# Chapter 4

# Caring for the homeless: Westminster City Council and anti-homeless bye-laws

Caroline Hunter, York Law School

## Introduction

‘We offer friendship....I give people a hug, you’re not allowed to do that in many agencies etc now.’ (Soup run volunteer)

‘Excessive soup run activity helps to maintain a street lifestyle for people unwilling to come indoors, and draws people out of accommodation and back into street culture.’ (Westminster Council) (both quoted in Lane and Power 2009)

The serving of food to the hungry is an iconic image of human care for those in severe need, particularly those without a home in which to keep and prepare their own food. In this Chapter I will set out the story of an attempt by one of London’s local authorities - Westminster City Council (‘the council’) – to ban, though a bye-law, soup runs serving food to the homeless in part of their area.

In reflecting on what happened in Westminster I want to explore some questions about how, what might be considered, a ‘space of care’ became subject to potential legal regulation. There is now a growing literature on the geography of care. Milligan and Wiles (2010) suggest that any attempt to understand care needs to consider not just the care-giver or care-recipient, but all those involved in the care relationship. ‘Critically the nature, extent and form of these relationships are affected by *where they take place’* (2010, p. 738, emphasis in original). They point out (2010, p. 738) that these ‘landscapes of care’ can encompass a wide range ‘the institutional, the domestic, the familial, the community, the public, the voluntary and the private as well as transitions within and between them.’

Much of the work on the caring landscapes used by homeless people has focused on indoor spaces. While such spaces are also undoubtedly shaped by law, the soup run specifically provides the care in an outdoor, public space. This inevitably leads to interactions and relationality not just between the care giver and receiver, but with the wider public who may also use those spaces. For Johnsen et al (2005, p. 334), the ‘transitory spaces of care’ that are soups run ‘engage directly with (and must adapt to) spatial variations in turf ownership and associated behavioural codes....and often have to negotiate conflict with neighbouring retailers, residents and authorities.’

The concept of a landscape of care is also useful in connecting the literatures on both the spatial specificity of care and the social and political construction of care (Milligan and Wiles 2010, p. 742). Care has received much attention as a gendered concept, which links it to the divide between public and private spaces. The role of care (characterised as mothering) has its place in the domestic setting. This pushes it out of the realm of politics and justice. For Milligan and Wiles an ethics of care provides a framework not just for interrogating who gives care, where and why, but also as a way of challenging our usual public ethics of justice. ‘An ethics of justice is a more rationalised approach based on universal rules or laws. Hence an ethics of care is concerned more with responsibility and relationships than rights and rules’ (2010 p. 743).

The idea of a space of care inevitably contrasts with the literature which has focused on how the neo-liberal age has seen the rise of the revanchist (Smith 2001) or post-justice (Mitchell 1997 and 2003) city where harsh, often legal measures are used to oust homeless people from public spaces. Much of the focus of this has been on US cities and on laws that target the homeless. The United Kingdom too has seen a similar growth in legal regulation of public spaces which has had an impact on the homeless people who use those spaces. What is particular about the soup run ban was that it was directed at the providers of services - the carers - rather than the users of the soup runs.

In legal terms it has been suggested (Blomley 2012, p. 922) that the forms of local law used to govern public spaces, often bye-laws, come from a different rationality (‘police’) than other forms of law. Rather than being concerned with the rational autonomous rights bearer, they are concerned with the ‘household’, since in this rationality the state ‘is the institutional manifestation of the household’. In relation to bans on homeless people, the legal effort in the US has been on how these can be resisted through constitutional challenges. These largely focus on the rights of the individuals (see e.g. the discussion of the case law in Feldman 2004). In this Chapter I want to take the focus back to the care givers, the homeless charities themselves. Thinking about the attempt to introduce the soup run ban in Westminster provides a way in to thinking about how law shapes both the space of care and the care-giver.

The story is told from the documentary evidence – the documents produced by both the council and different homelessness organisations operating in the area in response to the proposals. The quotes which open this Chapter are taken from a report (Lane and Power 2009) commissioned by the council. The documentation is partial and incomplete. An approach was made to Westminster City Council to access all the responses, but unfortunately they were unable to locate them to make them available. Responses were, however, obtained from organisations’ websites, where they had made them publicly available.

