

University of Nevada, Reno

**The Right to a Home**

A thesis submitted in partial fulfillment of the  
requirements for the degree of Master of Arts in  
Philosophy

by

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**THE GRADUATE SCHOOL**

We recommend that the thesis  
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## Abstract

This project does three things. The first is to understand the contemporary homeless population and the contingent identity that they inhabit. I do this by refining our understanding of the contemporary homeless population and their contingency, as well as through the consideration of an argument for the right to public dwelling. I find this argument lacking and turn my attention towards the role of the state in maintaining homelessness. I argue that the burden of homelessness, in large part, lies with the formal institutions of the state. I examine the ideal of equality of opportunity, particularly what I call formal equality of opportunity. I isolate three key issues with this conception and develop a concept that I call real equality of opportunity, which places more of an emphasis on opportunity itself. The rest of my argument relies on this point, which seems to demand the provision of positive rights to accomplish. I discuss what is unique about a home in particular, as opposed to other goods and resources to which citizens may have a right. I conclude that, if we take equality of opportunity seriously, the state ought to conceive of equality of opportunity as real equality of opportunity. This results in the right of all citizens to a home.

Trying to dedicate my thesis to one person proved to be a difficult a task. For this reason, I have decided to dedicate this project to three people, each of whom have played not only a profound role in my education and this project, but my life more broadly. For their guidance, patience, and unending willingness to help me through difficult things, I dedicate my thesis to Dr. David Rondel, Dr. Sara Waller, and Britney Brooks.

## Acknowledgments

It is truly incredible the number of people who, either directly or indirectly, have a role in the completion of a project such as this. Whether it was a brief conversation in passing, or extended conversations over a significant period of time, they all had an impact. Unfortunately there is not enough space to mention everyone, so I have tried to narrow it down to each person that had a direct and crucial role in the completion of this thesis. First and foremost, I would like to thank Dr. David Rondel. Without the support and guidance that he provided, this project surely would have never gotten off the ground. He spent countless hours helping me to not only articulate the problems that I am deeply concerned with, he also helped to shape the trajectory of this project and the result that fills these pages. Without him I surely would not have discovered the incredible philosophers whose work I draw on and this project would not have been completed. For all of this, and the numerous basketball conversations, I am very thankful. I would also like to thank my other committee members, Dr. Katharine Schweitzer and Dr. Emily Hobson. Their insights have been incredibly helpful to the completion of this project. Thank you all for the support you have provided, without all of you this project would not be what it is. Finally, I would like to mention my parents, who at a very early age instilled in me my love of reading and learning.

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## Introduction: Diagnosing the Problem

This project is about homelessness.<sup>1</sup> It also concerns equality of opportunity and how that ideal is best understood and realized. My goal is to both establish and defend the right to a home. While there is certainly more work that could be completed, I believe that at least in a minimal sense, this goal has been accomplished in what follows.

I have always been concerned with homelessness, but in a very abstract sense. Growing up in cities where homelessness was not a large phenomenon, my experience with and relationship to homelessness was largely by way of popular culture, rarely through face-to-face interactions. When I started graduate school and moved to a much bigger city, although still not a large city, I was confronted with homelessness in a much more direct way. My relationship with homelessness went from depictions in popular culture to a near inability to leave my apartment without interacting, in some way, with the homeless. While this alone was a shock, it was not until I visited San Francisco for

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<sup>1</sup> I would like to make a brief note on terminology, particularly my use of the term “homeless.” There is some debate in the literature as to whether the term “homeless” or “unhoused” should be used when referring to those without a home. I have studied closely the argument for both cases, learning crucial things in both directions. For purposes of this project, I have chosen to maintain use of the term “homeless.” I have two reasons in particular for this word choice. The first of which is the intensity and prevalence of the term. The term homeless conjures a number of images for everyone, as well as thoughts, feelings, and opinions. Unhoused, on the other hand, is a much more recent term, which seems to me to be more isolated to academic conversations. While this may seem somewhat insensitive, as the term unhoused is often used to discuss in particular the lack of the home (lacking the nuance of ‘homeless’), my second reason is the broader descriptive abilities of the term “homeless.” Where unhoused seems restricted to those who do not have a home, homeless is broader in that it takes into account those who are staying with others, living in weekly motels, or any number of other living situations, including existing in an unhoused situation. I admit, this is a very complex issue and I went back and forth numerous times on word choice. I am not sure that there is a correct answer here, but my hope is that concern over this term will not hold the reader up. Rather, my hope is that my reasoning can be understood and that the discussion over preferred word choice can continue. Unfortunately the rest of the discussion falls outside of the scope of this project.

the second time that I really began to understand the nature of homelessness in the United States. I attended the first Howard Zinn Book Fair, which took place in the Mission District of San Francisco. Anyone who has been to the Mission District knows that it is a site of rapid gentrification, homelessness, and tension between younger, wealthier populations and those who first created the neighborhood. It was at this book fair that I had the opportunity to attend a talk given by Paul Boden, the Executive and Organizing Director of the Western Regional Advocacy Project. Boden's talk concerned a book that he had recently completed, *House Keys Not Handcuffs: Homeless Organizing, Art, and Politics in San Francisco and Beyond*, which explains both the history of homelessness in San Francisco and the history of anti-homeless activism and organizing in San Francisco. This talk, and book, began for me what became a relentless search, in an attempt to better understand the root causes of homelessness, what causes it to grow, and who is to blame. What is presented here is my attempt to respond to what I found, my attempt at a contribution to the literature on homelessness, and something that I hope can aid the attempts to end homelessness.

Obviously when one sets out to complete something they feel as though it is important; to embark on a project that one finds unimportant would be confusing. As such, I find my project to be of crucial importance. More specifically, what I find crucial about my project is that it not only addresses and explicates a puzzling phenomena, but it offers a solution. It sets forth a solution that would essentially eradicate the problem. While the solution, the right to a home, is certainly radical, it is both well grounded and

feasible. Homelessness is a systematic issue, one which has real effects on real people. As I argue below, homelessness is usually not the fault of the people who are affected most. Not only is what follows a contribution to political philosophy, it is also an attempt to offer a solution to a problem that has far reaching effects in the world.

There are essentially three things that I do in this project. The first is an attempt to understand the contemporary homeless population, as well as the contingent identity that they inhabit. I do this by working to define the current homeless population<sup>2</sup>, and their contingency, as well as considering an argument for the right to public dwelling. With this argument leaving something to be desired, I begin to turn towards the role of the state in maintaining homelessness, arguing that much of the burden does in fact lie with the formal institutions of the state. I closely examine the ideal of equality of opportunity, particularly what I call formal equality of opportunity. Isolating three key issues with this conception, I develop a concept that I call real equality of opportunity, which places more of an emphasis on opportunity itself. My overall argument rests on this point, which seems to demand the provision of positive rights to accomplish. I discuss what is unique about a home in particular, as opposed to other goods and resources to which citizens may have a right, and conclude that, if we take equality of opportunity seriously, the state ought to conceive of equality of opportunity as real equality of opportunity. This results in the right of all citizens to a home.

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<sup>2</sup> I do want to note briefly that a fully accurate definition of such a broad population is extremely difficult. To properly define the homeless population would require incredible nuance. What I have tried to do here is provide a more exact understanding of the phenomena itself, such that we can understand its position in terms of political philosophy.

## Chapter One: Homelessness, the State, and Equality of Opportunity

### 1. Introduction

Homelessness is a pervasive problem in the United States.<sup>3</sup> In nearly every major city one visits, an encounter with the homeless is inevitable. I find this feature of society to be puzzling: we take for granted that we are surrounded by the homeless and moreover that we possess the ability to overlook their very existence. Homelessness remains largely unconsidered in the philosophical literature, not only leaving unanswered and under-examined critical questions, but also leaving one wanting for a clear and concise understanding of homelessness.

In this chapter, I first provide a brief overview of the contemporary homeless population, with the intention of problematizing our understanding of homelessness. Given this more accurate understanding of homelessness, I will argue that, in most cases, homelessness is not the fault of the homeless. In fact, if we take a step back, it becomes obvious that homelessness is largely a failure of the state to ensure equality of opportunity for its citizens. This failure is twofold: a) attempts at solving homelessness, such as defending the right to public dwelling, or even defending homelessness itself, do not solve the deeper problem at hand. That is, they do not adequately respond to the complex interactions between freedom and property that lead to the economic deprivation and political marginalization that the homeless experience, and b) liberal political

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<sup>3</sup> For purposes of this project, I have limited my analysis to the United States. The philosophical argument that I provide in later chapters, though, could be extended beyond the United States with little adjustment.

philosophy often operates on, what I take to be, an incomplete and unsatisfying conception of equality of opportunity.

