requires that we recognize housing as a human right<sup>201</sup> and concomitant legal

197. *Id.* at 166-67 (“The recommended amendments to the Bankruptcy Code are as follows: (i) repeal the “means test” and leave the decision to dismiss abusive bankruptcy filings to the sound discretion of the bankruptcy judges; (ii) repeal the pre-petition credit counseling requirement; (iii) repeal the limitations on the automatic stay for repeat filers; (iv) end protected status for home mortgages; (v) end protected status for student loans; (vi) prohibit the denial of employment based on an individual’s bankruptcy status; and (vii) delete bankruptcy history from credit reports after five years.”).

198. See, e.g., Laura Riley, *Hurdles to Housing and Interim Solutions Part III: Legal Representation and Models*, in HOMELESS ADVOCACY, *supra* note 19, at 223, 225 (“In New York City, a steep drop in evictions could be indicating that landlords are choosing not to bring frivolous suits because they know their tenant will have an attorney . . . the city saw a twenty-four percent decline in evictions when it increased its budget for legal services to low-income tenants . . . ”).

199. *Id.* (“Since 2017 when New York City became the first jurisdiction in the United States to pass legislation guaranteeing a right to counsel in eviction cases, San Francisco and Newark, New Jersey also passed laws guaranteeing such a right . . . . The right to counsel in eviction proceedings has expanded across several cities and at the state level in Washington, which became the first [state] to give its indigent tenants a right to counsel.”) (footnote omitted).

200. McDonald, *supra* note 1, at 167 (arguing for a “right to counsel” in all cases where housing is at risk, including eviction, foreclosure, and bankruptcy cases).

201. See, e.g., SOUTHWORTH & BRALLIER, *supra* note 10, at 155 (“The Universal Declaration of Human Rights identifies housing as a basic right. The presence of homelessness violates this right along with other human rights, including the right to life, non-discrimination, health, clean water and sanitation, security of the person, and freedom from cruel, degrading, and inhumane treatment.”) (footnote omitted).

entitlement.<sup>202</sup> Currently, housing and homelessness assistance, including the right to temporary shelter, are not legal entitlements across the United States.<sup>203</sup> Very few jurisdictions recognize a right to even temporary shelter.<sup>204</sup> Massachusetts is the only *state* that recognizes a right to shelter.<sup>205</sup> On the municipal level, Washington D.C. and New York City uphold such a right.<sup>206</sup>

Researchers have established a strong correlation between homelessness and a lack of affordable housing.<sup>207</sup> Any realistic solution to the homelessness crisis must include an expansion of affordable housing.<sup>208</sup> This would need to include the construction of new housing as well as

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202. See, e.g., Foscarinis, *supra* note 19, at 32 (“It is important to understand what a right to housing means. While its meaning may vary depending on circumstances, in general, it means that the government adopts policies designed to ensure that everyone has access to safe, decent, affordable housing. It does not mean a free house for every person in the U.S.”) (footnote omitted).

203. See, e.g., Samantha Batko & Dennis Culhane, *Homelessness in the United States*, in THE ROUTLEDGE HANDBOOK OF HOMELESSNESS, *supra* note 6, at 413, 414 (“It is also important to note that housing and homelessness assistance in the United States are not entitlements—meaning that even though a person qualifies for assistance, the government is not required to supply it. While there are 580,000 people experiencing homelessness on a given night, there are fewer than 400,000 emergency shelter and other temporary beds available nationally.”).

204. See, e.g., MARYBETH SHINN & JILL KHADDURI, IN THE MIDST OF PLENTY: HOMELESSNESS AND WHAT TO DO ABOUT IT 103 (2020).

205. See, e.g., REGINA SERPA, MIGRANT HOMELESSNESS AND THE CRIMMIGRATION CONTROL SYSTEM 59 (2023) (“The Commonwealth of Massachusetts is notable for its ambition to address homelessness compared to other states. Massachusetts is classified as a ‘right to shelter’ state . . . . However, unlike other right-to-shelter jurisdictions, Massachusetts has limited this right to households with dependent children and not extended it to single homeless persons (who *may* access assistance, but not as a matter of entitlement). Furthermore, in this context of restricted entitlement and broad eligibility, migrant groups are expressly included in Massachusetts’s homelessness system where emergency accommodation and public housing providers are prohibited by law from considering legal status in determining eligibility to access state-funded homelessness assistance.”) (citation omitted).