I first set out how law has interacted with homelessness. I examine the nature of ‘police’ in this context and the response of ‘big law’ to this rationality. The second section looks at the role of homelessness organisations and their relationship with the state, examining the differentiation between those organisations that have been contracted into the state project for homeless people and those which sit outside this governing framework. It is these organisations which have primarily provided soup runs. In the final section I explore the particular ‘space of care’ in Westminster and how the ideas which emerge from the literature played out in the attempt to introduce the bye-law which prevented the soup runs from operating. In particular, I focus on the advice obtained by Liberty as to whether the byelaw could be challenged under the Human Rights Act 1998. The story of the byelaw reveals a range of rationalities at play and interplay. The rationality of ‘police’ is adopted not just by the local authority and demonstrated through its use of the byelaw, but also by the corporate homelessness organisations. This is challenged by Liberty through the use of human rights law based on the rationality of the autonomous human subject. That challenge recasts care in its image, unconcerned with the desire of the carers simply to provide care should this space be closed down.

## The modern punitive turn in law

Much has been made of the growth of anti-homeless legislation, particularly in the US (Mitchell 1997; 2001) with many US states and cities regulating begging and in some cases prohibiting sidewalk-sitting and sleeping and camping in public parks.

A similar plethora of laws emerged in the UK at around the same time. While moves to recriminalise rough sleeping nationally failed, many other statutory provisions have provided a range of tools to deal with those who are deemed to be behaving inappropriately in public places. These measures, while primarily targeted at anti-social behaviour, have been used against the street homeless (Johnsen and Fitzpatrick 2010). One of the features of these laws is how much they are focused on localised application. Thus it is for local authorities and the police working in collaboration to decide that a particular area may be subject to control. So for example areas may be designated for dispersal (Anti-social Behaviour Act 2003, s.30) or as a designated alcohol free zone (Criminal Justice and Police Act 2001, s.13).

The use of local bye-laws has also emerged as another form of local law which may be instituted by local authorities. The Local Government Act 1972, s.235 contains a broad power for councils to ‘make bye-laws for good rule and government and the suppression of nuisances’.

Blomley (2012, p. 921) characterises these forms of law as ‘police’ – an ancient form of political rationality that is powerfully evident in urban law. For him city ordinances in the US or bye-laws in the UK are key expressions of such law. Drawing on the work of Dubber (2005) he suggests that ‘police’ differs from ‘law’ in the way that the state manifests itself. For law the state is a ‘manifestation of a political community of free and equal persons.’ By contrast the primary concern of ‘police’ is protection of the state from within and without. As such is it concerned with domestic order and has a forward looking intent. The city is ‘the quintessential police site’ (Blomley 2012, p. 925) where it manifests its concerns with the minutiae of everyday life, particularly life in public spaces.

For Blomley the punitive turn is not necessarily directed at homeless people. In considering the city ordinances of Seattle which ban homeless people from sitting or lying on the sidewalk there are other rationalities at play.

‘To object that urban regulation, like Seattle’s sit/lie ordinance, violates the rights of the urban poor is, therefore, to miss the point. It is to insist on a framing for which police is ill-suited: for to invoke rights is to center the autonomous, liberal subject. We value rights because we value the autonomy of the Kantian self. Yet police is very different. To compare it to civic humanism is not so much as to weigh apples and oranges as it is to contrast apples to, say, colored fowl.’ (Blomley 2012, p. 928)

For him the sit/lie ordinance is part of a project of regulation of side-walks more generally, where circulation is the predominant rationality. One feature of this form of rationality is to equate people with things. Thus the homeless person on the sidewalk is no more or less an obstruction than a vending machine or an improperly parked car. Another feature of ‘police’ is that it is forward looking; it is concerned with prevention of behaviour rather than punishment for past acts.

This forward looking ‘preventive’ conception has proved particularly difficult to tame using constitutional and in particular human rights legislation. Ashworth (2004, p. 267) in looking at the plethora of legal powers introduced under the guise of anti-social behaviour in the UK notes:

‘in European human rights law there is a distinction between penalties and preventive orders. One way of establishing that an order is preventive rather than punitive is to show that it can lawfully be imposed in the absence of a criminal conviction, and that it has public protection as its goal. If an order is held to be preventive, this is taken to allow fairly onerous obligations to be imposed on a person either without a criminal conviction or (if the person is convicted) in addition to the penalty or other sentence.’

This is very much reflected in the response of the UK courts to the anti-social behaviour order (see *R. (McCann) v Manchester Crown Court* [2002] UKHL 39; [2003] 1 A.C. 787). It raises questions as to how far human rights, as embodied in UK law, can provide a protection against the advance of ‘police’.