In section two, I offer a more accurate picture of the contemporary homeless population in the United States, as well as demonstrate the contingency of the identity which they inhabit. In section three, I entertain arguments that both defend homelessness and the right to public dwelling. While I do not dispute the idea that we should defend homelessness and that we should defend the right to public dwelling, in section four I depart from these arguments. I develop a position according to which public dwelling is not an adequate solution to the problem of homelessness. Rather, if we take equality of opportunity seriously, it should become obvious that one must instead be provided with a home, not simply the freedom to exist without interference in a space in which their existence should not have been under question in the first place. Thus, in section three I argue that homelessness is not, in most cases, the fault of the homeless. Instead, it is the product of a number of complex political interactions: anti-homeless laws, stigma against the homeless, failed or lacking attempts to solve homelessness, and most of all a failure of the state to ensure equality of opportunity in a robust and complete sense. I have, therefore, two goals: 1) to problematize our understanding of homelessness and 2) to show that homelessness is not a problem for which individuals can be blamed, but instead is a problem for which the state must take responsibility.

## 2. Homelessness and the Homeless

### 2.1 A More Accurate Picture of Homelessness

The homeless are definitionally those who do not possess a home. The legal definition of homelessness has seen some change in recent years, as a new homeless population has taken shape. According to the McKinney-Vento Act of 1987<sup>4</sup>, a law that provides federal money for homeless shelter programs, an individual is homeless when they:

lack a fixed, regular, and adequate nighttime residence, and have a primary nighttime residency that is (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations...; (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.... The term 'homeless individual' does not include any individual imprisoned or otherwise detained pursuant and Act of Congress or state law.

As the demographics of the homeless changed, the development of an extended legal definition of the homeless was put forth in 1990. It states:

the term 'homeless child and youth' (A) means individuals who lack a fixed, regular, and adequate nighttime residence...and (B) includes (i) children and youth who are sharing the housing of other persons due to a loss of housing, economic hardship, or a similar reason; are living in emergency shelters; are abandoned in hospitals; or awaiting foster care placement; (ii) children and youth who have a primary nighttime residence that is a private or

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<sup>4</sup> Abbarno, GJM. *Encyclopedia of Applied Ethics*, 2nd ed., s.v. "Homelessness." Cambridge: Academic Press, 2012.

public place not designed or ordinarily used as a regular sleeping accommodation for human beings...; (iii) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children... who qualify for purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

“Thus,” Abbarno states, “included among the homeless are those people who reside with family or friends and, after a short stay, either from a sense of pride or personal conflict, join the many who seek refuge on the streets for a place of privacy and safety. The homeless are basic need seekers...”<sup>5</sup>

The homeless population has changed significantly over time. In the nineteenth century, for example, homelessness was often a chosen lifestyle amongst post-military males. “[T]heir lifestyle became synonymous with boxcar riders, never remaining in any one place for any length of time.”<sup>6</sup> The homeless were wanderers. This has led to the common perception of homelessness that exists today. According to this idea, the homeless are “lazy and aimless people who either choose not to have the responsibility of employment and property or, once down on their luck, have no desire to continue in the social system.”<sup>7</sup> While this view of the homeless may have had more merit in the early to mid 1900’s, it is certainly not the norm today. The new homeless population is both younger and poorer than the homeless population of the past. “In 2008, it was estimated

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<sup>5</sup> Abbarno, “Homelessness,” 600.

<sup>6</sup> Abbarno, “Homelessness,” 601.

<sup>7</sup> Abbarno, “Homelessness,” 601.

42% of the homeless population in the United States were working minimum wage jobs.”

The new homeless population are a working poor. “[T]he reported annual income of Chicago homeless in 1958 was \$1058. In 1986 Rossi reported it to be \$1198. In 2009, the National Health Care for the Homeless Council reported that an employee who works 40 h per week at minimum wage will earn \$15080 annually, four fifths of the poverty level threshold for a family of three.... A renter with full-time employment would not be able to afford a one-bedroom apartment.”<sup>8</sup> What this says about the contemporary homeless population is that, despite working a full time job, it is still incredibly difficult, if not impossible, to acquire a home. Further, unlike the homeless population of the past, it was estimated in 2007 that 1.35 million of the approximately 3.5 million homeless in the United States were children, often living in a single-mother family unit.<sup>9</sup> The new homeless population are the victims of both “economic deprivation” and “political marginalization.”<sup>10</sup>

## *2.2 The Contingent Identity of the Homeless*

The economic deprivation and political marginalization that the homeless face leads to an inhabitation of a contingent identity. Contingency, here, is meant in a somewhat loose sense that will become clearer upon consideration of policies in the United States that affect the homeless, a brief look at the social stigma that is attached to

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<sup>8</sup> Abbarno, “Homelessness,” 601.

<sup>9</sup> Abbarno, “Homelessness,” 602.

<sup>10</sup> Abbarno, “Homelessness,” 601.

homelessness, and a discussion of the relationship between place, property, and freedom in Jeremy Waldron's article, "Homelessness and the Issue of Freedom."

Throughout the United States, various cities have put into place a number of laws that are intended to remove the homeless from public spaces. The most obvious of these are anti-loitering laws. Almost everywhere you go you will see a sign forbidding loitering. A similar method that has been used by business owners is making bathrooms for use by customers only. While there are private property rights that could justify this, such rights could not account for this same practice being used by city bus stations. In New York, laws were passed that prevent individuals from sitting down, or even stopping, in the subway, so as to prevent the homeless from laying on grates that emit heat. In a similar vein, barbed wire was placed on hot-air grates in Greenwich Village that emit heat so that the homeless were unable to sleep there.<sup>11</sup> Another blatant example of anti-homeless measures, albeit outside of the United States, include the anti-homeless spikes placed outside of residences in London. The spikes, placed in the small space around the doorway of a luxury housing unit, amongst other places, were intended to keep people from sleeping in the covered area next to the door.<sup>12</sup> The use of methods such as this is known as 'defensive architecture.' One final example involves an elderly gentleman in Florida who was arrested for feeding the homeless.<sup>13</sup> A number of these

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<sup>11</sup> Anita Superson, "The Homeless and the Right to 'Public Dwelling'," in *The Ethics of Homelessness: Philosophical Perspectives*, ed. G. John M. Abbarno (Atlanta: Rodopi, 1999), 141.

<sup>12</sup> [http://www.slate.com/blogs/the\\_eye/2014/06/12/artist\\_nils\\_norman\\_documents\\_anti\\_homeless\\_spikes\\_and\\_other\\_defensive\\_architecture.html](http://www.slate.com/blogs/the_eye/2014/06/12/artist_nils_norman_documents_anti_homeless_spikes_and_other_defensive_architecture.html)

<sup>13</sup> <http://thinkprogress.org/economy/2014/11/06/3589693/ft-lauderdale-arrest-feeding-homeless/>

anti-homeless measures have been reversed, but they continue to emerge in new ways. Recent examples include arm rests being placed on benches at bus stops. While this is not blatantly anti-homeless, when we consider the context we understand the implications. Arm rests, while they may be comfortable for individuals while they sit, also serve to prevent one's ability to lie down, thus preventing the homeless from sleeping in bus stops, one of only a few covered public spaces. Similarly, in a public bus station in Florida recently, a police officer stopped a homeless man who had intended to use the bathroom. He forcefully shoved the homeless man to the ground. While the homeless man expressed a desire to use the restroom the officer responded that the man needed to leave. This resulted in more arguing and the police officer eventually smacking the homeless man in the face with enough force so as to knock him onto the ground again. The homeless man was then arrested for trespass.<sup>14</sup> This is a fascinating example for a number of reasons. The first is that the homeless man was arrested for trespass, in a public space. The second illustrates perfectly the contingency that I discussed above: the homeless, like any other biological being, need to use the restroom. However, if they do so in a park, behind a dumpster, or any number of outside locations, they will be arrested. But, the gentlemen mentioned above was arrested and unable to relieve himself in a legal manner. The homeless, it seems, are unable to legally relieve themselves.<sup>15</sup>

Aside from general disgust with the homeless, which results in the desire to remove them from our sight, these policies are motivated by the social stigma that is

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<sup>14</sup> <http://www.alternet.org/watch-cop-slaps-homeless-man-face-entering-public-bus-terminal>

<sup>15</sup> This is just one of a number of examples of similar instances.

attached to homelessness. The homeless are considered lazy, dangerous, they are often unclean, and tend to display characteristics of mental illness. This negative image is affixed to the homeless.

