

ARTICLES AND ESSAYS

ADDRESSING QUALITY OF LIFE CRIMES IN OUR CITIES: CRIMINALIZATION, COMMUNITY COURTS AND COMMUNITY COMPASSION

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INTRODUCTION

Each fall, community-minded law students stand out in the cold on public sidewalks in front of the school and ask passersby for money to help the hungry and homeless. We praise the students for their efforts and commend them on being committed to the underprivileged. Meanwhile, that afternoon, the homeless man who would benefit from their collection stands on the same sidewalk and asks a pedestrian for spare change for a cup of coffee. A police officer sees the activity and issues the man a summons charging him with violating the city ordinance banning panhandling.

This true vignette reveals that our current system of justice criminalizes conduct on the part of the homeless which is totally acceptable, even praiseworthy, when engaged in by the rest of society. With the great prosperity throughout the economy and throughout the country, one might think this is a time when society would be the most compassionate toward the poor and homeless because now we can afford to be. However, as our urban centers finally begin to see some revitalization, we are focusing not on the causes of homelessness but instead we are focusing on complaints from the business community that the nuisances created by the poor and homeless are bad for business.

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This essay will discuss what many call "quality of life crimes" committed by the homeless and recent attempts by cities to address the problem through increased criminalization of homelessness and poverty. It will then review alternative approaches including community courts, which employ sentences involving community service and provide social services to those caught in the revolving door of minor criminal offenses.

Finally, this essay will explore the benefits of another approach that has more to do with leaving the homeless alone than it does with aggressively trying to force them off the streets or into services. It suggests that by applying the same standards to the homeless that we apply to middle class America, we can save money, time and the dignity of the poor.

QUALITY OF LIFE CRIMES

It can be easily argued that every crime that occurs affects the quality of life for society. For some reason, social commentators have chosen to use the term "quality of life" crimes to describe nuisance-type violations which are often violations of ordinances and, therefore, not on par with more serious crimes prosecuted in state courts.

The offenses included in discussions of quality of life crimes often include loitering, panhandling or begging, urinating in public, sleeping in public, peace disturbance, petty theft (which usually involves shoplifting groceries), and destruction of property and turnstile jumping, which is riding public transportation without paying the fare. Prostitution is also often included in the list of "quality of life crimes," but defendants in these latter cases usually see much harsher punishment than defendants in the former cases.

In addition to these types of crimes which are seen as disturbing urban life, the poor and homeless also are charged frequently with minor traffic charges which, like the other charges already mentioned, can serve as barriers as families attempt to find housing or employment. These charges can include routine speeding or red light violations, but more troublesome are the traffic charges involving driving without a license or driving without insurance. Many poor persons drive if a car is available even if they have never obtained a driver's license, and many would have a hard time passing the written test. Financially, many cannot afford insurance but drive anyway out of necessity. These charges can be costly in terms of fines, but also can mean loss of driving privileges for extended periods. This, in turn, makes it more difficult to obtain an education or employment.

The Law Clinic at Saint Louis University has been assisting the poor and homeless with minor criminal problems since 1995. The Clinic restricts its assistance to cases of municipal ordinance violations of the nature described above. Some of this assistance occurs at one-day events where hundreds of

homeless gather to receive services.¹ At other times, homeless shelters or welfare-to-work programs refer clients to the Clinic who have outstanding warrants for minor violations who need their records cleared up before moving into permanent housing or a new-job.

While many homeless persons have brushes with the law, most are not hardened criminals. A recent study by the U.S. Department of Housing and Urban Development showed that only eighteen percent of the homeless have spent time in a state or federal prison on a serious offense.² But forty-nine percent of the homeless have spent five or more days in a city or county jail in their lifetime.³ To understand this figure, it must be remembered that being held in a city or county jail for five days can simply mean a homeless person did not have \$100 to post bond on a traffic ticket that the rest of us could easily afford. It does not mean he committed some serious crime.

