

## Confronting the Myth of Choice: Homelessness and *Jones v. City of Los Angeles*

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Tanene Allison\*

*In Jones v. City of Los Angeles,<sup>1</sup> the United States Court of Appeals for the Ninth Circuit struck down Los Angeles's vagrancy law as effectively criminalizing homelessness. This issue includes two scholarly pieces that address this set of issues—Adil Haque's *Lawrence v. Texas* and the Limits of the Criminal Law,<sup>2</sup> and Sarah Gerry's *Recent Development, Jones v. City of Los Angeles: A Moral Response to One City's Attempt to Criminalize, Rather than Confront, the Problem of Homelessness.*<sup>3</sup> In addition to these voices from the legal scholarship community, we wanted to include the voice of someone who can speak to the issues raised in *Jones* from a different perspective—a person who has experienced homelessness.*

In my homeless shelter I was told not to read the newspaper in the morning. I was also instructed not to initiate talk with the other shelter residents about politics or local homeless policy. It was the summer of 2001, I had just turned twenty, and I was homeless in San Francisco.

The shelter sat in what is considered one of San Francisco's ghettos, the Tenderloin, and was populated by up to forty men and women between the ages of eighteen and twenty-four. We were a hodgepodge of a group: diverse in many ways, quite similar in many others. An overwhelming number of us grew up in abusive households. Some grew up in San Francisco; others hopped a bus there when there were no other options, hoping the city would provide them with an opportunity to craft a better life. The population of queer-identified youth was notable, several having run from conservative hometowns and intolerant families.

Almost all of the youth at the shelter had been failed by the individuals and systems charged to protect and nurture them. Collectively, we were failed by abusive households and overwhelmed child protective services systems, failed by underfunded school districts, and failed by a harsh economy.

Having been one of those youths, failed by the policies crafted to protect me—and then, later, having been one of those studying public policy in the hallowed halls of the Ivy League—one theme stands out for me in

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\* Tanene Allison lives in New York City, where she writes and works on progressive politics and media campaigns. Tanene earned a B.A. from San Francisco State University before heading east to earn a Masters in Public Policy from Harvard's Kennedy School of Government. A believer that homelessness is not an unsolvable problem, Tanene has faith that the American Dream can someday be made accessible to all.

<sup>1</sup> 444 F.3d 1118 (9th Cir. 2006).

<sup>2</sup> 42 HARV. C.R.-C.L. L. REV. 1 (2007).

<sup>3</sup> 42 HARV. C.R.-C.L. L. REV. 239 (2007).

the debate and reality of homelessness: the Myth of Choice. The Myth of Choice asserts that homeless people are homeless only because they make bad choices, and it is a myth that lies behind many flawed policies. These policies lead to an institutional failure that causes further social stigmatization and criminalization of the homeless population—all of which create the whirlpool pull that is poverty's cycle.

The Myth of Choice is a response to society's cognitive dissonance—the disconnect between the success we believe is possible and the existence of homelessness. We, as a society, want to believe ourselves to be a kind and a just people who respect the value of fairness. We want to believe that all we have created has been won by our hands alone, and that our society allows for those with less than us to better themselves through hard work. This is the premise of our country, the premise of the "American Dream." It is simply too much for us, as a society, to believe that the American Dream might be flawed, or, for some, potentially impossible to accomplish. The presence of homelessness in our society does not easily fit with society's belief in the American Dream. It is incomprehensible, as we go about our daily lives, to drive casually by or step over individuals without food or shelter. It is impossible to believe that our communities create and allow for such disparity. And yet these incomprehensibilities are a part of the daily experience of millions of Americans. The Myth of Choice soothes society's cognitive dissonance.

The Myth of Choice creates a serious gap between the policies created to deal with homelessness and the actual problem of homelessness in terms of the factors that cause it and the needs it creates. The homeless are viewed as bad people who have made bad choices, and who thus deserve not assistance and support but condemnation and rebuke.

Out in society, my homelessness transformed my entire identity. As a homeless individual I was suddenly viewed by default as representing what is wrong in society. I had spent years working with children and youth, but when I sat on the steps of a school near the shelter, I was instantly seen as a threat, deserving of a call to the local police. If I sat in a park, I was not enjoying a sunrise (or, more realistically, occupying the only place that I could at that hour), I was a threat to public comfort.

While I was homeless, those who came to know and respect me often had difficulty believing that my homelessness was not a chosen experiment with poverty. They thought that my being young, healthy, hard-working, and smart must have meant that I was just experimenting with what it would be like to be homeless, that I couldn't truly be a member of such a stigmatized community. Those who did not know me, but knew I was homeless, decided that I must be bad, secretly addicted to something, or otherwise defined as somehow different from that which was familiar to them.

