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LEADS: MAKING A CASE FOR CONSTITUTIONAL ENTITLEMENTS

Introduction

by Sidney D. Watson*

This issue of the Mercer Law Review grew out of the 1992 program of the Poverty Law Section of the American Association of Law Schools. The theme of the Association's 1992 Annual Meeting was "Ensuring Social and Economic Justice in a Changing America: Time for a New Bill of Rights?" The Poverty Law Section sponsored a panel to respond directly to this question and to the malaise experienced by both advocates and scholars concerned that the Constitution and Bill of Rights no longer assisted poor people to obtain the shelter, employment, education, and health care that they need. The panel consisted of three speakers: Professor Mary Becker, University of Chicago, Professor Erwin Chemerinsky, University of Southern California, and Dr. Jeremy Cooper, Department of Law, Polytechnic of East London.

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Professor Becker suggested that the problem for poor people lay in the very structure of the Bill of Rights. She proposed new affirmative constitutional rights to value women's labor and to guarantee participation in government. Professor Chemerinsky urged both advocates and scholars not to give up on the Constitution or the courts as a source for assuring minimum entitlements. He offered suggestions for constitutional arguments and urged that the issue should not be whether these arguments will convince the present Court, but whether they could provide a blueprint for the future. Professor Cooper, an expert on the use of poverty law strategies in other countries, offered a comparative law analysis. He explored the promises and limitations of economic rights litigation in Europe and the Third World, particularly Asia. He also told of the constructive and constitutive role the Indian Supreme Court plays in bringing basic needs to impoverished Indians.

This symposium issue is titled after and led by Professor Chemerinsky's article "Making the Case for a Constitutional Right to Minimum Entitlements," which expands on the thesis he presented at the 1992 Poverty Law Program. The Law Review has used Professor Chemerinsky's article to initiate a dialogue and creative thinking about our Constitution and Bill of Rights and advocacy on behalf of poor people.

This issue contains the spirited, provocative debate generated by Professor Chemerinsky's piece. Professors Frederick Mark Gedicks, Dennis Dorn, and Peter Ferrara respond directly to Chemerinsky's suggestion that the Constitution is a source of minimum entitlements. Robert Prior and Professor Laura Gardner Webster address constitutional issues confronting poor people entangled in the criminal justice system. Professor Jeremy Cooper offers a comparative law perspective examining constitutional litigation on behalf of poor people in India and the role played by the Indian Supreme Court. Professor Joseph Claxton offers an essay exposing the dichotomy between Constitutional visions of equality and the history of slavery in this country. Finally, Professor Theodore Blumoff, takes us on a "video-blast"¹ for a slightly fantastical, thoroughly disquieting view of Supreme Court Justice Clarence Thomas' confirmation process.

When the Poverty Law Section presented its program in January of 1992, the possibility of advocacy to secure minimum entitlements based upon the present Constitution seemed not only difficult, but practically impossible. Twelve years of Republican presidents had resulted in four conservative justices under the age of fifty-five. President Bush's re-election seemed assured. One year later the climate has changed. President Bill Clinton, a Democrat, is in the White House. His message of sacrifice

1. So titled by Professor David Oedel of Mercer University Law School.

coupled with government help for the poor to develop the skills necessary for self sufficiency is capturing the attention of Americans both inside and outside the Washington beltway.

This issue of the *Mercer Law Review*, with its theme of developing constitutional arguments as a way of improving the lives of poor people, now seems prescient and uniquely timely. As legislative efforts turn away from aiding the rich to caring for America's poor, it is also time to think about the courts and the Constitution as avenues to assist the poor. This issue of the *Mercer Law Review* begins that discussion.

