INTRODUCTION TO THE SYMPOSIUM ON
BRINGING ECONOMIC & SOCIAL RIGHTS
HOME: THE RIGHT TO ADEQUATE HOUSING
IN THE UNITED STATES

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On April 26, 2013, a packed room of close to 150 attorneys, advocates, and federal, state, and local government representatives, from over eighty organizations in fifteen states, gathered in New York City for a national symposium on Bringing Economic & Social Rights Home: The Right to Adequate Housing in the United States. Co-sponsored by the Columbia Law School Human Rights Institute, the National Law Center on Homelessness & Poverty (NLCHP), the Northeastern Law School Program on Human Rights and the Global Economy (PHRGE), and the Columbia Human Rights Law Review, the symposium connected participants to advanced legal analysis and practice from the United States and abroad to inform the housing rights movements’ advocacy on behalf of homeless and poor Americans. The event was generously hosted by Skadden, Arps, Slate, Meagher & Flom.

This symposium took place at a time when the need for a human rights approach to housing has never been greater. Estimates suggest that up to 3.5 million Americans experience homelessness each year,¹ including over a million who work full or part-time yet are

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unable to pay for housing. The crisis is worsening. A quarter of American renters spend more than half of their income on rent, putting these families one paycheck away from homelessness. This precariousness and instability is apparent in the number of people living doubled up with family or friends, which increased to 7.4 million people—a 9.4 percent rise from the previous year—in 2011, the most recent year for which data is available. Deep budget cuts to the Department of Housing and Urban Development (HUD) and other federal agencies due to the budget sequestration agreement have threatened the basic safety net for many people living in poverty. The resulting cuts have caused 125,000 households to lose assistance from the Housing Choice Voucher program; have diminished funds available to other shelter and housing programs, potentially causing some of them to close; and have resulted in 75,000 fewer households receiving foreclosure prevention assistance.

In the midst of this housing crisis, momentum is building for a human rights-based response. Grassroots organizers, legal advocates, and policy makers are exploring the potential of human rights to frame and address issues of housing insecurity and homelessness. Legislatures in Connecticut, Illinois and Rhode Island have recently passed Homeless Bills of Rights to protect people who are homeless from discrimination in housing, employment and government services. Local communities are enacting Right to

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Housing resolutions. The American Bar Association approved a resolution calling for federal and state governments to take steps—legal and budgetary—to promote the human right to housing. The U.S. State Department is showcasing its engagement with the U.N. human rights system, including through its participation in the human rights treaty review and the Universal Periodic Review, and has indicated a renewed commitment to economic and social rights. The U.S. Interagency Council on Homelessness recently ran a month-long blog series addressing human rights and homelessness.

In this generative context, the co-sponsors of the symposium convened academics, practitioners, government officials, and directly affected individuals to explore opportunities and develop strategies to advance the field of housing and human rights. Participants began the day by evaluating the connection between the right to housing and other rights. Specifically, they discussed the centrality of housing to other economic, social and cultural rights (ESCRs), including health and education, and the circumstances in which the right to housing can—and should—be formulated in terms of more widely accepted civil and political rights. Next, program participants examined international comparative approaches to the right to housing and related ESCRs and examined factors that contribute to the varying approaches. Over the lunch hour, Evan Wolfson, Executive Director of the Campaign for the Freedom to Marry, and Columbia Law School Professor Olatunde Johnson discussed lessons that advocates urging a human right to housing can draw from the


Campaign’s successes in winning support for and legal recognition of the right to marry for same-sex couples. Next, participants examined how U.S. advocates are working to build an international record on the human right to housing in the United States through engagement with U.N. mechanisms and grassroots advocacy, and explored ways to integrate the outcomes of these efforts into litigation in U.S. courts. At the end of the day, a roundtable of experts discussed opportunities for and challenges to establishing a human right to housing in the United States, including the justiciability of ESCRs and the efficacy of judicial remedies in enforcing ESCRs.

The Articles in this special issue of the Columbia Human Rights Law Review provide an important complement to, and expansion of, the day’s discussion. Authored by symposium participants and experts in the field, these essays explore in greater detail several of the topics touched upon in the symposium and contribute to the emerging literature exploring opportunities to establish the human right to housing in the United States.

