

The Right to Housing

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There is a movement strengthening in the United States today to establish the right to housing. These efforts respond to the recognition of the ever increasing toll in human suffering caused by the unrelenting incidence of homelessness and of poorly-housed individuals and families, and the shame this brings upon us as a society. In addition to the moral and ethical components, there are also strong arguments as to why it makes economic sense to advocate and work for this right.¹ Supporters of this effort also recognize that these conditions are a construct of our active and passive social and economic policies which can therefore, be remedied.

It is estimated that more than 12 million Americans have experienced homelessness during their lifetime² and as reported in 1999, 4.9 million families spend more than half their income on housing or live in substandard housing.³ In Delaware, over 18,000 renter households earn less than \$20,000 annually and pay more than 30% of their income for housing expenses, thereby living “at risk” of homelessness due to the crisis that an unforeseen financial setback would precipitate.

There is international and faith-based precedent for establishing and working toward achieving this right for all. Much of the following historic and legal background on the international bases of the right to housing is derived from the National Law Center on Homelessness and Poverty,⁴ a leader in the Right to Housing effort.

United Nations Initiatives

In 1948 the Universal Declaration of Human Rights stating that “Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁵ was adopted. Since then, the International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborated on the right to housing. It is probably the most significant treaty concerned with this right. The U.S. signed this treaty in 1976 but the U.S. Senate has



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never ratified it. Other treaties have addressed components of this right and the U.S. has ratified one of them.

The UN convened a 1996 conference on human settlements as part of a 10 year series on major social problems facing the world. Held in Istanbul, Turkey, Habitat II included a focus on the human right to housing and produced the “Habitat Agenda” and “Istanbul Declaration” outlining commitments made by the 170 signatory nations. The U.S. was part of this conference which focused not just on housing but on homelessness as well. In 2001 states reported back to at a special UN session on progress made to date. Furthering the commitment toward this goal, the UN created a new Housing Rights Program as a joint effort of the UN Habitat and High Commission for Human Rights.

Faith- Based Declarations

Chester Hartman of the Poverty and Race Research Council comments: “It is significant that some of the most powerful statements supporting a right to housing have come from religious bodies (the same sources that provided leadership in the abolition and civil rights movements).”⁶ Among them are the 1975 statement from the U.S. Catholic Bishops.

“We begin with the recognition that decent housing is a right,” and quotes the Second Vatican Council: “There must be made available to all men everything necessary to live a life truly human, such as food, clothing shelter, rest and medical care... are absolutely essential to human dignity as are the political and economic freedoms granted pride of place in the Bill of Rights of the U.S. Constitution.”

The Massachusetts Diocese Episcopal City Mission (1986) states that:

“Shelter in decent, affordable housing is not a luxury. It is a necessity upon which access to other necessities and the developments of healthy protective families and communities most often depend. Nothing is more essential to the welfare of men, women and children. Nothing is tied more directly to the recognitions of the dignity, worth and values of persons, nothing is a more basic right than the opportunity, regardless of income or class, to live in that kind of housing which

supports the welfare of the family and community.”

The General Board of the American Baptist Churches stated in a December 1987 resolution:

“We proclaim that each person being created in the image and likeness of God possesses an inherent dignity from which stems a basic human right to shelter.”

In the United States

A national housing goal was incorporated into the preamble of the National Housing Act of 1949 “the implementation as soon as feasible of a decent home and suitable living environment for every American family.” The 1968 Housing Act reiterated this goal and slightly differing versions were part of the 1974 and 1990 Acts. While there were objectives set in the 1968 act to mark progress toward this goal, there have never been nearly enough resources dedicated to actually achieving it. Further, a goal is not a right; there is no legal basis for mandating that it be met.

Hartman states that in the U.S. rights have been borne of an evolving societal sense of justice and entitlement. The examples of slaves’ hard-fought right to freedom and women’s right to vote are used to show how the U.S. has created amendments to the Constitution and subsequently enacted laws to establish and implement rights.

He argues that just because it may not be immediately feasible to fully achieve the right to housing that this should not preclude us as a society from embracing it.

Community building efforts hold the promise of fulfillment of basic human needs and betterment of individuals and families. Participation by more in the political process may be predicated on the attainment of basic economic rights. A right to decent, affordable housing “builds as well upon recognition that the political and civil rights for which we have struggled and continue to struggle have little practical meaning or utility for those among us whose material existence is precarious.” And we can echo the sentiments expressed by the church bodies in citing the issue of dignity in the sense of asserting and receiving full respect and for membership in one’s community and in the society at large.

In Delaware

State constitutions and statutory law may be even better avenues to pursue the establishment of a right to housing according to noted legal scholar Florence Roisman.⁷ State constitutions are vital sources of rights independent of the US Constitution. The Delaware State Constitution article XII, §1 states

“The General Assembly shall provide for the establishment and maintenance of a State Board of Health which shall have supervision of all matters relating to public health.” This falls into the category of states making provisions for authorizing state or local government providing for the poor or the health of its citizens.

In Delaware, the right to housing has emerged in Tilden v. Hayward⁸. Although the Court of Chancery held that there no right to “financial assistance to secure housing,” in either the Federal or State Constitutions, it declared that both moral and economic considerations “plainly support the plaintiff’s position.” The judge noted that government has a “moral obligation to eliminate the evils of poverty, of which one of the most serious modern examples is homelessness.” Supporting the economic argument the judge said “[i]t has been shown time and time again that it

is more economical to house an intact family than to provide child protective services for a single child.” However, the judge, citing the court’s “institutional role” and “principals of restraint”, said that there would be “severe practical problems in crafting a meaningful judicial decree.”

Despite this unfavorable decision, the Delaware case has been cited in support of a right to minimum subsistence by the dissent in a landmark Connecticut Supreme Court case stating that Tilden “expressly recognized that other state constitutions do, in fact, provide such a right and note that the language of a state constitution and its history are important factors to consider in determining whether or not a state constitutional right exists.”⁹

Delaware is uniquely poised as a state small enough to be flexible in its implementation of policy, small enough to know its constituency well, yet sufficiently connected to take a universal idea and put its own imprimatur on it. Delaware can study how others are progressing toward full implementation of this right, adopt and internalize the concept, commit and coordinate resources and be especially proud to say “It’s good to be first.”

Resources

- [1]Hartman, Chester The Case for a Right to Housing,” Housing Policy Debate, Volume 9 Issue 2 Fannie Mae Foundation 1998 p.224-227
- [2]Link, Bruce, et al., “Lifetime and Five-year Prevalence of Homelessness in the United States.” *65 Journal of American Orthopsychiatry* 347-54 (1995).
- [3] U.S. Dept. Of Housing and Urban Development, United States — Habitat Progress Report 6. N.14 (2001) citing U.S. Dept. Of Housing and Urban Development, A Report on Worst Case Housing Needs in 1999:. New Opportunity Amid Continuing Challenges (2001).
- [4] www.nlchp.org
- [5] Universal Declaration of Human Rights, GA Res. 217, U.N. GAOR, 3rd Sess. Pt. 1 art.25 (1), UN Doc. A 810 1948
- [6] Op.cit., Hartman
- [7] Roisman, Florence Wagman, “Establishing a Right to Housing: An Advocate’s Guide,” National Support Center for Low Income Housing, 1991, n 11.
- [8] Tilden v Hayward, 1990 WL 131162 (Del. Ch. 1990)
- [9] Moore v Ganim, 233 Conn. 557 at 688 (A.J. Berdon, dissenting)