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PERSPECTIVE

Does LA's homelessness crisis justify federal court intervention in local affairs?

By Ernest Galvan

What are the powers of a federal court when faced with deeply entrenched violations of federal constitutional rights? What should the federal court do when the violations are so deeply entrenched that they have become part of ordinary everyday life? And what should a federal court do when those violations were caused by state and local governments, and can be uprooted only by those in charge of state and local governments?

These are questions at the heart of Los Angeles Alliance for *Human Rights v. City of Los Angeles*. In 2020, a broad coalition of Angelenos impacted by homelessness filed the action. The plaintiffs included homeless people, business owners, and others. Their lawsuit challenges the resignation and helplessness many of us feel when we walk past tent cities in the middle of the richest nation on earth. Their March 2020 complaint stands athwart this extraordinary moment in our history, and challenges us to stop accepting as normal the idea that thousands of human beings are left to live in the streets without basic shelter and sanitation.

The district court held a series of hearings in 2020, presided over by Judge David O. Carter, regarding the allegations in LA Alliance. The resulting record contradicts all of the comforting nostrums about homelessness as inevitable and intractable. On the contrary, the record shows that nearly everything about homelessness in Los Angeles is the result of deliberate policy choices. That includes the geographical patterns of where homeless people live, and the demographic makeup of the homeless population.

From the beginning of Los Angeles's growth in the early 20th century, the city and other levels of government made deliberate policy choices about who would receive the benefit of housing assistance, favorable zoning decisions, and home mortgages, and who would bear the burdens of city and state initiatives such urban renewal and highway construction. Many of these policy choices were expressly conditioned on race, and many were based on thinly veiled racial distinctions embedded in existing housing arrangements. The net effect of all of these decisions would to put Black Angelenos at greater risk of homeless than white Angelenos.

The district court found that these policies and their lingering effects violate the 14th Amendment's equal protection and due process clauses. The court also found that allowing these conditions to persist would cause irreparable harm to the plaintiffs and to the public. The district court thus faced the questions at the head of this article.

As this is a publication for lawyers, any of us can quickly latch on to reasons for a federal court not to act when state and local government prerogatives are at issue. Federal courts are courts of limited jurisdiction. The federal government has no police powers, which are reserved to the states. Federalism, comity and respect for the competence of states as coordinate sovereigns, all point to caution. Caution, however, has to have a breaking point, lest federal constitutional rights become purely symbolic.

The deference shown to state and local governments is borne out by the rarity of such breaking points. The most often cited cases are the school desegregation rulings to enforce *Brown v. Board of Education*. The decisions after *Brown v. Board* established that federal courts can order extraordinary structural remedies to address deeply entrenched constitutional violations in state and local education systems. Abuse and neglect of persons incarcerated in state prisons has also been so pervasive and severe as to demand that federal courts push past their usual hesitation and order structural remedies. In *Brown v. Plata*, the Supreme Court recognized that such action can include caps on state prison populations even though such caps might impinge on the state's traditional powers over policing, public safety and spending priorities for scarce tax dollars.

Does homelessness belong in this small set of problems that justify federal court intervention in state and local affairs? There was a point before *Brown v. Board* when the legal community would have said that education was outside the range of federal structural relief. There was a point before the modern understanding of cruel and unusual punishment when the legal community would have said that state prisons were out of bounds. Yet in both areas, there came a point where the abuses were so terrible, and where the harms were so painful that the consensus changed and the door opened for federal courts to enforce federal constitutional rights.

The extraordinary record gathered in the LA Alliance case points to this moment as a similar inflection point. The record in that case forces us to face head on that what we have slowly gotten used to about homelessness can no longer be tolerated as normal and inevitable. The harms to the unhoused and to all of us have become too severe to be excused by doctrines of federal deference. The extraordinary injunction in LA Alliance should be upheld. ■

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