In most cities today, it is easy for a poor or homeless person to end up in jail and with a record for committing a crime. A homeless man who begs a passerby for change can get arrested in many places for "panhandling." He probably would not be arrested on the spot, but would be given a summons to appear in court at a later date. The defendant might miss the court date due to lack of transportation, a medical problem, or countless similar difficulties. The court would then issue a warrant for the defendant. At some later point when the person is stopped again for some alleged violation, a record check would reveal the outstanding warrant and the homeless man would be taken to jail. Bond would likely be the cost of the original fine and court costs, and may total \$100 or more. Not having any money, the person would remain in the jail for several days until a judge decided the city had spent enough money to house and feed the defendant.

Despite the apparent futility of charging the poor with crimes of this nature, the traditional approach to these quality of life crimes is to create as many laws as possible to outlaw the activities of the poor and homeless and to increase enforcement.

CRIMINALIZING POVERTY

Many cities are passing new laws aimed at the homeless and are stepping up enforcement of laws dealing with quality of life crimes. New York City provides the best example of a major urban center that has addressed homelessness through aggressive policing. The City Administration's efforts to

1. Lorraine Kee, *Homeless Veterans Get Care, Chance to Regroup*, ST. LOUIS POST-DISPATCH, Oct. 10, 1999, at C3.

2. HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE (Interagency Council on the Homeless ed., 1999), at 25. Copy on file with author and also available at <<http://www.huduser.org/publications/homeless/homelessness/homelessness.pdf>> (visited Mar. 23, 2000).

3. *Id.*

clear Times Square and other areas of the homeless and petty criminals has been both praised and criticized.⁴ Mayor Giuliani has spearheaded efforts to enforce work rules as a condition of shelter for homeless families and police in New York promise to arrest those who refuse to go to homeless shelters.⁵

In most cities that have attempted to address quality of life crimes, the impetus for criminalizing homelessness comes from the business community.⁶ Retail establishments believe the presence of the homeless in the vicinity scares away customers, including tourists. Many efforts at revitalizing decaying downtown centers include the business community contributing funds to "clean up" the streets of beggars or those who sleep on park benches. The business community is also often behind measures to create new ordinances outlawing such conduct or to add more police officers to enforce laws that already exist. However, there are serious constitutional concerns with many of these ordinances.

Laws that prohibit sleeping or sitting in certain areas can be struck down as vague and violative of the Fourteenth Amendment. Courts have struck down laws that restrict panhandling under First and Fourth Amendment principles.⁷ The United States Supreme Court has given some comfort to advocates for the homeless by striking down a Chicago ordinance that outlawed gangs from congregating.⁸ The ordinance made it illegal for two or more persons to congregate for no apparent purpose if one of those persons was a known gang member. The Court found the ordinance unconstitutional on its face due to vagueness.⁹

Perhaps the most important part of the ruling was the Court's acknowledgment that "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment."¹⁰ The Court properly distinguished between innocent conduct and conduct threatening harm.¹¹

In a concrete example of the difficulty city councils, mayors, and police have in labeling conduct as criminal or innocent, the Court, in citing the deficiencies of the ordinance, stated: "It matters not whether the reason that a gang member and his father, for example, might loiter near Wrigley Field is to rob an unsuspecting fan or just to get a glimpse of Sammy Sosa leaving the

4. Nina Bernstein, *Labeling the Homeless, in Compassion and Contempt*, N.Y. TIMES, Dec. 5, 1999, §1, at 53.

5. *Id.*

6. Maria Foscarinis et al., *Out of Sight-Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. POVERTY L. & POL'Y 145, 154 (1999).

7. *Id.* at 156-57.

8. *City of Chicago v. Morales*, 119 S. Ct. 1849, 1851 (1999).

9. *Id.*

10. *Id.* at 1857.

11. *Id.* at 1859.

ballpark"¹² The example points out another major problem with charging people with violating these quality of life ordinances. These laws are usually only enforced against the homeless and not the dad and son hanging around the ballpark for an autograph. They are not even consistently used against the homeless, but often are dusted off when police do sweeps to remove homeless people from certain parts of a city,¹³ often in anticipation of a major event or the visit of a dignitary.