In his article, "Homelessness and the Issue of Freedom," Jeremy Waldron points out that "one of the functions of property rules, particularly as far as land is concerned, is to provide a basis for determining who is allowed to be where."<sup>16</sup> People purchase property in order to have their own space, in which they can decide who is and is not welcome there and at what time. "An individual," Waldron continues, "who is in a place where he is not allowed to be may be removed, and he may be subject to civil or criminal sanctions for trespass..."<sup>17</sup> Private property is restricted to those who own it and who they allow to be there. Collective property, on the other hand, is property whose inhabitants are "determined by the people, usually officials, acting in the name of the whole community."<sup>18</sup> The homeless individual is not allowed to be in a space that is privately owned, unless invited by the owner. Since they do not own property of their own, "the homeless person is utterly and at all times at the mercy of others."<sup>19</sup> Waldron continues, stating that "land is finite in any society, there is only a limited number of places where a person can (physically) be, and such a person would find that he was legally excluded from all of them. It would not be entirely mischievous to add that since,

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<sup>16</sup> Jeremy Waldron, "Homelessness and the Issue of Freedom," *UCLA Law Review* 295 (1991-1992), 432.

<sup>17</sup> Waldron, "Homelessness," 433.

<sup>18</sup> Waldron, "Homelessness," 433.

<sup>19</sup> Waldron, "Homelessness," 434.

in order to exist, a person has to exist *somewhere*, such a person would not be permitted to exist.”<sup>20</sup> The homeless are permitted to exist in areas that are held collectively, such as parks. However, as we have seen above, the homeless are not always permitted to be in these spaces. Laws emerge that force the homeless out of public spaces. Leaving them, in Waldron’s terms, without a place to exist, *literally*. Society does not want to be confronted with the reality of homelessness, so the homeless are pushed into a contingent existence.

### **3. Towards the Right to a Home**

Anita Superson argues that the homeless have a right to public dwelling. After dealing with a number of arguments that would deny the homeless this right, she shows them to lack merit. When one considers the various attitudes that have been taken against public dwelling it seems obvious that the ability to exist in public spaces has been severely restricted. The lack of ability to reside in public spaces, moreover, severely limits the freedom that the homeless have.<sup>21</sup> Superson points towards several arguments that have emerged, arguing that the homeless do not have a right to public dwelling because they are dangerous. “It has been estimated,” she states, “that between 10 percent to 33 percent of homeless people exhibit some psychosis, the figure being lower among homeless families. This statistic is biased,” she continues, “the homeless often exhibit characteristics of mental illness: without food, shelter, and bathing facilities, and with

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<sup>20</sup> Waldron, “Homelessness,” 434.

<sup>21</sup> Superson, “The Homeless,” 141.

constant worry about survival, they become listless, depressed, and (perhaps) violent. These are natural responses to their situation, the kind everyone would have if put in their place...”<sup>22</sup> She concludes by stating that the “homeless are much more likely to be victims — not perpetrators — of crime.”<sup>23</sup>

It is further argued that the homeless do not have a right to public dwelling because public spaces are funded by tax payers. Thus, if those who pay taxes do not want to be bothered by the unsettling sight of the homeless, they have the right to keep them from public spaces. Superson quickly dispels this argument, stating that 87 percent of the homeless held a job at one point and were therefore taxpayers. Further, with the steep increase in the number of homeless children, a growing portion of the homeless population cannot legally work, and therefore cannot pay taxes. This argument, Superson contends, does not carry the weight that one might think and does not provide grounds from which to remove the right to public dwelling.<sup>24</sup>

Superson’s final point deals with offensiveness. In particular, she is addressing the position that the “homeless contribute to the demoralization and destabilization of entire communities.”<sup>25</sup> People are often offended by the presences of the homeless and this is thought to outweigh the right to public dwelling. When one considers the economic background of the homeless and the lack of governmental support the homeless tend to

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<sup>22</sup> Superson, “The Homeless,” 142.

<sup>23</sup> Superson, “The Homeless,” 142.

<sup>24</sup> Superson, “The Homeless,” 143-4.

<sup>25</sup> Superson, “The Homeless,” 144.

receive, one can easily see that homelessness is not the fault of the homeless. At the very least, given the severe restrictions on the choices of the homeless, and the lack of freedom that follows, Superson determines that “public dwelling on the part of the homeless is *not* wrongful behavior because it is certainly *not* without justification or excuse.”<sup>26</sup> Moreover, to forbid public dwelling would further restrict the choices and freedom of the homeless. The right to live in public spaces outweighs the interest of those at risk of being morally or physically offended.<sup>27</sup> If the homeless are no more dangerous, do in fact have rights as taxpayers, and the offensiveness argument does not get off the ground, it follows that there is no reason to argue against the right to public dwelling.

Superson ends by stating that “it does not follow from the fact that the homeless have a right to public dwelling that they have a right to *shelter*,” though she does believe that a fuller defense of the rights of the homeless could tend in this direction.<sup>28</sup> As we have seen above the homeless are not wanted in public spaces. This is unlikely to change, even if we recognize the right they have to be there. If this is the case, it does not seem like this gets us where we want to be, viz., the homeless have the freedom required to live a good life and more generally putting an end to homelessness. It takes more than a recognized right to public dwelling and more than access to a shelter to accomplish these goals. In order to have the opportunity to fulfill a good life, the homeless will need a home.

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<sup>26</sup> Superson, “The Homeless,” 148.

<sup>27</sup> Superson, “The Homeless,” 149.

<sup>28</sup> Superson, “The Homeless,” 149.

#### **4. The Role of the State in Homelessness**

At this time it is worth recalling what we have established so far in this chapter. Through an examination of the state of contemporary homelessness, we saw that, contrary to what is often believed, the homeless population today is often a working poor. I also argued that the homeless inhabit a contingent identity and that the homeless are literally unable to exist, let alone relive themselves (a basic biological function). I also considered Anita Superson's argument for the right to public dwelling and defense of homelessness. While neither was disputed, it was determined that neither of these arguments go far enough, ignoring what I take to be the most fundamental issue at hand: the role of the state in homelessness. For the remainder of this section I want to briefly consider the implications of these claims and to make explicit the economic deprivation and political marginalization that the homeless face. What this will accomplish, I hope, is the ground on which to consider the role of the state in homelessness, more particularly the failure to ensure equality of opportunity for its citizens. This will prepare the ground for chapter two, in which I further discuss and defend my position on equality of opportunity.

If we take equality of opportunity seriously, it should become obvious that one must be provided with a home, not simply the freedom to exist in public spaces. Instead, homelessness is best understood as the result of a number of factors: anti-homeless laws,

social stigma against the homeless, failed attempts at solving homelessness, and a failure of the state to ensure equality of opportunity, in a complete and robust sense of that term.

If, then, the state can in a large way be held responsible for homelessness, then it has an obligation to do what it can to resolve it. In the next chapter I continue this discussion of equality of opportunity, arguing that the way in which the state currently realizes equality of opportunity is inadequate.

## Chapter Two: Two Concepts of Equality of Opportunity

### 1. Introduction

The ideal of equality of opportunity is a central component of a theory of justice. But how should we understand this ideal? In this chapter, I assess the libertarian claim that the ideal of equality of opportunity is best understood in terms of formal equality of opportunity, hereafter FEO. More narrowly, I respond to the claim that FEO is sufficient for realizing the set of opportunities<sup>29</sup> that citizens of a just state ought to have, arguing that this account is lacking. While not disputing the importance and value of equality of opportunity, which is widely affirmed across the liberal political philosophical tradition, I identify three problems that arise when one conceives of equality of opportunity only in terms of FEO. I show instead that there are two relevant ways in which we can understand equality of opportunity: FEO and what I will call *real* equality of opportunity, hereafter REO. My argument is that, on its own, FEO is unable to account for the set of opportunities that are afforded by REO. As I will argue, FEO incorporates both security and self-ownership, but fails to include real opportunity. REO, on the other hand, incorporates all three components, providing one with two sets of opportunity, both the negative freedom to not be interfered with and the positive freedom such that one can

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<sup>29</sup> By “opportunity” I have in mind something like what G.A. Cohen calls ‘freedom’ in his article “Freedom and Money.” However, whereas Cohen is restricting his conversation largely to the set of freedoms that come along with the possession of money, I use the term opportunity to convey a broader meaning, something beyond having money. I return to this in Section Four.

do what they may desire to do, so long as it does not cause harm to others. Both of these freedoms, I contend, a just state has an obligation to fulfill.

