Conclusion

This book advances a theory of the State's fiduciary duties to end homelessness, maintain public property's shared value, and legitimize laws that govern public space. It argues that republicanism provides new insight into homelessness and the regulation of public property – insights that existing constitutional theory and legal philosophy typically overlook. This book's overarching argument, original contributions, and advantages can be described as follows.

Chapter 1 provided an overview of homelessness in the United States and in Canada, the risk factors associated with homelessness, and the overrepresentation of certain groups in the unhoused population. It described the evolution of laws that regulate public property and unhoused persons. It also detailed the rise and fall of vagrancy laws and the emergence of municipal ordinances in the United States and in Canada.

Chapter 2 explored how constitutional law has approached homelessness and the regulation of public property in these jurisdictions. It discussed the principal constitutional challenges to laws that regulate public property, and highlighted the successes and shortcomings of those claims. It analyzed the arguments that municipal ordinances that govern public property are unconstitutionally vague or overbroad, violate the fundamental right to travel, contravene the right to equality (or equal protection), or impose cruel and unusual punishments. The second chapter also explained why US and Canadian courts have not yet recognized a positive right to housing.

Chapter 3 analyzed some of the principal legal philosophical approaches to homelessness, liberty, and property that are based on the positive conception of freedom as self-actualization and the negative conception of freedom as noninterference. The chapter showed how housing protects both forms of freedom, and it illustrated why unhoused persons enjoy less positive and negative freedom compared to people with access to housing.

Chapter 4 introduced the republican theory of liberty as nondomination. It distinguished between three forms of domination: horizontal domination by other individuals, vertical domination by the State, and double domination by the State and by others. It also highlighted the connection between nondomination and

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political equality. The chapter demonstrated why unhoused persons face two forms of double domination associated with laws that govern public property. First, others exert control over unhoused persons' opportunities to obey these laws. Second, unhoused persons must make nonegalitarian sacrifices as the price of law-abidingness. Chapter 4 elucidated why unhoused persons lack positive, negative, and republican liberty, and ultimately, political equality.

Chapter 5 explained how people experiencing homelessness suffer double domination because they are subject to nonegalitarian coercion, meaning that the State has more power to regulate and to police unhoused persons compared to people with access to housing. It distinguished the respective roles of private property and public property. And it showed why the State can more justifiably regulate need-alleviating conduct on public property than on private property. More specifically, the State's justifications for regulating such conduct on public property either do not apply to private property, are mitigated when individuals alleviate their needs on private property, or are outweighed by a person's privacy and dignitary interests within the home. The concluding parts of Chapter 5 explained why law enforcement can more easily surveil and police unhoused persons' need-alleviating conduct compared to the need-alleviating acts of people with access to housing – a form of vertical domination that disparately affects people experiencing homelessness.

Chapter 6 showed why unhoused persons are subject to punitive entrenchment which exacerbates nonegalitarian coercion. It explained how fines, fees, surcharges, and collateral consequences enmesh individuals in homelessness. It discussed how excessive punishments violate proportionality constraints and are inconsistent with retributivist and consequentialist justifications for punishment. The final parts of the chapter elucidated how excessive financial penalties fail to satisfy instrumental rationality constraints. Rather than deter unhoused persons from alleviating their needs on public property, harsh financial penalties entrench individuals in homelessness, such that they are more likely to sleep, shelter themselves, or urinate in public spaces.

Chapter 7 justified the State's fiduciary duties related to homelessness and public property. It argued that the government and individuals are in a fiduciary relationship, which gives rise to the State's overarching fiduciary duty to counteract domination. Drawing on the insights of republicanism and fiduciary theory, the chapter contended that the State's overarching fiduciary obligation to redress domination results in three specific fiduciary duties. First, the State must end homelessness to counteract the domination to which unhoused persons are subject. Second, the State must safeguard public property's value and protect liberty in public space. Third, the State must legitimize the coercion and punishment associated with laws that govern public property. Chapter 7 explained why the State bears these fiduciary duties. Notably, the State creates a private and public property system to secure liberty in both spheres. Yet the State de facto excludes unhoused persons from these systems of mutual coercion, which results in domination. The State's three fiduciary

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duties related to homelessness and public property aim to rectify that domination and secure individuals' liberty and equality.

Chapter 8 demonstrated why the State's fulfilment of its fiduciary duties is preferable to other public and private mechanisms that address homelessness. It argued that certain existing ameliorative and coercive mechanisms either fail to reduce unhoused persons' domination or exacerbate it. These mechanisms include shelter space increases, zoning proposals, concentration strategies, dispersal tactics, and encampments. The final part of the chapter explained why encampments cannot constitute a complete and permanent justification to appropriate public property. However, encampments can be partially and temporarily justifiable in certain contexts when unhoused persons lack other reasonable alternatives and the benefits of encampments outweigh their burdens. The fact that encampments can only constitute a partial justification further underpins the State's fiduciary duty to end homelessness and supports a right to housing.

Chapter 9 offered a set of concrete proposals for how the State can better fulfil its three fiduciary duties related to homelessness and public property. The opening parts of the chapter highlighted the connection between these duties. It showed how the State better fulfils its fiduciary duties when it helps ensure that individuals enjoy access to housing. It described the components of the State's first fiduciary duty to end homelessness. More specifically, the State must address the risk factors associated with homelessness, improve access to housing, and provide shelters and other interim resources until individuals become housed. Chapter 9 then set out various mechanisms for how the State can alleviate homelessness, reduce nonegalitarian coercion, and decrease punitive entrenchment.

This book's overarching theory refines our understanding of homelessness, property, and the regulation of public space. The republican theory of freedom deepens our knowledge about why people experiencing homelessness lack freedom and political equality that others enjoy. This book provides new insight into how access to housing protects republican liberty in ways that positive and negative liberty theory can overlook. By uniting republicanism and fiduciary theory, it enhances our comprehension of why the State has obligations to end homelessness, regulate public property, and legitimize laws that govern public space.

There are several advantages to the theory advanced in this book. Its arguments provide new insight into homelessness, criminal law, property law, and fiduciary theories of legal authority even if one disagrees with republicanism. One can reject republicanism as a theory of freedom or government or disagree that the State has a duty to counteract domination. Yet one can accept that republicanism offers a deeper understanding of homelessness, liberty, property, and their interrelationship. Furthermore, one may accept many of the final chapter's concrete proposals even if one rejects republicanism or disagrees with this book's theoretical framework. For instance, a reader can accept the final chapter's proposals for reform because they treat unhoused persons with greater respect and consideration, regulate public

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space more effectively, or cost less than existing mechanisms. This book's law and public policy proposals are advantageous because they can be justified on various grounds and can be implemented across jurisdictions.

This book's arguments can play an important role with respect to homelessness and the regulation of public property. Society will face new challenges that can exacerbate homelessness and create new challenges for the regulation of public space, such as climate change, automation, pandemics, and increased costs of living. More than ever, cities will be forced to address homelessness and manage public property effectively. And they must do so in a way that treats individuals with the dignity, respect, and concern they deserve, irrespective of whether they have access to housing. This book offers a framework and a set of law and public policy reforms that may help achieve those aims.

Ultimately, this book raises a more basic question about what it means to be free and what it means to be treated as an equal. Indeed, the nature of homelessness and the regulation of public property is more than a story about who can be where and who can do what. It is fundamentally a story about our liberty, political equality, and the extent to which some individuals wield power over others. This book not only shows us why that is. It also provides a roadmap to safeguard the liberty and equality of all persons in the private and public spheres.

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