In some communities, city councils are creating safe zones that protect the homeless from prosecution for everyday necessary activities like sleeping. These safe zones are traditionally away from the main retail districts. This isolates the homeless, cuts them off from social services, jobs, and the rest of society. It also imposes another set of rules involving boundaries of movement that others don't have to follow.¹⁴

While the current effort in cities focuses on prosecution of the homeless for their crimes, it is, in fact, the poor and homeless who are more likely to be the victims of crime than they are to be the criminals. Almost forty percent of the homeless are victims of robberies or thefts, and twenty-two percent reported being physically assaulted at least once while homeless.¹⁵ As the earlier cited HUD study found, "being homeless removes the safety of a permanent residence and leaves one's person and possessions vulnerable to attack."¹⁶

So, at a time when the homeless need more assistance and more protection, and at a time we can afford to provide it, cities instead are looking for ways to remove them from the streets, even if it means criminal prosecution and incarceration.

COMMUNITY COURTS

A fairly recent innovation designed to address quality of life offenses is the community court concept. While a community court program can mean geographic decentralization with a system of small justice centers in many parts of the community, community courts are more importantly a concept than a geographic phenomenon. In fact, community courts in most cities are starting as one central center where the primary goal is to address the needs of the offender to prevent the behavior from being repeated.

In community court programs, people who commit quality of life offenses are brought to court quickly. They are offered alternative sentencing

12. *Morales*, 119 S. Q. at 1861.

13. Foscarinis, *supra* note 6, at 150.

14. Maria Foscarinis, *Downward Spiral: Homelessness and its Criminalization*, 14 YALE L. & POL'Y REV. 1,49(1996).

15. HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, *Supra* note 2, at 22.

16. *Id.*

arrangements, which usually include community service. While many criminal courts offer community service options, in community courts the service is often tied directly to the offense or the neighborhood where it occurred. A homeless man who urinates in public may be ordered to clean the sidewalk where the offense occurred. A prostitute might be required to work on a community watch program to eliminate crime from the street where she worked. Those charged with vandalism might be required to repair their handiwork.

The second major characteristic of community courts is a system of services for the offenders aimed at preventing repetition of the conduct that was the subject of the charge. Located at the courthouse where community court is held are health services, a job counselor, domestic violence counseling, drug abuse treatment, housing assistance providers and similar services. The offender is required to participate in the services provided as part of the sentence.

Community courts are usually run by professionals who understand the social problems faced by the defendants who appear. In Atlanta, city officials noted that those who commit minor offenses have higher rates of drug and alcohol addiction than people who commit felonies. About two dozen cities have established community courts or are in the process of doing so.¹⁷ New York is credited with establishing the most notable community court in the nation. Currently, New York City has two community court centers, the Red Hook Justice Center in Brooklyn and the Manhattan Community Court which opened in 1993.¹⁸ Other major cities implementing community courts include Los Angeles¹⁹ and Chicago.²⁰ There has been little activity with community courts in smaller communities as the need has not been found to exist there.

Community court backers in New York state that there are six principles to planning a community court. They are 1) restoring the community, 2) bridging the gap between communities and courts, 3) knitting together a fractured criminal justice system, 4) helping offenders deal with problems that lead to crime, 5) providing better information, and 6) designing a physical space to match the court's goals.²¹

It is telling that in the major cities where community courts have been instituted, the driving force is often the downtown business establishment. As mentioned earlier in this essay, business leaders claim they have the most to

17. [communitycourts.org](http://www.communitycourts.org) (visited Mar. 27, 2000) <<http://www.communitycourts.org>>.

18. Joseph P. Fried, *Court is Moving Back Into the Neighborhood*, N.Y. TIMES, Oct. 10, 1999, § I, at 45.

19. Carla Rivera, *Downtown Drop-In Center Allows Homeless People to Shower and Catch a Little Sleep*, L.A. TIMES, Oct. 24, 1999, at B1.

20. Lorraine Forte, *Community Court Program Targets Small-Time Crime*, CHICAGO SUN-TIMES, Nov. 28, 1998, at 11.

21. [communitycourts.org](http://www.communitycourts.org), *supra* note 17.

lose by the commission of quality of life crimes. In New York, it was the bad reputation of Times Square among visitors that led the City to implement a community court there. In Atlanta, city leaders saw it as a tool for making downtown more attractive to visitors and workers.