Eric Tars, Heather Maria Johnson, Tristia Bauman, and Maria Foscarinis contribute an analysis of one possible next step in promoting the human right to housing through litigation. Recognizing that achieving a right to housing in the United States will most likely be a long-term project, the authors propose that one way to begin is by expanding available remedies in litigation challenging the criminalization of homelessness. The authors focus in particular on bans on sleeping, “camping,” and, in general, living in public places where the typical remedy ordered in successful challenges is an injunction against enforcement of the ban. The authors consider whether courts have authority to provide greater relief for homeless plaintiffs—perhaps including the provision of housing—and address whether human rights law and comparative legal authority, in addition to U.S. precedent, would help support such authority. The Article concludes that U.S. courts are under-using their remedial powers in this regard, and that evolving standards among international human rights courts and national constitutional courts may eventually cohere into a customary international law standard in favor of such remedies.

Risa Kaufman, Martha Davis and Heidi Wegleitner train the lens of international human rights to explicate the relationship between the right to counsel in civil cases and a right to housing. As the authors note, one strength of the human rights framework is its recognition of the interrelationship of rights: civil, political, economic, social and cultural. Just as the right to housing is a lynchpin to the
realization of other rights, so, too, is the right to counsel. In their essay, the authors set forth the international human rights framework for understanding the United States’ obligation to provide a civil right to counsel when basic human needs, including housing, are at stake. They offer client stories from one legal services office in Madison, Wisconsin, alongside quantitative research, as a way to better understand the impact that legal counsel has on individuals’ ability to secure and protect their housing, and discuss the implications of efforts to link a housing rights strategy to advocacy for a civil right to counsel.

Lucy Williams explores recent constitutional and statutory jurisprudence from the Constitutional Court of South Africa regarding the right to housing in South Africa. Professor Williams explores three aspects of the doctrine that have emerged in several major decisions since the Court’s landmark decision on the right to housing in the 2000 case of Grootboom: (1) the concept of judicially required “meaningful engagement” between government entities and individuals threatened with eviction; (2) the prohibition of unfair practices by landlords and tenants under Rental Housing Act 50 of 1999; and (3) developments in the concept of just and equitable eviction under the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Housing Act 19 of 1998. Noting that each of these areas of jurisprudence has led to positive developments for tenants, Williams nevertheless raises several cautionary aspects of the emerging doctrine and human rights discourse, which, she asserts, are limited in their ability to address the vexing questions that must be answered to make the right to housing a reality.

The transcript of the lunchtime discussion between Columbia Law School Professor Olatunde Johnson and Evan Wolfson, Executive Director of the Campaign for the Freedom to Marry, reveals several lessons that U.S. housing advocates can draw from the effort to secure the freedom to marry for same-sex couples. Insisting there is no silver bullet to a successful advocacy campaign, Wolfson urges advocates to set a clear vision for their desired outcomes and develop strategies to create the necessary critical mass to support the actions of politicians and judges in concert with the vision. Wolfson notes that not all of the lessons from the campaign for marriage equality will translate to efforts to achieve a right to housing. Nevertheless, he urges housing advocates to command a strong and positive narrative, appeal to Americans’ sense of justice and equality, and create manageable, effective, achievable solutions to reframe the issue of a right to housing.
Finally, Brittany Scott of the National Economic and Social Rights Initiative offers a human rights analysis of nearly a century of unequal development and investment in cities’ urban cores, disparately affecting the racial minority populations that live there. She offers case studies from Chicago and Los Angeles of non-human rights-based policy approaches which promote gentrification and displacement of existing communities through the combined use of demolition of existing housing, development of higher income housing, and excessive use of police powers. As human rights alternatives, she cites the development of Community Land Trusts in Burlington and Boston which have created participatory environments for community residents and the promise of perpetually affordable housing, and Community Benefit Agreements, which exist in cities such as New Haven and San Diego, as a means of holding private developers accountable to the community.

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Working from a variety of perspectives, the Articles in this Symposium edition illuminate a range of approaches to advancing the human right to housing—and social and economic rights more broadly—in the United States. From creative arguments to build a legal foundation for such a right, to ensuring access to counsel to make rights real, to comparative law and analysis, to practical models of local level laws and policies: each approach contributes to an emerging narrative supporting recognition of the human right to housing here at home. Taken together, they also suggest that much of the work now being done in the United States to further housing rights could be viewed in the broader context of the human right to housing. And perhaps by sketching out this broader agenda, these Articles contribute to a clear vision and strong, positive narrative to support the human right to housing.