Another manifestation of urban law that demonstrates its ‘police’ rationality is governance through ‘use’ of land. Valverde (2005) demonstrates this through a residential zoning law in Toronto which required a 250-metre separation between any homeless shelter. A challenge to this ordinance on a constitutional basis of discrimination did not get off the ground. ‘The attempt to circumvent the relatively self-contained network of planning law by recourse to 'big law' thus failed miserably’ (Valverde 2005, p. 40).

Thus it is suggested that the types of law which might be used to fight legal ordinances against the homeless may be of limited effect, because they do not address the rationality at play in the type of laws being used. The law is not an attack on the homeless person as an individual legal subject but on the way the city is being used or obstructed in ways that do not differentiate between humans and objects. As will be discussed below we also see this play out in terms of the attack on those providing care for the homeless in public spaces, and particularly how the relational human-centred care clashes with this law.

## The role of homelessness organisations

A corrective to the notion of the revanchist city is found in the work of De Verteuil et al (2009), who remind us both that this punitive turn cannot be assumed to have taken place in all cities (it is after all a phenomenon of local law) and also that there are other spaces in to which, having been banished from the public space, homeless people disappear. Many of these spaces are provided by voluntary organisations and it is to the role of these in providing and caring for homeless people that I now turn.

The UK is unusual in having a strong legal safety net for homeless people first introduced in the Housing (Homeless Persons) Act 1977. The genesis of that legislation came from campaigning by a Joint Charities Group (Thompson 1988). The effect of the legislation was to place much of the responsibility for providing a safety net for the homeless not on charities but on the local state. However, from the outset the Act limited the full assistance of the state to those in ‘priority need’ and in the case of single people ‘vulnerable’. In practice this excluded and continues to exclude the vast majority of single people who are ‘street homeless’, so that for this group there was a continued call on charitable organisations to provide assistance.

As a crisis of rough sleeping unfolded in the late 1980s, the then Conservative government turned to non-statutory organisations through the Rough Sleepers Initiative (May et al 2005). The focus of that policy was to get people off the streets, something which continued under New Labour. Although the labels for the policies changed under the New Labour regime, Cloke et al (2010, p. 19) note ‘how little has actually changed with regard to the core characteristics of British single homelessness policy over the past decade or so.’

The Social Exclusion Unit, set up when New Labour first came to power, in its report on rough sleeping noted that some voluntary organisations were suggesting that steps should be taken:

‘to discourage initiatives such as soup and clothing runs which can undermine efforts to get people into hostels. Outreach workers also vary in the degree of assertiveness they use to persuade rough sleepers into shelter and challenge attachment to life on the streets’ (SEU 1998, p. 9).

In its way this late twentieth century attitude very much mirrored that of the nineteenth century (Humphreys 1999) in its concern that the ‘wrong’ form of assistance was being provided and that only certain more coercive forms of assistance should be provided. The focus for that assistance should be ‘indoors’ not ‘outdoors’. Here we can see the ‘police’ rationality at play, preventing nuisances on the street ‘both by abating those that exist and prudentially forestalling future threat’ (Blomley 2012, p. 927).

The change from New Labour to the Coalition Government in 2010 did not bring a great change in the policy (CLG 2011, p. 16). The government championed a ‘No Second Night Out’ policy with local authorities working alongside homelessness charities with a particular focus on reaching new rough sleepers.

While the development of a far more comprehensive welfare state during the twentieth century did not lead to an end of the role for homelessness charities, nonetheless the reframing of the welfare state in the latter part of the 20th century and into the 21st century as part of the turn to neo-liberalism has meant significant change in the relationship between such voluntary organisations and the state. As the welfare state has retreated (Peck and Tickell 2002) voluntary organisations have been incorporated as mainstream deliverers of welfare. May et al (2005 p. 704) characterise a shift under New Labour from:

‘welfare pluralism but relatively weak regulatory structures and a certain measure of independence for non-statutory welfare providers (whether non governmental agencies or private citizens), [to]....the development of ever tighter regulatory controls aimed at securing the self-regulation of non-statutory welfare providers and welfare recipients alike....’

These changes led to a homelessness sector ‘increasingly populated by large corporatist organisations which represent a voluntary sector which is significantly tied into government approaches and agendas’ (Cloke et al 2007, p. 1091). Thus such groups are also subject to the rationality of ‘police’ and provide their care in conditional ways (Johnsen et al 2014).