It has taken some cities significant periods of time to implement community court programs. In Atlanta, Mayor Bill Campbell announced creation of a community court in 1998, but it was two years later before any funds were appropriated for it.²² St. Louis officials have been discussing a community court for about two years as well, and are now ready to implement their plan.²³ In jurisdictions starting community courts, new appropriations are usually necessary since these courts are seen as new and additional programs. The Red Hook Community Justice Center in Brooklyn has a price tag of \$5.4 million for construction alone.²⁴ In Atlanta, the city has committed \$500,000 to hire a judge and administrative staff.

The lure of community courts for advocates for the homeless is the emphasis on community service sentences as opposed to jail time. Many jurisdictions allow jail sentences of ninety days or longer on ordinance violations, so on its face, this aspect of community courts is beneficial to the homeless. If community service requirements are not out of proportion to the offense, this element should be encouraged. On the other hand, very few people are sent to jail for ordinance violations in the regular court system. Most people pay fines and avoid both jail time and community service.

Social service providers who support community courts hope that they will lead to lower numbers of ordinance violations being issued. But in many programs, at least initially, the number of violations is up dramatically.²⁵ The reason appears to be that police officers, knowing now that there is a system to deal with these offenses, are issuing more charges. Before community courts, many minor offenses were dismissed because officers did not appear for the trial knowing the case might be dismissed, plea bargained, or the defendant would fail to appear. In the St. Louis program, the municipal judge organizing the new community court stated that he expected arrests overall to "dramatically increase."²⁶ This aspect of community courts must be monitored carefully to ensure the rights of the homeless are not ignored.

Most community courts limit themselves to minor violations, usually ordinance violations. At the new community court in New York, however, officials plan to handle some felonies and even some family law matters. In

22. Julie B. Hairston, *Community Court Receives Start-Up Funds*, ATLANTA J. & CONST., Feb. 17, 2000, at 1JD.

23. Mark Schlinkmann, *St. Louis Will Crack Down on Panhandlers*, ST. LOUIS POST-DISPATCH, Mar. 3, 2000, at 1C.

24. Fried, *supra* note 18, § 1, at 45.

25. Forscarinis, *supra* note 6, at 150.

26. Schlinkmann, *supra* note 23, at 1C.

Minneapolis, city officials implemented a community court program in June of 1999, and their court program handles some felonies. The risk when community courts handle too wide a variety of offenses is that those who commit minor offenses will be lumped together with the violent offenders. There is a qualitative difference between sleeping in public and robbery.

The Minneapolis program includes a community council to improve communication between the county attorney and residents.²⁷ Such a council would appear to be a necessary element to a successful program. The natural risk of implementing a council of this sort is to generate requests for community court centers in multiple neighborhoods. Very few jurisdictions that have implemented community courts have courts in all areas of the city. Most cities have a handful of centers in the areas of highest concentration of petty crime, while some cities, like St. Louis, plan to have the community court housed in the building where municipal court is already held with no additional sites in other areas in the immediate future. In some cities, neighborhood organizations may complain that the vandalism and street crime they face is just as important as the crime affecting downtown businesses.

Another aspect of community courts is the immediacy of addressing the offenses.²⁸ In some cases, they are handled the same day. The offender could be on the street hours after the offense doing his community service. This aspect of the program is intriguing and can have its benefits, but the rights of the offender, such as the right to consult with an attorney or the right to a trial can be infringed if community courts move too swiftly towards disposition.

As the Center for Court Innovation indicates, the U.S. Department of Justice has a Bureau of Justice Assistance (BJA), which provides a wide range of assistance to communities considering community courts. Community court advocates will need to continue to educate the public about this new system of justice, and will need to be careful not to let extreme views take control of it. Law and order advocates will use the community courts to call for new crackdowns on the homeless since there now is a place to prosecute them and "make" them change.