In section two, I outline FEO, taking care to articulate the libertarian position that I intend to dispute. In section three, I consider three problems associated with conceiving of equality of opportunity as FEO: its narrow understanding of freedom and autonomy, its limited conception of harm, and its inability, or unwillingness, to consider a broad view of social relations. These three issues, I argue, make FEO inadequate as a conception of equality of opportunity. In section four, I argue for a conception of equality of opportunity, REO, that does not succumb to these problems. While REO does not on its own guarantee the kind of freedom that is desired, it offers a second set of critical opportunities, beyond what FEO offers. In section five, I argue that REO can best be realized by the recognition of certain positive entitlements that citizens have a right to receive. It is further shown that these positive rights generate specific positive duties on behalf of the state.<sup>30</sup>

Let us begin with an example, in order to start untangling the differences between FEO and REO. Consider two citizens of a polity: Tagg Romney and a poor African American man from Oakland. In one way, each is as free as the other: there are no artificial barriers formally keeping either of them from doing those things which they desire. There is no limit placed on either one's freedom, barring of course those things

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<sup>30</sup> Put briefly, by positive rights I have in mind those things which one is, or ought to be, entitled to as a result of being the citizen of a just state. Similarly, by positive duties, I have in mind those duties which are generated as a result of one's possession of a positive right. I return to this in Section Five.

which may cause harm to others.<sup>31</sup> In another sense, it seems obvious that Tagg Romney has *more* freedom than the poor African American man from Oakland. Tagg Romney is able to travel, scratch his consumer itch, or simply save his money for a rainy day. As is clear in this example, the absence of constraint is not the same as means or opportunity. Tagg Romney has REO, the poor African American man from Oakland does not.

## 2. Formal Equality of Opportunity

The concept of FEO can best be understood as containing three essential features. The first is *political equality*, which “refers to equality at the ballot box, equality in the ability to be elected to public office, and equality of political influence.”<sup>32</sup> Further, FEO requires *equality before and under the law*, meaning that citizens ought to be treated as equals by the legal system. The legal system ought to be impartial, and as Aristotle maintained, like cases should be treated alike.<sup>33</sup> Finally, FEO entails a *meritocracy*. As Lyman Sargent argues, this can best be understood in terms of two features: “first, that every individual in society can move up or down within the class or status system

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<sup>31</sup> By ‘artificial barrier’ I have in mind race, class, gender, etc., all of which are generally thought to be morally irrelevant features of an individual. Despite this, the example that I have provided discusses two individuals, each of a different race. The reasoning behind this is simple: there are no formal (legal) advantages to being white. Nonetheless, as I develop my conception of REO, it will become clear that certain features of society are designed to benefit some members more than others, particularly with regard to these ‘artificial barriers’. This is not the focus of this project, so it will not be a large point of focus, but there is a significant discussion to be had on this issue.

<sup>32</sup> Lyman Tower Sargent, *Contemporary Political Ideologies: A Comparative Analysis* (Belmont: Thomson Wadsworth, 2006), 69.

<sup>33</sup> Aristotle, *Politics*, trans. Peter L. Phillips Simpson (Chapel Hill: The University of North Carolina Press, 1997), 91, 99.

depending on that individual's ability and application of their ability. Second, it means that no artificial barrier keeps any person from achieving what she or he can do through ability and hard work."<sup>34</sup> Thus, one would be able to improve, or worsen, one's situation on one's own merits. These features, when taken together, comprise what I am calling FEO. To be precise, FEO is characterized as containing these three features, in addition to a lack of prohibition placed on any citizen that would keep them from succeeding on their own terms.

### **3. Shortcomings of Formal Equality of Opportunity**

I argue that FEO is not enough on its own, as a conception of equality of opportunity. I also claim that REO provides a more complex understanding of equality of opportunity. These claims are supported by considering three issues that proponents of FEO motivate. It is important to specify that my intention is not to dispute the importance of FEO. On the contrary, I am in favor of FEO. The issue that I am presenting is with those who argue that equality of opportunity is *fully understandable* in terms of FEO. Those who maintain this belief operate with an insufficient view of freedom, assume a narrow understanding of harm, and have an inability, or unwillingness, to consider a broad view of social relations. In order to make these three issues clear I will address each of them individually.

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<sup>34</sup> Sargent, *Contemporary Political Ideologies*, 72.

One aim of FEO is to allow citizens to exercise the most *freedom* possible, without impugning upon other's freedom. Despite this, proponents of FEO operate with an incomplete understanding of freedom. The freedom which FEO allows is the freedom to do what one desires, without interference from others, so long as what they desire does not undermine the freedom of any others. This is roughly what Isaiah Berlin refers to as *negative liberty*.<sup>35</sup> For example, I, along with any other citizen of a polity, am free to apply to any university I choose, go on any cruise I like, or, as Isaiah Berlin pointed out, I am free to jump ten feet in the air.<sup>36</sup> It would be unwarranted coercion to prevent me from doing those things which I desire to do, so long as I do not cause any harm to others. Freedom in this negative sense is taken by libertarians to be the most meaningful sense of freedom. While this sounds as though it encompasses all of the freedom that one ought to have in a society, it does not. I do not intend to dispute the importance of this kind of freedom, but which only to make clear that there is a critical set of opportunities missing from this view. To borrow G.A. Cohen's language, there is a certain kind of *unfreedom*<sup>37</sup> at work here, which necessarily accompanies the negative freedom that libertarians defend. Cohen asserts that, in a capitalist society, while one is free to sell their labor power, they are importantly unfree in this decision: they lack the freedom to not sell their labor on pain of starvation. This position turns on one's idea of *force*. While the

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<sup>35</sup> Isaiah Berlin, *Four Essays on Liberty* (London: Oxford University Press, 1969), 122-3.

<sup>36</sup> Berlin, *Four Essays on Liberty*, 122.

<sup>37</sup> G.A. Cohen, "Capitalism, Freedom, and the Proletariat," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford: Oxford University Press, 1979), 9-10.

libertarian thinker is content to define force in a legal sense, Cohen urges us to consider a broader conception of force. While no one can legally require you to sell your labor, one can be informally required to do so if they wish to survive. Libertarians are not concerned with this unfreedom, but it is this unfreedom which confuses their position. While we can certainly agree that one ought to be free to do as one pleases, so long as they do not harm others, it also seems that on a complete understanding of freedom, one ought to be *able* to do what they desire, so long as they do not harm others.<sup>38</sup> That is, one ought to have a *real* opportunity to acquire the *means* to do what they desire. One might ask, though, why this is not already the case, on the libertarian view, that one has real opportunity to acquire the means that they must have in order to do what they desire? The answer seems obvious enough: one must have the means to do what they desire, but the needy person does not have those means. The libertarian argues that the needy person is *free* to acquire whatever means they desire, so long as they do not harm others and therefore there is not an injustice at work which can require the coercion of another. This is an important freedom that they certainly have, but again, the libertarian fails to take into account the unfreedom that Cohen articulates. Can we really say that the needy and the well-off both have equality of opportunity? In one sense, yes, they have the negative liberty to do what they desire, so long as they do not harm others. In another, they clearly do not: they may

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<sup>38</sup> What one ought to be able to do is limited, as well as what one can claim an injustice for if they are unable to do. Returning to Berlin's example, it is not unjust that one is unable to jump ten feet in the air. Similarly, it is not unjust that, despite my desire to, I am unable to play point guard for the Portland Trailblazers. The freedom that I have in mind here involves the capacity to undertake a valuable set of actions, not any desire that one may have. So, being free to do x implies that one can (not merely may) do x.

not have the means to do what they desire, or even live a good life. According to libertarian thinkers, the needy cannot require that the well-off help them, as this would infringe on their right to choose not to help. Jan Narveson makes this point clearly when he says that interference is not the same as *nonhelpfulness*.<sup>39</sup> One has the freedom to help those in need just as much as they have the freedom to not help those in need. Any other formulation of freedom, for the libertarian, would violate one's private property rights, the cornerstone of freedom for the libertarian. But, one is not merely able to do as they please by virtue of the fact that no one stops them. *Real* freedom requires the means to be free. For example, G.A. Cohen argues that one must have, in addition to other things, money in order to be free.<sup>40</sup> Money here is understood as a means, of which a lack restricts one's freedom.<sup>41</sup>

The libertarian makes a further mistake in the understanding of equality of opportunity: the narrow sense in which they consider harm and wrongdoing. It is not possible to have a wholly satisfying conception of harm and wrongdoing when, on the

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<sup>39</sup> Jan Narveson, "The Right to Liberty is Incompatible With the Right to Equality," in *Are Liberty and*

*Equality Compatible: For and Against*, ed. Jan Narveson and James P. Sterba (New York: Cambridge University Press, 2010), 135.

<sup>40</sup> G.A. Cohen, "Freedom and Money," in *On the Currency of Egalitarian Justice and Other Essays in*

*Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), 166-92.