Running alongside this provision is a group of organisations outside the favoured approach, characteristically running night-shelters, drop-in centres and soup runs (Cloke et al 2007). Buckingham (2009, p. 117) reaches a similar conclusion, identifying four different types of organisations involved in homelessness provision. Three contract with government agencies, with greater or lesser willingness, to provide services. Her fourth category is of non-contractors entirely independent of government contracts, mainly staffed by volunteers and often faith-based. These groups are characterised by their strong emphasis on offering ‘acceptance to users and building relationships with them.’

The role of such organisations in providing soup runs has been documented by Johnsen et al. (2005). The picture that emerged from their study of soup runs outside London was ‘that of a service strongly dominated by churches and/or other voluntary or charitable organisations’ (Johnsen et al 2005, p. 326). Furthermore, they were more reliant on volunteers than other emergency services for homeless people. They conclude (2005, p. 334) that ‘soup runs continue to occupy marginal positions within service networks because of the incongruity of their non-interventionist ethos.’

Cloke et al (2007; 2010) have suggested that both the individuals and the organisations provide a post-secular response to the crisis of homelessness. They argue that ‘soup runs provide a powerful reminder of a quite different current running through the homeless city; the unconditional outpouring of agape and caritas’ (Cloke et al 2010, p. 115). They provide a counter point to the uncaring picture of the revanchist city seeking to annihilate homelessness through law (Mitchell 1997) and rather recognise an ‘opposing social and political urge to care for and serve homeless people in recognition of their plight...’ (Cloke et al 2010, p. 50).

While Lacionne (2014) provides a critique of such a positive view of the work of religiously motivated care, suggesting that the care cannot be seen as unconditional, the importance for my argument is not the basis on which it is provided but the fact that it falls outside of the usual homelessness governance structures. It is a form of care which resists the rationality of ‘police’ which has largely been accepted by the corporate charities. This makes them vulnerable to direct ‘police’ action themselves. I turn next to how this played out and was resisted in Westminster.

## The Westminster byelaw proposal

London is of course the major and capital city within the UK, which brings particular housing demands and problems. Local government in London is arranged on a two-tier basis, with the Greater London Authority having some strategic functions and the 32 London Boroughs delivering many of the services and having extensive legal powers.

Westminster lies at the heart of London, contains its royal residences and royal parks, the Westminster parliament and the Whitehall community.... It contains some of the world’s finest art collections and some of its most important historic buildings, p. its world-renowned theatres, plus the attractions of Soho and Leicester Square, make it the country’s capital of entertainment. 550,000 people work in Westminster. It is home to about 222,000 people.

The city’s population is growing rapidly and is expected to reach 250,000 by 2021.This leads to considerable demand for new housing of all tenures, yet in an already densely developed inner city area, development opportunities are becoming increasingly rare. (Westminster Housing Commission 2006, p. 15)

This description is found in the report of the Westminster Housing Commission (2006), indicating the particular geographic situation of Westminster within London. The report goes on to acknowledge the particular housing problems to which this leads. In particular, Westminster has a very high number of rough sleepers. A report in 2006 noted: ‘Westminster has always had the highest number of rough sleepers of any local authority area in England: in 2006 they had around a third of the national total’ (Randall and Brown 2006, p. 2). In 2007 Westminster Council noted in their Rough Sleeping Strategy (WCC 2007, p. 2) that, ‘For a number of reasons to do with the ‘pull’ of central London, Westminster attracts very high numbers of homeless people and rough sleepers in a high-pressure housing environment.’

One response to this large number of rough sleepers has been the provision of soup runs by voluntary organizations, particularly Christian groups. This has been a ‘contentious issue’ for many years (Lane and Power 2009). Various attempts were made by the council both to map the problem and to try and co-ordinate and ultimately reduce the number of soup runs operating in the borough. A mapping project in 2004, which was sent to the estimated 65 soup runs operating in the borough, concluded that 65% were run by Christian groups, 33% from Greater London and 25% from outside London (WCC 2005). Following this exercise, a ‘soup run summit’ was convened, although it is not clear that any concrete changes emerged from this.

The continuing operation of soup runs was clearly at odds with the Council’s strategy to provide services for rough sleepers inside buildings rather than on the streets (Randall and Brown 2006, p. 2). In its 2007 Rough Sleeping Strategy one of Westminster’s seven priorities was ‘reducing the over provision of soup runs in Westminster’. In explaining why this was a priority the document (WCC 2007, p. 34) states:

* It is the council’s view that there is overprovision of Soup Runs in the borough. Excessive soup run activity helps to maintain a street lifestyle for people unwilling to come indoors, and draws people out of accommodation and back into street culture.
* A scoping exercise (January 2007) showed that in some areas of Westminster, as many as three Soup Run organisations provide food to exactly the same group of people on the same night and in the same place. This kind of uncoordinated provision does not meet any real need on the streets and causes maximum disruption to the local area.
* Anti-social behaviour is rife before, during and after soup runs, and turns many residential and public areas into virtual no-go areas. The majority of soup run users are not rough sleepers.