206. See, e.g., SHINN & KHADDURI, *supra* note 204, at 103.

207. See generally Batko & Culhane, *supra* note 203, at 418 (“Numerous studies over the last several decades have shown that rates of homelessness strongly correlate with a number of indicators for lack of affordable housing, including low vacancy and high costs of rent, increases in rents, high incidences of housing cost burden, and unfavorable rent to income ratios for renters.”) (citations omitted). See, e.g., GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS IS A HOUSING PROBLEM: HOW STRUCTURAL FACTORS EXPLAIN U.S. PATTERNS 14 (2022) (“Over the course of this book, we illustrate that personal vulnerabilities may explain *who* becomes homeless within a given community under a specific set of circumstances—but that, in aggregate, these vulnerabilities do not adequately explain regional variation in homelessness. This finding suggests that broader structural explanations of homelessness—especially those that shape housing markets—may have more explanatory power than the precipitating events frequently cited in local surveys as the ‘primary causes’ of homelessness. Policy responses ought to be tailored accordingly.”).

208. Batko & Culhane, *supra* note 203, at 419. (“The obvious solution to homelessness is affordable housing.”).

providing vouchers for existing housing.<sup>209</sup> Vouchers must be available for all who need them.<sup>210</sup> Approximately 80% of those eligible for federal housing assistance, including housing vouchers, do not receive it.<sup>211</sup> Housing vouchers typically pay the remaining rent after the tenants contribute 30% of their household income toward the rent.<sup>212</sup> Paying more than 30% of household income toward housing expenses can easily become unmanageable for low-income individuals and families.<sup>213</sup> Housing vouchers have been effective in promoting housing stability as well as a sense of well-being in the recipients.<sup>214</sup> It would not be inexpensive to make vouchers an entitlement and provide them to all who are in need.<sup>215</sup> But regardless of the expense, the radical obligation to the other requires that we, as a society, bring to bear nothing less.

## CONCLUSION

Here, I am, of course, thinking of the homeless who die of exposure, the drug addicts who die from overdoses, those killed in street violence and in wars, and those who die of preventable diseases or starvation. The sheer immensity of these horrors calls one to an absolute obligation. I wish here to make an ontological claim that the highest—most existentially satisfying and morally praiseworthy—vocation for a human being is total dedication to fighting injustice and easing suffering. With this in mind, we must begin

209. *See, e.g.*, EIDE, *supra* note 13, at 137 (“Permanent housing benefits in America operate on a two-tier system. Government provides home ownership assistance for the middle class (and above) and rental assistance for lower income households. Rental assistance comes in two forms. Through ‘project-based’ subsidy programs, government builds (or requires or incentivizes to be built) units that rent on a below-market basis. ‘Tenant-based’ subsidy programs defray the cost of a unit rented on the open market. The standard example of ‘project-based’ subsidies would be public housing. The standard example of ‘tenant-based’ subsidies is a Section 8 voucher.”).

210. *See, e.g.*, Batko & Culhane, *supra* note 203, at 419.

211. *Id.* at 418 (“The lack of affordable housing is compounded by the fact that only one in five households that are eligible for federal housing assistance—those households that need ongoing rent assistance to make housing affordable—actually receive it.”).

212. *Id.* at 419 (“One of the primary ways to help low-income households is to provide housing vouchers, a type of assistance for private market rentals, where the household only has to pay 30% of income toward rent.”).

213. *See, e.g.*, Riley, *supra* note 19, at 101 (“Low-income people who spend more than 30 percent of their income on rent are unable to save money, leaving them vulnerable to losing their housing when they face setbacks, such as a job loss, sickness, or death of a spouse or partner.”).

214. Batko & Culhane, *supra* note 203, at 419. (“This type of voucher has been proven to promote housing stability, significantly reducing the risk of entering shelter. Vouchers also support well-being, including reductions in psychological distress, food insecurity, child separations and partner violence, and alcohol and substance use.”) (citations omitted).

215. *See, e.g.*, EIDE, *supra* note 13, at 139 (“Cost estimates for making vouchers an entitlement—also known as a universal housing choice voucher program—reach as high as \$100 billion a year. This would be one of the very largest safety net programs in America.”).

with the least well-off, including the homeless and those facing homelessness.

This Article focused first on homelessness, which remains a serious issue in the United States. The Article next reviewed the traditional moral philosophical writings of Aristotle, Kant, and John Stuart Mill. While traditional moral philosophy has many strengths, it has been unable to provide the basis for the comprehensive action needed to end homelessness. The Article next turned to the more recent philosophical works of Levinas and Derrida that do, in the radical obligation to the other, provide the foundation and support for the tremendous task of ending homelessness. The Article concluded with concrete recommendations for legal advocacy and policy reform that are necessary to end homelessness in the United States.