<sup>41</sup> It is important to briefly explain what I understand by *means as freedom*. Similar to Cohen's point in "Freedom and Money," I intend to argue that unless one possesses certain means one cannot be free to pursue those things that they desire. This is importantly different from possession, or lack of, natural means, such as being tall enough to be a good basketball player. While one may desire to be a basketball player but be too short, or lack the skill required to do so, this is not an objectively meaningful good life. Things such as food, or money, on the other hand, are necessary for one's ability to live a good life, at least at some minimal standard.

libertarian view, our concern with harm and wrongdoing has been limited to consideration of unwarranted interference, particularly interference based on property rights. One is free, on this view, to do as they please with their own property, maintaining the ability to either help those in need, or not. We should recall here Narveson's point about *nonhelpfulness*: though we may have some moral obligation to help, we are free to choose not to help, as we cannot be coerced to use our property for something which we do not desire to use it for. Thus, the libertarian would argue, to be required to help the needy would be construed as harm. On the contrary, though, the libertarian would not consider it to be harm (to the needy), in the relevant sense to *not* help this in need.

Narveson has argued that while we have a moral obligation to help those in need, it cannot be required of us; it would harm us if we were coerced into using our property to help those in need, especially if we do not desire to help those in need. This leaves one confused: why should it be considered harmful (to the wealthy) to be forced to help one in need, but not harmful (to the poor) in the same sense? The libertarian thinker restricts their conception of harm to property rights and self-ownership, not extending their consideration to the wrongdoing that results from *nonhelpfulness*. That is, while the libertarian would consider themselves to be harmed if they were coerced to use their property in a way that they do not desire, or coerced to do so even if they do desire, they would not similarly consider the individual that did not receive help to be harmed, by them, in a relevant sense. The likely libertarian response here is that rights and wrongdoing are not the same things and their conflation should be avoided. However, I

think that this response is somewhat misleading. The conflation that I would likely be accused of results from such a strict understanding of harm, so as to exclude what I have referred to as wrongdoing as a result of one's not helping the needy. But, as I have argued, the conception of harm that the libertarian maintains must be broadened. In order to have a full conception of harm we must consider the wrongdoing that is present as a result of the mere existence of the needy: choosing not to help those in need restricts one's (the poor) ability to do what they desire, or worse, restricts their ability to survive. Thus, the wrongdoing that occurs from one's choosing the option of *nonhelpfulness* results in a harm that is comparable, if not worse, than the harm that is caused by one's being coerced into helping those in need.<sup>42</sup>

The final problem with the libertarian's defense of FEO as the best way to realize equality of opportunity is that they have an inability, or unwillingness, to consider a broad view of social relations. This problem is expounded when Narveson argues that the hungry do not have a positive right to be fed, in his article "Feeding the Hungry."<sup>43</sup> By positive right, it is meant that there is a required action on behalf of someone else. Thus Narveson's point: the hungry do not have the ability to require action on someone else's behalf, as this would result in a harm (to the wealthy), caused by an infringement of their property rights. "Of course," he states, "we have a right to feed them, if we wish, and they have a negative right to be fed. But may we forcibly impose a duty on others to feed

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<sup>42</sup> This point may not seem entirely clear here, but will become clearer as I move forward.

<sup>43</sup> Jan Narveson, "Feeding the Hungry," in *Moral Matters*, ed. Jan Narveson (Ontario: Broadview Press, 1993), 138-50.

them? We may not. If the fact that others are starving is not our fault, then we do not need to provide for them a duty of justice. To think otherwise is to suppose that we are, in effect, slaves to the badly off. And so we can in good conscience spend our money on the opera instead of the poor.”<sup>44</sup> This does not mean that we may not feed the poor, in fact, he believes that we have a moral obligation to do so. The important point is about coercion: we cannot be reasonably coerced to feed the hungry, unless it is our fault that they are hungry. Though, as G.A. Cohen puts it, and I think correctly, while we are not nothing but slaves to the poor, we are at least partially.

It is of course, in most circumstances, not *your* fault that the hungry woman on the corner is hungry and unable to feed herself. *You* did not cause this woman to be hungry, *you* are not, as an *individual*, responsible for her hunger. This point is taken easily enough. But to stop here ignores the broader social problem of hunger, poverty, and homelessness. Poverty is a part of a larger social phenomenon which cannot be linked to any one individual. On the contrary, it is the product of unemployment, housing issues, the economy in general, and so on. It is not simply a problem of isolated individuals. The libertarian ignores the various social situations involved in the creation and perpetuation of poverty, focusing solely on the individual. They are what Marx called “bourgeois” thinkers.

Taken together, these three issues make it clear that FEO is *not* the best way of realizing the ideal of equality of opportunity, as the libertarian contends. A society which

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<sup>44</sup> Narveson, “Feeding the Hungry,” 150.

adopts only FEO, without considering the problems above, fails to fulfill what we expect a conception of justice to fulfill, namely, to provide “some moral basis for the claims of the relatively powerless.”<sup>45</sup> In order to have equality of opportunity in a polity, we must have REO, which I will develop and defend in the next section.

#### **4. Real Equality of Opportunity**

We can certainly agree that one ought to be free to do what they desire, so long as what they desire does not cause harm to others. However, as discussed above, this is not the only set of opportunities which one ought to have. One ought to have the *opportunity* to do what they desire, which is at least in part dependent upon having the *means* to do so. REO can be understood as having those freedoms guaranteed by FEO, in addition to real opportunity. Though, as I will show, a precise understanding of REO is dependent upon an understanding of those means to which one ought to have a right. G.A. Cohen argues convincingly “that lack of money, poverty, carries with it a lack of freedom.”<sup>46</sup> One must have money, where money is understood as a means, in order to possess certain kinds of freedoms. While I think this is right, we can take this one step further: in addition to money, one must have their basic needs met in order to possess the set of freedoms with which Cohen is concerned. By basic needs I have in mind those things which one must possess in order to have, with respect to some standard, physical well-being. This notion will become clearer as we proceed.

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<sup>45</sup> Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), 46.

<sup>46</sup> Cohen, “Freedom,” 166-7.

REO can be made clearer by consideration of Philippe Van Parijs' distinction between formal and real freedom. Formal freedom, according to Van Parijs, is essentially focused on security and self-ownership. Quoting Friedrich Hayek, Van Parijs states that "[e]ven if the threat of starvation to me and perhaps to my family impels me to accept a distasteful job at a very low wage, even if I am "at the mercy" of the only man willing to employ me, I am not coerced by him or anybody else', nor therefore unfree, since freedom is nothing but freedom from coercion."<sup>47</sup> Freedom is simply negative liberty on this view, the liberty to not be interfered with. Van Parijs continues by quoting James Buchanan, who argues that, "an individual is at liberty or free to carry on an activity if he or she is not coerced from doing so by someone else, be this an individual or group."<sup>48</sup> On this view, there is a lack of coercion, which the libertarian extends to mean not only coercion by an individual or group, but institutional violations as well. In sum, "in the language of Hayek and Buchanan, ..., 'negative liberty' consists in the 'absence of constraint by individuals or institutions.'"<sup>49</sup> Real freedom, on the other hand, contains both of the main features of formal freedom: security and self-ownership, in addition to a third component: opportunity. Real freedom, according to Van Parijs, recognizes that security and self-ownership do not on their own constitute any freedom other than economic freedom. While the libertarian is content to maintain that economic freedom

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<sup>47</sup> Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (New York:

Oxford University Press, 1995), 22.

<sup>48</sup> Van Parijs, *Real Freedom*, 22.

<sup>49</sup> Van Parijs, *Real Freedom*, 22.

encompasses the only relevant sense of freedom,<sup>50</sup> argument that it *is* real freedom, it does not provide one with the means to be free. By adding opportunity to our understanding of freedom, Van Parijs maintains that one is only considered to be free when they have adequate opportunity to pursue what they desire, so long as it does not cause harm to others. “The term real freedom [refers] to a notion of freedom that incorporates all three components — security, self-ownership, and opportunity — in contrast to formal freedom, which only incorporates the first two.”<sup>51</sup>

Moreover, G.A. Cohen makes an importantly similar point about freedom in his article, “Capitalism, Freedom and the Proletariat.”<sup>52</sup> Cohen argues that individuals in a capitalist society are certainly free to sell what they own. This freedom, at the very least, is a freedom that everyone is guaranteed in a capitalist society. Further, he makes the critical point that being free to sell something is entirely compatible with one not being free to not sell that thing; “one is free to do what one is forced to do.”<sup>53</sup> This point is critical to our understanding of freedom, as one significant disagreement between Marxist thinkers and both liberal and libertarian thinkers seems to be rooted at this juncture: if the Marxists are right that there is an important unfreedom that comes along with being forced to sell one’s labor, on pain of starvation, this is compatible with the fact that they do have the freedom to sell their labor. Cohen states, though, that where the liberals and

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<sup>50</sup> Recall Jan Narveson’s arguments that were brought up previously, as well as the points raised by Hayek and Buchanan.

<sup>51</sup> Van Parijs, *Real Freedom*, 22-3.

<sup>52</sup> Cohen, “Capitalism.”