At this time the Council sought to gain more legal powers to control soup runs through the inclusion in the London Local Authorities Bill of a provision to control the provision and distribution of free food on public land: ‘unfortunately, on this occasion the council was unsuccessful in gaining enough support from other London local authorities and the previous Mayor of London’ (WCC 2009, p. 11). This might in part have been due to the ‘extreme public opposition’ (Johnsen and Fitzpatrick 2010).

### The particular space of care

A particular location where there were concerns about soup runs was an area in the south of Westminster around Victoria and the Catholic Westminster Cathedral, known as the Cathedral Piazza. In 2009 the Council produced a draft action plan for the area. The plan stated that a ‘major challenge’ was the impact of soup runs operating in the area: ‘other issues that have caused concern to local stakeholders are the presence of street drinkers, rough sleepers and the effects of the soup kitchen’s operations’ (WCC 2009, p. 9). The plan set out existing measures which had already been used to try and control these issues, particularly around street drinking including a ‘dispersal zone’ under the Anti-social Behaviour Act 2003. The entire area was also at the time subject to a designated control zone for street drinking. Thus, a ‘police’ rationality was clearly at play in the area, but these measures had not been able to prevent the soup runs operating as the measures were focused on the street users rather than the soup-run providers.

At that time the council together with Crisis (a national homeless charity) had commissioned an independent research report into the effects of soup runs. The action plan for the Piazza area stated that key homelessness agencies, user groups and other agencies represented on the Soup Run Research Steering Group had agreed to abide by the recommendations from the research. The action plan continued:

The council plans to use the impartial evidence-based findings from this study to promote more appropriate ways for faith groups to work with more homelessness agencies providing building based services. It may also be used to provide evidence to pursue further an amendment to the next London Local Authorities Bill or for the council to draft its own bylaws (awaiting guidance from the Department of Communities and Local Government) to control the distribution of free food (WCC 2009, p. 11).

The report (Lane and Power 2009) did not suggest any further legal provisions, but primarily focused on better collaboration and co-ordination through the London Soup Run Forum, together with better joint working between soup run providers and other services. It acknowledged the tensions around over-provision in the Victoria area but simply suggested that a ‘working group could be established to discuss and mediate the problems of emergency provision on the streets that resolves or reduces current tensions’ (Lane and Power 2009, p. 33).

The Lane and Power report included evidence of the motivations of the soup-run providers. One volunteer is quoted as saying: ‘We offer friendship....I give people a hug, you’re not allowed to do that in many agencies etc now’ (Lane and Power 2009, p. 13), One case study organisation, All Souls Local Action Network (ASLAN), underlined their Christian mission:

ASLAN volunteers reach out to some of the most vulnerable and damaged members of society who are commonly forgotten or ignored. In this way ASLAN hope to demonstrate Christ’s unconditional love (Lane and Power 2009, p. 15).

At the same time as focusing on the soup runs, the Council was also drawing up more general plans for the area. The use of legal measures against the presence of the homeless in public space has been analysed by Feldman (2004, p. 43) as an exclusion of poverty from ‘prime’ consumptive spaces: ‘contemporary homeless laws protect a consumptive public (which they constitute) from threats to its security and enjoyment’.

We can see this reflected in both the draft action plan for the area (WCC 2009) which refers to giving the public spaces a ‘real sense of place and purpose.’ In relation to the Piazza in particular it is proposed that events may be run in it:

Possible ideas are a second-hand book market, an antiques market or a farmers market selling quality produce. To promote the Piazza as a place where people can relax and unwind from the hustle and bustle of Victoria, we will consider small scale arts and cultural programmes … where people will be able to enjoy some of the unique aspects of the area (WCC 2009).

The recommendations from the soup-run research were clearly considered insufficient to bring an end to the problems. In February 2011 the Council ran a consultation on two proposed byelaws. The first would have made it unlawful to sleep rough in the designated area. The second proposed outlawing the distribution of any ‘free refreshment in or on any public space.’ Westminster claimed that ‘the byelaw was proposed as a last resort. Despite a decade of efforts to resolve the issue, no solution has been reached which satisfied both local residents and other interested parties’ (WCC 2011, p. 5). The byelaw was framed very much in terms of ‘use’ (Valverde 2005) – it does not target specifically the soup-runs but makes unlawful a particular activity in the area.