Society's vision of the homeless was far from reflected in the reality of the folks I shared the street with. In the shelter, we came to understand that if we didn't look out for each other, no one else would. We would ask

about each other's days and would tip the newcomers off to important facts, such as that the apple juice was better than the orange, and that the undercovers would attempt to bust you around the corner just for standing there. We helped each other cope with the violence that is a near daily reality. Slowly, and in pieces, my peers in the shelter would tell their stories. Whose mothers had died. Whose fathers had raped them. The overwhelmed child protective service agency and underfunded education system that had failed them. The endless lists of towns that turned them away. Despite the fear and the violence and exhaustion that are so common to the experience of homelessness, some of the most compassionate people I've ever known were those with whom I shared the homeless shelter.

Whereas inside the homeless community we saw ourselves as unique individuals trying to make the most out of the cards we had been dealt, society saw us in a very different light. The homeless are viewed as an inherently suspect group. This collective social stigmatization has allowed for policies that criminalize the group as a whole—and make it even more difficult for the homeless to achieve their dreams.

This societal disrespect has evolved into laws that criminalize the actual existence of homeless individuals, rather than focusing on their absence of choice. In Los Angeles's Skid Row, the location of one of the largest homeless populations in the United States, there are more homeless people than available shelter beds. Despite this situation, no consideration was given to whether human beings had a choice to rest in public places; homelessness was simply criminalized. In *Jones v. Los Angeles*,<sup>4</sup> the Ninth Circuit took Los Angeles's Myth of Choice to task. The *Jones* court recognized that for homeless individuals in Los Angeles's Skid Row, mere existence would put them at risk for ticketing, fines, and jail time.<sup>5</sup> They deemed this effective criminalization of homelessness unconstitutional.<sup>6</sup>

The court in *Jones* held that the law of Los Angeles County violated the Eighth Amendment's prohibition against cruel and unusual punishment.<sup>7</sup> This punishment was perpetrated by L.A.P.D. chief William Bratton, who said about homelessness: "If the behavior is aberrant, in the sense that it breaks the law, then there are city ordinances . . . You arrest them, prosecute them. Put them in jail. And if they do it again, you arrest them, prosecute them, and put them in jail. It's that simple."<sup>8</sup>

Unfortunately, it's not so simple for those who are attempting to escape homelessness while living through such prosecution. *Jones* highlights how such poorly crafted policy responses are brought about, in large part, by the Myth of Choice—they are laws built upon a presumption that the homeless have choices that they simply lack. In Los Angeles, the home-

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<sup>4</sup> 444 F.3d 1118 (9th Cir. 2006).

<sup>5</sup> *Id.* at 1131.

<sup>6</sup> *Id.* at 1130–37.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1122.

less of Skid Row found “resting in public” were fined and incarcerated, despite the fact that there were more of them than shelter beds, and despite the fact that fining the homeless (who cannot pay the fines) is an unproductive use of legal resources. *Jones* struck down this practice, but other laws driven by the Myth of Choice remain. In San Francisco and New York, general assistance funds have been slashed under the much-touted theory that those funds would inevitably be spent on drugs and booze. Society does not consider that the same cash could be spent on laundry, bus fare, and toiletries, all of which are difficult for the homeless to obtain.

The presumption that underlies these policies is flawed; it is no easy task to escape the cycle of criminalization and related poverty. The youth I shared the shelter with fiercely refused to believe that they would find themselves as homeless adults, living on some town’s Skid Row. Despite unavoidable violence and despair, the shelter I stayed in also housed some of the most powerful optimism I have ever witnessed. My peers and I, despite our circumstances, had big dreams and made an exhaustive attempt to find ways to beat the odds and turn those dreams into eventual realities. These youth were not necessarily destined to grow up into adults repeatedly arrested for want of shelter. They were not necessarily so destined, and yet, almost all of them remain homeless as adults. Escaping homelessness, in large part, seems to be an anomaly. The homeless youth I knew were teetering at the edge of poverty’s cyclonic downward pull, and many of them were unable to find a way out. The Myth of Choice says, “Had these youth only applied themselves, they would no longer be on the street.” The Myth of Choice leads policymakers to believe that the youth with whom I shared the shelter somehow made the conscious decision to call the streets their home forever.

An attempt to escape homelessness presents a complex minefield of challenges, making the leap to stability vastly more difficult than the Myth of Choice would have us believe. While homeless and attempting to dress for a job interview, I was baffled by the dilemma of how to acquire proper shoes or clothes to wear. My interview had been arranged through a friend of a friend, so I was already entering the job market more connected and supported than most homeless attempting to gain employment. Still, I was terrified that my appearance would give away my homelessness. A staffer at the shelter took me into a back room where extra used clothes were kept in bags and tossed on the floor. We dug about the torn bags and, about an hour later, emerged with something resembling a presentable outfit. My borrowed shirt and too-small shoes were not ideal; they were enough. I showed up at my job interview early, nervous, and stiffly overdressed.