<sup>53</sup> Cohen, “Capitalism,” 9.

libertarians go wrong is when they take this freedom to refute the Marxist claim.<sup>54</sup> They fail to acknowledge the unfreedom that necessarily accompanies this freedom. Thus, Cohen argues, economic freedom, in the sense developed by liberals and libertarians, is not significant freedom, but merely “libertarianism with respect to buying and selling.”<sup>55</sup> There is no *real* freedom to sell one’s labor, if one must sell their labor on pain of starvation. This point is in direct conflict with thinkers such as Hayek, discussed earlier. The libertarian position is uncritical of the necessary limit to liberty that comes along with property. Property, Cohen argues, necessarily limits liberty.<sup>56</sup> The libertarian position that free enterprise constitutes economic liberty is false. In order to make this point, Cohen provides the example of his taking Mr. Morgan’s yacht for a drive. Cohen, despite having the desire to do so, experiences a lack of freedom: he is unable to do so, or else authorities will stop him. He is unable to take the yacht without interference. Importantly, though, the libertarian is likely to respond that Cohen does not lack the freedom to do so, but rather must refrain from doing so, on threat of arrest, as the yacht belongs to Mr. Morgan, not Cohen. Thus, Cohen rightly points out that his liberty is restricted. This, however, seems to violate the notion of liberty that the libertarian puts forth. The libertarian will respond by arguing that we are free to do “what we wish without *unjustified* interference from others.”<sup>57</sup> We are, therefore, unable to separate property

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<sup>54</sup> Cohen, “Capitalism,” 10.

<sup>55</sup> Cohen, “Capitalism,” 10.

<sup>56</sup> Cohen, “Capitalism,” 13.

<sup>57</sup> Cohen, “Capitalism,” 12.

rights from freedom, on the libertarian view. Cohen refers to this as the “moralized” definition of liberty.<sup>58</sup> Liberty, even for libertarians, is restricted in some sense, namely that all law is intended to restrict someone’s rights, often the restriction of someone’s ability to do something to another person, and their property extension. More specifically, laws restrict what one can and cannot do, without interference by authorities. As such, even for the libertarian, some rights are restricted.

Thus, one who has REO can be understood as having real opportunity, in addition to security and self-ownership. More precisely, one who has REO can be understood as having some means provided for them, which grant some opportunities, and thereby the freedom that equality of opportunity is intended to guarantee. The means that one ought to have, according to REO, go beyond money, and include one’s basic needs, for a standard of well-being, being met. In the next section, I will address more clearly the means to which citizens have a right and those to why they do not.

## **5. Positive Rights and Positive Duties**

I argue that the best way of realizing equality of opportunity is by the recognition of certain positive rights that citizens of a polity have and the positive duties that are generated on behalf of the state as a result of their recognition. While we cannot draw a clear line, distinguishing between what one is entitled to and what one is not, I think that we can begin to separate them provisionally. The difficulty in distinguishing between

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<sup>58</sup> Cohen, “Capitalism,” 12.

these sets of goods has to do with the fact that what constitutes a good life for one person could be drastically different from that which constitutes a good life for another. Thus, I think we can take as our starting point those things which we can objectively and uncontroversially say are necessary for a good life. I have in mind three specific entitlements: food, shelter, and medical care. Each of these are necessary for a good life, no matter what one's personal preferences or desires may be.

There are of course some strange cases in which this distinction becomes somewhat confused. I will briefly take one of use cases into consideration: sexual companionship. Sexual companionship is generally a feature of a good human life, as with companionship more broadly. But, this does not mean that the state ought to provided taxpayer funded prostitutes for those who are unable to cultivate these relationships on their own. Sex is, in some sense, necessary for a good physical life, so why can we not require that this is provided for us in the event that we cannot provide it for ourselves? I think we can roughly articulate the answer as follows: one's inability to cultivate a sexual relationship is not *necessarily* restricted by FEO, in the way that one's opportunity is restricted without REO. Where a needy person is unable to acquire those things which are necessary for a basic level of well-being through only FEO, this person may still be able to maintain sexual relationships. Friendship can be dealt with in a similar matter, not through a government organization checking up on your friendship status. While this answer is not entirely convincing, there will necessarily be some cases

that fall somewhere within a confused distinction, a sort of gray space, for which a clear answer cannot be provided.

Positive rights generate action on behalf of someone else, in this case, the state. It is the duty of the state to ensure that these entitlements are provided to each citizen who is unable to provide them for themselves, regardless of the reason they are unable to. These basic goods are necessary for one's living a good life, regardless of what they may desire beyond them. But, in order to pursue what one may desire to pursue, one cannot be concerned with providing these goods for oneself, or else they will remain in a subordinate position, never having REO.

## **6. Conclusion**

I began this chapter by providing a conception of equality of opportunity which is generally thought to be the best way of dealing this ideal, FEO. I articulated the libertarian position, which stubbornly suggested that FEO is the only obligation of the state in the realization of equality of opportunity. I discussed three problems with this view, and developed a second conception of equality of opportunity, which I call REO. I argued that REO does not succumb to the same problems and therefore offers a better realization of equality of opportunity. While I recognized that REO does not on its own guarantee the freedom sought by equality of opportunity, it is the best way to realized the ideal of equality of opportunity. I concluded that REO requires the recognition of some

positive rights possessed by citizens of a polity and thereby generates positive duties on behalf of the state.

## Chapter Three: Equality of Opportunity and the Right to a Home

### 1. Introduction

In this chapter I defend a particular conception of equality of opportunity and show that when equality of opportunity is construed in this way, all individuals have the right to a home. I argue that what I call REO maintains not only those rights which are afforded by what I call FEO, but also the recognition of a set of positive rights. FEO consists of two major components: security and self-ownership. REO, in addition to these two components, contains a third component: what I call *real* opportunity. The positive rights that REO necessitates are grounded in this third component. More specifically, I contend that in order to realize the third component of REO, we ought to be concerned with the provision of certain basic material goods. That is, in addition to the two components of FEO, the third component of REO requires the recognition of a set of positive rights to certain basic goods. I defend the right to a home in particular, on the grounds that access to a home is an uncontroversial necessity for a minimally good life.

The main task of this chapter is to articulate what about a home makes it uniquely the sort of good to which there is a positive right. The goal will be to draw a principled line which distinguishes between a home, to which one has a positive right, and the other goods to which one does not have a positive right. While there are surely a significant number of goods that one could argue are necessary for a minimally good life, and some have tried to determine what these are, these lists become unable to account for

everything that ought to be included. It is not my intention to determine and defend a positive right to everything that is necessary for a good life. Rather, my aim is to locate what is unique about a home and argue that these features render it necessary for a minimally good life. The final goal of this chapter will be to argue that the right to a home is unconditional.

In section two, I show why REO necessitates the recognition of certain positive rights. I also develop a principle that delineates what one does and does not have a right to. In section three, I make clear what is meant by the phrase “minimally good life.” In section four, I discuss what is unique about a home, making it a worthy candidate for a positive right, according to REO. Moreover, I tie all of this together and argue for the positive right to a home, based on the realization of REO. In section five, I defend my view that the positive right to a home is unconditional. In section six, I consider some objections to the view that I have provided, offering a further defense of the positive right to a home. Section seven seeks to tie everything back together, namely that the ideal of equality of opportunity is best realized by REO, which necessitates the recognition of certain positive rights, in particular the unconditional right to a home.

## **2. Real Equality of Opportunity and Positive Rights**

The best way of realizing REO is by recognizing certain positive rights that citizens of a polity have and the positive duties generated on behalf of the state as a result of this recognition. FEO ensures that one is able to pursue those things which they desire,

based on merit. But if one is unable to pursue what one desires, due to lack of means, they cannot be said to have opportunity in a real sense. However, equality of opportunity, in particular REO, is something which a just state owes to its citizens, on pain of being unjust. Thus, something in particular must be done to ensure that REO is guaranteed to the citizens of a just state. In particular, it must be ensured that citizens of a just state have the means that are required to pursue those things which they desire. While we cannot draw a perfectly clear line distinguishing between what one is entitled to and what one is not, we can at the very least begin provisionally to separate them.

The difficulty of distinguishing these sets of goods has to do with the fact that what constitutes a good life for one person could be drastically different from that which constitutes a good life for another. Thus, we can take as our starting point those things which can objectively and uncontroversially be agreed upon as necessary for a good life. I have in mind three specific goods: food, shelter, and medical care.<sup>59</sup> Each of these is necessary for a good life, no matter what one's personal preferences or desires may be. I focus on a home and shelter in particular as they seem to be the most complex, going beyond just physical necessity. Moreover, as Naomi Zack argues, a home seems to be more complex than even value-materialism, a notion that I will explain and explore further in the section on the uniqueness of a home.<sup>60</sup>

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<sup>59</sup> One may wish to consider other basic needs as well, such as security and privacy. I focus mainly on these three because they, at least on the surface, seem to be the most obvious.