### Responses to the proposal

The responses to the proposals came from a variety of organisations. Over 400 responses were received (WCC 2011, p. 9). Unsurprisingly the majority of local residents’ groups were in favour of both byelaws. The umbrella group for businesses in the Victoria area and the principal land owner for the area were supportive of the soup run byelaw but not the rough sleeping byelaw. Interestingly the charities providing services to the homeless were not uniformly against the byelaws. At least one (Thamesreach) was in favour of both byelaws, and some others also supported the soup run byelaw.

Those charities advocating the soup-run ban did so partly on the basis of the disturbance to local residents’ lives and also due to the fact that the soup runs could not be justified. Soup runs are only justified where they engage homeless people to be helped indoors. That from St Mungo’s is typical:

In our view, the wide availability of outreach services in Westminster means that that justification for soup runs no longer applies.

There is an argument that taking basic services to the streets helps keep people there are that what should instead happen is that essential services should be available inside easily-accessible buildings.

Two responses advocate caution because of the possibility of ‘entrenching the opinions of soup run providers who are resistant to change’ (Crisis). Indeed, Housing Justice (the national Christian umbrella group for housing and homelessness) suggests ‘the ban will have the opposite effect, encouraging soup run martyrs into civil disobedience’. Thus we get to the position where it is suggested that not only will this form of caring be outlawed but that the carers themselves will become outlaws. None of the mainstream charities advocate for the soup runs on the basis of the type of unconditional care they provide.

Perhaps most interesting from the legal point of view is that of Liberty, a leading civil rights organisation, which actively promotes civil rights. Unsurprisingly Liberty resisted both bye-laws. Liberty’s resistance is couched in legal terms of legitimacy and proportionality. These will be explored further below, in the light of the legal advice obtained by Liberty.

### The follow-up

Following the consultation, the council concluded that ‘there is clearly significant opposition to the Rough Sleeping byelaw’ (WCC 2011, p. 11) and withdrew the proposal. However, the soup run proposal was held for progression following an eight week discussion and resolution period. It was not subsequently implemented, and a process of dialogue continued. When Westminster sought to move ahead on the ban on the ‘distribution of free refreshment’ Liberty sought advice (the ‘Liberty advice’) from leading public lawyers on the legality of the bye-law. It published that advice (from James Goudie QC and Deok Joo Rhee) on its website.

The conclusion of the Liberty advice is that there is a strong case that the byelaw is unlawful. Whether a court would have agreed with that conclusion we cannot know. The authors of the advice conclude that the byelaw constitutes a disproportionate interference with a number of fundamental rights of the soup-run providers under the Human Rights Act 1998. Thus there was a potential for ‘big law’ based on the autonomous rational subject – here the soup run volunteers - to be used to challenge the ‘police’ byelaw.

Article 8 of the European Convention on Human Rights provides for respect for private life. The lawyers conclude that ‘the charitable activity of providing food and drink to those in need clearly falls within the ambit of article 8’ as article 8 protects personal autonomy and the right to enter into and develop relationships with others. While this does not extend to public activities (see *R (Countryside Alliance) v A-G* [2008] AC 719), the charitable provision of food is fundamentally a private activity which is undertaken by the volunteers ‘for the humanitarian purpose of helping another human being who is in need and giving effect to personal philosophical and ethical convictions.’ As such, any interference with this form of personal autonomy requires appropriate objective justification. Thus there is some potential through individual human rights to accommodate a charitable rationality.

They also consider whether there is a breach of article 9 – the right to freedom of thought, conscience and religion - in so far as volunteers assist the soup runs because of their personal philosophical and/or religious convictions. If they do, it is concluded that the byelaw would plainly constitute an interference with article 9.

Whether the interference with these qualified rights is unlawful depends on whether the byelaw is proportionate and rational. The starting point for considering whether the interference with the rights of the soup-run volunteers is proportionate and rational are the two aims taken from the council’s own documents. The first focuses on the soup-runs facilitating and enabling rough sleeping and being bad for the well-being of the homeless themselves; the second on the nuisance and annoyance to the local residents and businesses. In the view of the barristers ‘the Court would be likely to accept that these aims, however they might be reformulated, are sufficiently cogent to justify an appropriately rational and proportionate response.’