While it is too early to assess the overall effectiveness of community courts, officials in New York report that the court has handled cases from five primary crimes including turnstile jumping, petty larceny, prostitution, unlicensed peddling and low level drug charges. They report that seventy-five percent of the defendants complete the community service they are ordered to perform, which is higher than the completion rate in other city courts. They

27. Margaret Zack, *Court Takes On Livability Crimes*, MINNEAPOLIS STAR TRIB., Sept. 27, 1999, at 1B.

28. *Id.*

also report that arrests for prostitution and illegal vending have dropped significantly.²⁹

The public perception still slants towards treating offenders as criminals and not as people in need. When the St. Louis community court program was announced, and court officials had gone into detail at a press conference to explain the many innovative aspects of the program, the headline the next day in the St. Louis Post Dispatch was the following: "St. Louis Will Crack Down on Panhandlers."³⁰

JUST LEAVE THEM ALONE

Sometimes society tries too hard to solve its problems. While most complaints about society's ills are complaints that something must be done, the problems raised here to a large extent can be resolved by doing nothing. At the risk of stating the obvious, doing nothing is cheaper, more efficient, and takes a lot less planning than the usual complicated social programs.

Before embarking on this concept, let there be no mistake: additional services are needed to assist the homeless. More affordable housing, more shelter beds, more drug treatment, more job training, and other similar services are needed. Providing more public toilets and public showers and public buildings that are always open to anyone wanting to use them would help reduce the need for the homeless to engage in behavior others may find to be a nuisance.

But what is not needed is an increase in the number of homeless people who are charged with crimes. As noted earlier, the truth is that very few people get sentenced to jail on ordinance violations. In most cases, the sentence is a fine. Why do we waste our resources imposing fines of one hundred dollars for public urination or fifty dollars for turnstile jumping when the defendant has no means of paying?³¹ Some regular municipal courts provide community service as an option to paying a fine, but many smaller municipalities do not. Many cities pursue fines because they rely on revenue from them to fund city services.

In prosecuting the homeless, cities end up hurting themselves. Not only can they not collect fines from the homeless, the cases of the homeless take up an inordinate amount of court time since they get re-docketed numerous times due to the failure of the homeless to appear or because the person does not have the funds to pay the fine. For many of the homeless who get arrested on outstanding warrants or who get sentenced to a jail term, the cost of their incarceration, even if for a few days, far exceeds the amount of the original fine they would have had to pay. Many defendants get released after a few

29. communitycourts.org, *supra* note 17.

30. Schlickmann. *supra* note 23.

31. See Foscarinis, *supra* note 6.

days after the municipality realizes they are losing money by holding the homeless person. They decide it is cheaper to let them go. Soon they will realize that it is cheaper never to prosecute them in the first place.³²

As stated previously in this essay, most often the emphasis for removing the homeless or locking them up comes from the business community. There appears to be no groundswell of sentiment from the general public to charge the homeless with crimes to remove them from urban areas.³³ Perhaps the general public appreciates the freedoms we have, and has no problem applying the same standards to both the homeless and the middle class. A white middle class businessman in a suit riding the subway does not get asked if he paid the fare. A man who dozes on a park bench while he waits for his wife who is shopping does not get a ticket for sleeping in public, even though he has a bed at home. Yet we punish the homeless who have no alternative.

Perhaps the correct response to the beggar is to give him a dollar instead of a summons. Perhaps the correct response to the homeless veteran who urinates in public is to say a prayer for him instead of giving him a court date. Is it really necessary to issue a summons to an obviously homeless person riding the subway without having paid the fare?

CONCLUSION

Prosecution of the poor and homeless for committing quality of life crimes is increasing as our cities rebound. Cities are criminalizing conduct such as sleeping in public or begging for people who have no choice but to sleep in the park or beg for spare change. Community courts are growing in number across the country and provide an innovative solution to minor offenses if they are implemented in a sensible manner.

But cities must realize that simply allowing the homeless to engage in some of these behaviors will be more cost effective and more logical than dragging these offenders into an expensive system of summonses, court appearances, warrants and jail time. The homeless must either be offered appropriate services or be left alone to realize their own dignity. And while it might be argued that there is no dignity in begging in public or sleeping on the streets, the ultimate insult is to be arrested for it.

32. *Id.*

33. *See* Bernstein, *supra* note 4, § 1, at 53.