<sup>60</sup> Naomi Zack, "Denial of Universal Human Material Needs and Aversion to the Homeless" (paper presented at What is Materialism?, Eugene, Oregon, May 2014).

Returning to the discussion of positive rights, it is important to note that positive rights generate action on behalf of someone else, in this case the state. It is the duty of the state to ensure that these entitlements are provided to each citizen who is unable to provide them for themselves, regardless of the reason which they are unable to. These basic goods are necessary to one's living a good life, regardless of what they may desire beyond them. In order to pursue what one may desire to pursue, one cannot be concerned with providing for themselves these basic goods. If one is consistently forced to use her entire income on these basic necessities they will forever remain in a subordinate position, as they will never have the income to pursue what they desire to pursue.

In order to determine what this positive right looks like, with regard to what it does and does not include, we must draw a principled line. The goal of this principle is to distinguish between a home, and those goods to which one has a positive right, and those things to which one does not have a positive right. There are now doubt a large number of goods which would contribute to the realization of a minimally good life, but to list them individually would be an endless task.<sup>61</sup> A principled line must be drawn between the right to a home and those other goods which may be needed for a minimally good life, but nevertheless are goods to which one does not have a positive right.

This principle can be drawn along two axes. The first is one on which an individual has the right to anything that is necessary for a minimally good life. This comes directly from the definition of REO, which necessitates the means that are

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<sup>61</sup> Some have tried in the form of "objective list theories."

necessary for a minimally good life being provided to one who is unable to provide for themselves. Without the means necessary for a minimally good life, one cannot be said to have REO. This inevitably refers to a large set of goods, which can be narrowed and refined later. Someone might immediately ask, though, why should one have the positive right to any  $x$  that is required for a minimally good life? The answer seems somewhat obvious: REO requires not only the components of FEO, but also opportunity.

Opportunity, as argued above, is not fully realizable without the possession of certain necessary goods. REO is a right of citizens of a just state and its fulfillment requires the possession of those goods needed for a minimally good life. Thus, by definition, without the means necessary for a minimally good life, one cannot be said to have REO. If one does not have REO, then the state in which they live is unjust.

The second axis on which this principle can be drawn is a further restriction on what is included by the first axis, as it seems to allow too much (potentially including things such as a suit, friends, a job, and sexual companionship). This principle ought to be restricted, then, such that it includes only those cases in which the lack of  $x$  brings with it serious social cost or stigma, thereby reducing one's opportunity. This loss of opportunity results from the inability to pursue what one desires, as one would be inevitably forced to try and fulfill the need for basic goods. For example, homelessness carries with it serious social stigma. The lack of a home forces one to live on the street, results in the inability to bathe, wash one's clothes, and much more. The resulting stigma is at least in part due to the public nature and spectacle of homelessness. Something such

as lacking friends or a sexual companion, on the other hand, can be, and often is, hidden from public view. This in turn reduces the stigma that accompanies it. The reduction in stigma results from the lack of public spectacle that accompanies these features of one's life. Thus, one is not experiencing a kind of social loss or stigma when lacking something of a more private nature.<sup>62</sup> So, the line between those things which one can claim a positive right to and those things which one cannot claim a positive right to can be determined based on the consideration of these two axis.

This immediately raises concerns, such as as whether there is the right to a prostitute, in the event that one fails to find a sexual companion, as sex is often necessary for a good life. Thus, the principle needs to be restricted further, in order to exclude any x that involves the subordination of others. For example, one does not have the right to a prostitute, despite sex being a feature of most good lives.

As noted above, REO necessitates that one's basic needs be met for a minimally good life. In order to fulfill REO, then, we must recognize certain positive rights, in particular the positive right to those goods which are necessary for a minimally good life. Let's call this the right to a level of material sustenance that is sufficient for a minimally good life, in particular where social cost manifests when one lacks x. Moving forward, I will demonstrate how the right to a home falls under this right.

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<sup>62</sup> This line is certainly not black and white. A lack of friends, a job, or sexual companionship would certainly have some kind of effect on one's social life. Moreover, homelessness is not always publicly recognizable. While this is a useful place to begin, it is true that this will vary greatly with the individual in question.

### 3. Minimally Good Lives

In this section, I will make clearer what I have in mind when discussing a minimally good life, as well as those goods which are instrumentally necessary for a minimally good life. In order to accomplish this, I rely heavily on the distinction between basic-need materialism and value-materialism, articulated by Naomi Zack in her article “Denial of Universal Human Material Needs and Aversion to the Homeless.”<sup>63</sup>

Zack begins her article by stating that “some kinds of physical things that cost money are required to satisfy universal basic human material needs, for example adequate food, shelter for privacy, security, and protection from weather.”<sup>64</sup> She contrasts this with what she calls value-materialism. Briefly, she describes value-materialism as that which concerns “physical objects that are desired more for their non-material properties than for their need-satisfying material ones,” such as bottled water, designer jeans, and fancy restaurants.<sup>65</sup> Roughly speaking, then, basic-need materialism concerns those things that are needed for the satisfaction of basic physical need, as opposed to value-materialism which denotes a more psychological aspect to a material good, contributing to one’s status and prestige. For example, one’s dining at an exclusive establishment carries with it not only nourishment, but also the prestige of being a seen in a fine setting, one which only those with a certain status are able to gain admittance to. Moreover, Zack argues that “[t]hose who can afford more expensive versions may have a

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<sup>63</sup> Zack, “Denial.”

<sup>64</sup> Zack, “Denial.”

<sup>65</sup> Zack, “Denial.”

slight contempt for tap water, simple food, plain lodging, contempt that ignores the basic material need-satisfying properties of the humble versions of such objects.”<sup>66</sup> This contempt, she maintains, leads to the belief not only that those who consume more expensive objects have different basic needs than those who are unable to, but that this leads to a “tendency to remain unaware of the reality of basic-need materialism or to deny it.”<sup>67</sup> It is attitudes such as this that lead to the stigma surrounding homelessness, for example. “Everyone needs the materials of water, food, and shelter but the focus on the non-material values of objects providing them (for the sake of status and prestige), can contribute to a delusion that one’s basic needs are psychological and social and not at all physical.”<sup>68</sup> Karl Marx makes a similar point in *Capital Volume One*, when he distinguishes between use-value and exchange-value.

What can we make of this distinction, then, with regard to a conception of a minimally good life? Most importantly, we can understand a minimally good life as one which first includes those things which Zack outlines in her conception of basic-need materialism. Included in this conception are those goods which are necessary for physical survival. A rough conception of a minimally good life would seemingly be based on the fulfillment of basic physical need. No doubt, as Zack is sure to point out, there is some psychological element to a minimally good life, but everyone needs food, water, shelter, and all of the other goods which are necessary, which are primary physical, not primarily

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<sup>66</sup> Zack, “Denial.”

<sup>67</sup> Zack, “Denial.”

<sup>68</sup> Zack, “Denial.”

psychological. Having these needs met allows one to use their resources to pursue those further things which they desire. The importance of the psychological element emerges when we begin to consider the social and psychological complexity of a home, which seems to go beyond even value-materialism.<sup>69</sup>

#### **4. The Uniqueness of a Home and the Right to a Home**

When Zack begins to discuss the complex, and even psychological, element of a home, she uses the term “relation-place.” She argues that the “psychological and social connections are importantly tied to the idea of a home, as materially located in a constant place.”<sup>70</sup> Homes are unique in that one faces significant social rejection and stigma if one does not have a home. The homeless are considered to be less than the housed, in so far as they are seen to have failed, resulting in negative attitudes towards the homeless. “Those who are homeless...continue to be relentlessly stereotyped by the pathologies of drug and alcohol addiction, mental illness, criminality, and laziness.”<sup>71</sup> Moreover, one who lacks a home violates the norm that distinguishes between the public and the private — forced to eat, bathe, and use the restroom in the public eye, all of which are activities considered to be at home in the private sphere.<sup>72</sup> “It is expected that

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<sup>69</sup> Zack, “Denial.”

<sup>70</sup> Zack, “Denial.”

<sup>71</sup> Zack, “Denial.”

<sup>72</sup> It is certainly the case that those who use public assistance are similarly stereotyped and stigmatized. This is part of a larger cultural problem in the United States. But, one who makes use of public assistance, particularly a home, will likely have better chances of pursuing those things which they desire when their focus is not solely the acquiring a home.

people will perform their daily biological functions within walls, shielded from public view.”<sup>73</sup> The homeless, however, lack this ability, leaving them prey to the public eye which passes negative judgment on their situation, “forced by their circumstances to perform a radical unconventionality that is deemed by the majority not only to fall beneath respectability but to be unworthy of individual respect.”<sup>74</sup> Given the practical barriers to acquiring a home, namely money, the homeless seem to be stuck in an often perpetual cycle, unable to participate in society, acquire jobs and homes, and go about their daily lives in a respectable manner.