So the starting point of the Liberty advice is that it accepts that the Council could exercise this type of ban, in some circumstances. For the barristers, however, the ban as currently proposed was neither rationally connected to the legitimate aims of the byelaw nor proportionate for a variety of reasons. Much is related to the lack of evidence to justify the ban. Further it is the broad nature of the ban (beyond the work of the soup kitchens to ‘innocent’ sharers of food) which makes it disproportionate. Here then the ‘use’ nature of the byelaw is in fact a weakness and opens it up to challenge (cf Valverde 2005).

The only reference to the actual behaviour and motivations of the soup-run providers come when discussing Westminster’s justification for the ban. One part of this was the ‘fact that other, different, volunteering opportunities working with the homeless are available in London which volunteers....could take up.’ This justification is dismissed by the barristers in the following terms: ‘it is difficult to understand the supposed relevance of the availability of other volunteering opportunities working with the homeless. This is entirely incapable of providing any justification for the proposed byelaw.’

Ultimately the council decided not to go ahead with even the soup-run byelaw. This was hailed as a victory by Housing Justice in a press release dated November 2, 2011. Interestingly, however while welcoming the decision, Housing Justice also committed itself to working with the Council:

‘However Housing Justice and its members are committed to working together with Westminster and all local authorities, homelessness agencies and churches to help develop more indoor venues and to create a better and more effective safety net.’

By the time Westminster came to publish their rough sleeping strategy for 2013-16 they were able to state (WCC 2013, p. 14):

‘Following intensive and positive dialogue in the Victoria area of Westminster, the number of soup runs operating in this locality has declined considerably through voluntary agreement. Some of those soup runs now operate out of a local hostel and we want to continue working with those soup runs to ensure the work they are doing maintains its relevance while not impacting on local residents.’

This document stresses the options for volunteering that are being offered as an alternative to the soup-runs. Thus for the Council it was not the charitable act of care they wished to end, but rather its conflict with the ‘police’ rationality which meant that it was being provided in the wrong space.

## Conclusions

The area around Cathedral Piazza provided a transient space of care similar to those of other soup-runs described by Johnsen et al (2005). The motivations of the soup-run providers were similar. Over a long period the providers of that care faced considerable hostility from the local council who made several attempts to remove or at least reduce them. On the face of it this may seem like an example of the revanchist city – where in this case those providing care for the poor are moved off the streets, in order to open them up to commercial activity.

De Verteuil and others point to the necessity of a nuanced response to what is occurring to homeless people in our cities. In the context of Westminster, it is worth noting that the attempt to introduce what was effectively a law against sleeping rough in part of the borough was relatively easily ‘defeated’. In the face of strong opposition, the council retreated. This left the council with their attempt to end soup-runs. Here the response was much more ambiguous.

A number of the large charities, which fall into Cloke et al’s (2010) corporatist description, who were tied into the government agenda, strongly supported the byelaw. The soup-runs did not, for them, provide a form of care that was appropriate. Any provision of care had to be far more instrumental - to bring people indoors. Simply providing care – the caritas and agape referred to by Cloke et al (2010) – is not sufficient to justify and support the service of food in public spaces. Even the strongest critic, representing the soup-run providers (Housing Justice), has largely bought into this agenda. They too have backed the move indoors to private space. As a space of care for homeless people the public space of the Cathedral Piazza and surround was deemed unsuitable.

Much of what has happened in the control of public space in the UK over the last 20 years falls within Blomley’s description of ‘police’. He suggests that in relation to bans on sitting on side-walks the rationale is less to do with upholding the commercial interests and more a rationale of dealing with nuisance and obstruction. There is, however, evidence in Westminster that the rationale was in part about commercial interests. The order was not confined to the pavements, but included a much larger public area where the council had plans for other commercial activities. Nonetheless the references to nuisance indicate a strong element of ‘police’ rationality. There was a focus on the effects of the soup-runs that had nothing to do with the service they were providing but rather with the domestic order of the city. What was unusual about the byelaw was its focus not on the usual suspects – homeless people, street-drinkers and beggars - but the providers of care to such people.

Blomley (2012, p. 923, quoting Dubber and Valverde 2006, p. 5) notes the ‘fatherly concern [of police] presumes a particular form of prudential wisdom, with ‘the ability to decide, in the particular instance, which specific measure will best promote prosperity, order, and well-being, without being bound by strict lawlike definitions’.’ The Local Government Act 1972 gives a breadth of lawmaking power and in this instance the proposed bye-law would have had the effect of criminalising an ‘entirely lawful, humane and benign conduct: providing food to another person in need’ (Liberty advice, para. 14(a)).