Society and the makers of public policy would likely applaud my tenacity in finding work, and potentially would highlight such an example of how it is in fact possible for one to escape homelessness. Shortly into my job, however, the violence at the shelter increased. I was sleeping less

and less at night, for fear of my own safety, and it was beginning to take its toll on me.

Every morning I attempted to pull together a decent-looking outfit and, unable to afford bus fare, walked downtown to work. While at work, I tried to act like what I hoped others would perceive as a non-homeless individual. I tried to stifle the shaking that eventually resulted from lack of sleep. And after a series of several particularly violent nights, I left the shelter for fear of my own safety. I was lucky enough to have couches to move to, but for many homeless the streets are the only option that is safer than the shelters. Not everyone has the access to the shelter and clothing that are prerequisites to employment and permanent housing.

The layers upon layers of complexity and challenge that one must overcome to escape homelessness are daunting. They are daunting to the homeless individual seeking a better life, and they are daunting to a society that hopes to craft policies in reach for the ideal. The Myth of Choice fails to recognize this complexity and results in policies that only exacerbate the problem of homelessness.

Due to the continued belief that homelessness is just the result of bad choices, society often provides responses to punish “choices” where choice is actually absent. The homeless of Los Angeles’s Skid Row were not choosing to be a nuisance by falling asleep underneath the sky when there were no available shelter beds, they were merely responding to a lack of actual choice. Policies that punish effectively involuntary actions waste the resources of those who hope policies lead to some societal good.

I am talking about policies that futilely punish the homeless for things they have no control over, and effectively criminalize their existence in the process. I understand the concern non-homeless individuals have about aggressive panhandling, or having to steer children clear of drugged or drunk individuals on the street. But not all homeless perpetuate these problems, and it is unjust to punish the class for actions of individuals. In addition, services that will address the root of these problems—such as supportive housing and mental health and recovery services—are not implemented nearly enough. As a society, our inability to believe that well-meaning, hard-working individuals could still remain subjects of abject poverty leads to our mischaracterization of the entire contingent of homeless as criminal by default, just for the ways in which poverty forces them to live their lives. It is this result of our collective cognitive dissonance that has allowed for useless and harmful homeless policies to become the norm in too many jurisdictions.

The primary causes of homelessness are the lack of decent-paying jobs and affordable housing. The lack of these necessities is often correlated with histories of abuse and mental health and addiction concerns. As these are the core reasons homelessness occurs, and since no one would choose to be homeless, solving these concerns would decrease homeless-

ness and thus decrease the potential negative effects of having the homeless on the streets.

What homeless folks need is somewhat simple to define. First, homeless individuals need stable housing. In order to maintain such stable housing, the homeless need equally stable sources of income, and the skills required to be gainfully employed. And, for those with additional hurdles to leap before being able to manage these things, there must be serious and intensive support services through mental health and recovery programs that work together and that should operate in conjunction with stable and supportive housing.

None of what I'm writing is new or surprising. In fact, it is overwhelmingly basic and simple. But the above needs, and the policy responses that could be crafted to address them, are still somehow decidedly different than the policies taken to task in *Jones*, and implemented to some degree as the primary response to homelessness in cities throughout our nation. We, as a society, have the wrong focus.

In reaching for an ideal through the creation of our policies, we chose the wrong path. Rather than seeking to form solutions that would lift the homeless out of their predicaments, we began to criminalize their predicaments in a supposed attempt to solve the problem of homelessness. This policy presupposes that the opportunities to escape from poverty are accessible and, further, it assumes that if we punish poverty (as if poverty itself were not punishment enough!), folks will then opt out of such despair. In reality, this criminalization leaves us all wanting. It pushes the homeless deeper into that vicious cycle of poverty by forcing them to deal with additional fines, jail time, and the inability to focus their time and energies on working toward more stable lives. It wastes public resources in police time, jail beds, and court proceedings, resources which could be focused on more promising responses to the problem of homelessness. And it reinforces our inability to face our society's flaws head on, in the faces of the people we drive by, step over, and turn away from daily.

The cognitive dissonance society feels at the presence of homelessness in the face of the American Dream must lead to some resolve. If that resolve is to criminalize a population so that we can more easily look away, and leave the American Dream to go further unquestioned, we do a great disservice to ourselves as a society. *Jones* serves as a good rallying call for a fresh look at the policies we implement to deal with homelessness. Whenever a society criminalizes the mere existence of a population within the society, serious attention must be paid as to how and why we so easily declared this population as an "other." Homelessness in America challenges us to face, with vision unclouded by the Myth of Choice, our concepts of national identity and our belief in equality and systems that allow for more promising tomorrows.