What becomes obvious is that the homeless do not in fact have equality of opportunity, if by equality of opportunity we have in mind REO. The negative freedom to acquire a job, a home, and other basic goods is not on its own useful for someone who is viewed as a social pariah and unable to participate in society in such a way that they are able to make good on these negative rights. Given the unique nature of a home, it seems clear that if one is to have REO, one must in fact have a home.

## **5. Moral Responsibility and the Unconditional Right to a Home**

Earlier in this chapter I stated that I would be defending the *unconditional* right to a home. This is without question a very controversial statement and one that will need significant explanation. While I do think that moral responsibility has a role to play, I nonetheless think that the right to a home remains unconditional. In this section I will do

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<sup>73</sup> Zack, “Denial.”

<sup>74</sup> Zack, “Denial.”

two things: I will first argue that moral responsibility does have a role to play, but that it ought not undermine the unconditionality of this right. The second part of this section will be to briefly note on the practical matter with the right to a home, in particular a consideration of a view put forth by Richard Arneson.

I would like to first note that the unconditional right to a home does have room for moral responsibility. While this view likely seems counter to the unconditionality of a right, we can look back to FEO to find its role. Earlier in this chapter I argued in favor of what I have called REO, which includes and importantly does not reject, any components of FEO. Rather, it builds upon FEO for a more complete view. We can locate the role of moral responsibility in one of the major components of FEO, namely meritocracy. To repeat what I said previously, meritocracy can be understood as the ability of an individual to move up or down in class or status, dependent upon that individual's ability and application of their ability. Moreover, there is a lack of artificial barriers that prevent one from being able to do those things which they desire to do. In sum, one is able to improve or worsen one's situation on their own merits. It is here that I would like to situate the role of moral responsibility and self-reliance, in my view.

Moral responsibility here refers to the obligation that an individual has to society to acquire those goods which they need to survive. Individuals have an obligation to try and secure a home, food, health care, and any other goods which they may need, as opposed to exercising a right to welfare. It is moreover an obligation to not take advantage of what others, in this case the state, are able to offer if they do not need to.

This view fits in with the notion of meritocracy that I have sketched above. In a flourishing meritocracy, there is not movement up or down in the society unless an individual does the moving up or down themselves. An individual is directly responsible for their position in society, and therefore what welfare they may or may not need to make use of. Moral responsibility, therefore, can be considered a component of a functioning and flourishing meritocracy. It is not, therefore, in a direct relationship with the right to a home. By this I mean that the right to a home ought to be unconditional, but there is nonetheless a responsibility that one has to participate in the meritocracy, and moreover, to be self-reliant.

It is important to briefly consider Richard Arneson's point about the difficulty of judging moral responsibility in practice. Arneson argues that people do not walk around displaying responsibility scores on their foreheads.<sup>75</sup> We are therefore, in practice, unable to determine whether one is doing all that they can to acquire goods for themselves. To do so, Arneson argues, would be to give rise to some kind of prejudice, based on morally irrelevant features of an individual.<sup>76</sup> To revoke the unconditional right to a home, then, would be based on irrelevant information, information that ought not be used to determine who has the right to a home, survival, and freedom from the stigma of homelessness.

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<sup>75</sup> Richard Arneson, "Egalitarian Justice Versus the Right to Privacy," *Social Philosophy and Policy* (17) (2000): 9.

<sup>76</sup> Arneson, "Egalitarian Justice," 9.

Moreover, I think a kind of paternalism, with regard to moral responsibility, can be justified in a case such as the one considered here. One would have a kind of personal obligation to take on something such as counseling, if they were to be receiving something such as a home. Additionally, I do not think it would be too strong to say that one ought to be required, in certain circumstances, to attend some sort of counseling. One could immediately respond, however, that paternalism is a slippery slope and could rapidly lead to something such as banning large sugary beverages, in the name of citizen's health. This issue may be easily relaxed, however, by noting that those who would be obligated to receive some sort of counseling would be a rather small group. I imagine that by and large this group would be made up of those who were, without counseling of some kind, unable to better their situation and acquire a home for themselves (such as addicts of any kind, individuals with certain kinds of mental illness, minors, etc.). To say that individuals facing these issues ought to be required to partake in some kind of counseling, but others would not be required to, I believe, relieves the issue of slippery paternalism while still maintaining an important role for moral responsibility.

## **6. Some Objections**

In this section I would like to briefly consider three objections that could be raised against the argument that I have developed in this thesis. While I think these objections ultimately fail, they allow for a sharpening of the defense of this project. The first objection that I would like to address deals with the large amount of goods that the

principle that I have developed above allows for. While I focused on a home in particular, the principle defends the right to any x that is necessary for a minimally good life, so long as it does not involve the subordination of another person, and in particular if the lack of the x in question brings with it serious social cost. Thus, one would likely argue that I have allowed for too much to be included. My response to this is yes, and it is intentional. This right could potentially include things such as a shower, a shave, a place to use the restroom, do your laundry, and even the right to presentable clothes, including a suit. There are no doubt a lot more goods that I could list here and I would defend the right to each of them. Without presentable clothes, a place to shower, do your laundry, and so on, it would be difficult to see how one would have the opportunity promised in REO. REO is something that I argue a just state has an obligation to ensure, thus the state has an obligation to ensure that the opportunity it promises is met, potentially including the right to a number of goods such as those listed here.

The second objection that would likely be raised here is that I do not take moral responsibility seriously enough, instead I just pay it lip-service. In addition to my argument that it fits with meritocracy and therefore has room within the theory that I have provided here, I would take this a step further. On the surface, it would not seem unreasonable to require that one who takes part in the use of welfare such as this ought to be required to have regular check-ins, meet with a social worker regularly, or something along these lines. But I would argue that the requirement of this is borderline paternal, in a negative way. If one accepts the argument that I provided above, with regard to the

relationship between moral responsibility and meritocracy, it would seem that these requirements would be an unnecessary invasion of one's privacy, one of the very things that a home is meant to ensure. Thus, I would argue that it would be unreasonable to require this of those taking advantage of this right. That being said, it would remain that one is subject to compliance with criminal law, in practice. But, this would not exclude them from exercising this right after some kind of punishment was served. Again in practice, we would not put citizens on moral trial, as it would weaken the social solidarity of citizens, which is necessary to a flourishing society.

The third, and likely the strongest, critique of my argument would likely come from advocates for universal basic income (hereafter UBI). One would likely wonder why I have taken the time to single out a home, and other goods that may be included within the principle created above? It would certainly be much simpler, and allow for much more autonomy, if I simply advocated for a UBI. This argument, I admit, is of great importance, and does not miss the mark by much. Certainly those who do not fall into the category of justified paternalism that I have mentioned above would be better off with a UBI and I would advocate for this as well. The right to a home would in affect be for those whom fell into the above category. Moreover, the argument that I have developed in this project would certainly account for the right to a UBI. UBI would be the right afforded to the majority of people, but I still maintain, on the grounds of the special cases noted above, that the right to a home in particular ought to be noted and defended.

## **7. Conclusion**

In sum, this chapter sought to establish that a set of positive rights to which citizens of a just state are entitled follow from REO. I argued for the right to a home, based on a principle that establishes the positive right to those goods which are needed for a minimally good life. While this principle entails many things, I focused in particular on the right to a home, as a home has unique characteristics, especially given the public spectacle of homelessness. Moreover, I argued that the right to a home is unconditional. I addressed three significant concerns for this project, but I have concluded that if we take equality of opportunity seriously, which requires REO, its achievement will necessitate certain positive rights, in particular the right to a home in the event that one cannot acquire on on their own.

### Conclusion: The Importance of the Right to a Home

At the conclusion of this project, two things should be clear. First, it should be clear that homelessness is a complex phenomenon that is often misunderstood. A better understanding of homelessness should have been achieved in this project. Moreover, the role of the state in the homelessness problem should have been firmly established. I discussed this by parsing out the ideal of equality of opportunity and the way in which it is most often conceived, FEO. I argued that FEO falls victim to three crucial problems, making it inadequate on its own as a conception of equality of opportunity. I argued instead that REO is a more complete way of realizing the ideal of equality of opportunity, as it does not fall victim to these same problems. Moreover, I demonstrated the fact that the realization of REO necessitates certain positive rights, on behalf of the state. In particular, the realization of REO demands the recognition of a positive right to the goods that are necessary for a minimally good life. In the end, I established that REO requires the recognition of the positive right to a home.

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