Here the patriarchal rationale of police conflicts with the more matriarchal care of the soup-run providers. Again in so far as the argument about the move indoors was accepted, the care was shifted from the public space to the private space. This was the appropriate site for it. This seems to accord with the ‘police’ rationality. It also accords with the broader rationality of much municipal law of controlling use of public space.

In so far as the Liberty advice provides an opportunity to see how a legal opposition to ‘police’ from ‘big law’ might counter its tendencies not to be bound by ‘lawlike definitions’, it is interesting to note that the authors consider that the rights of the carers as set out in articles 8 and 9 of the ECHR could be trumped by an argument relating to nuisance and the impact of the behaviour that accompanies the soup-runs. It is the lack of evidence and the making of the argument that is the failure in this case. What is apparently being struck here is a balance between the freedom of the autonomous carer and the need for ‘police’ in these public spaces. Similar challenges focusing on the religious freedoms of providers have also had to compromise. Langlois (1996, p. 1287) writing about homeless shelters and soup kitchens provided by churches in the US concludes that the ‘... operation of shelters and soup kitchens must still comply with reasonable municipal restrictions and courts will not excuse a nuisance simply because it results from the free exercise of religion.’ In this regard human rights, like constitutional freedoms in the US, provide only a partial bulwark against this rationality.

Yet the council do also recognise, to a limited extent, the fact that if they are going to close down this space for those involved in the soup-runs to provide care then other opportunities should be made available. In this they provide some recognition of the urge to care amongst the soup-run providers. The Liberty advice provides an interesting contrast. For the authors, providing alternate opportunities to care is not relevant to the question of whether there has been a breach of the rights of the soup-run providers. It cannot provide a justification. Thus a human rights defence reveals itself as being uninterested in an ethic of care, in the motivations and desires of the soup-run providers to care.

Ultimately the bye-law was not promulgated, and we shall never know whether, if challenged, it would have been upheld. What has apparently happened is that the soup run providers were persuaded to change their practices in other ways. It was not necessary to pass the law to get them to move away from Cathedral Piazza itself to other locations, and in particular to indoor locations. The evidence does not show whether this was because of the threat of external regulation or because they genuinely considered that another space provided a better space of care to provide food for homeless people.

## References

Ashworth A. (2004) ‘Social control and ‘anti-social behaviour’: the subversion of human rights?’ *Law Quarterly Review* 120(Apr), 263-291

Blomley N. (2012) ‘2011 Urban Geography Plenary Lecture—Colored Rabbits, Dangerous Trees, and Public Sitting: Sidewalks, Police, and the City’, *Urban Geography*, 33:7, 917-935

Buckingham H. (2010) *Accommodating change? An investigation of the impacts of government contracting processes on third sector providers of homelessness services in South East England* PhD Thesis available at: <http://eprints.soton.ac.uk> (accessed 07/08/2013)

Cloke P. Johnsen S. and May J. (2007) ‘Ethical Citizenship? Volunteers and the ethics of providing services for homeless people’ *Geoforum*  38, 1089-1101

Cloke P. May J. and Johnsen S. (2010) *Swept up lives: Re-envisioning the homeless city* Chichester: Wiley­Blackwell

Communities and Local Government (2011) *Vision to end rough sleeping: No Second Night Out nationwide* London: DCLG

DeVerteuil G. May J. and von Mahs J. (2009) ‘Complexity not collapse: recasting the geographies of homelessness in a ‘punitive’ age’ *Progress in Human Geography* 33. 646-666

Dubber, M. D. (2005)*The Police Power: Patriarchy and the Foundations of American Government*. New York, NY: Columbia University Press.

Dubber, M. D. and Valverde, M. (2006) ‘Introduction: Perspectives on the power and Science of police’ in M. D. Dubber and M. Valverde, eds., *The New Police Science: The Police Power in Domestic and International Governance.* Stanford, CA: Stanford University Press, 1 –16.

Feldman L.C. (2004) *Citizens without shelter: homelessness, democracy and political exclusion* Ithica: Cornell University Press

Fitzpatrick S. and Stephens M. (2007) *An International Review of Homelessness and Social Housing Policy* London: CLG

Humphreys R. (1999) *No fixed abode: A history of responses to the roofless and the rootless in Britain* Basingstoke: Macmillan Press Ltd.

Johnsen S., Cloke P. and May J. (2005) ‘Transitory spaces of care: serving homeless people on the street’ *Health & Place* 11, pp. 323-336

Johnsen S. and Fitzpatrick S. (2010) ‘Revanchist Sanitisation or Coercive Care? The Use of Enforcement to Combat Begging, Street Drinking and Rough Sleeping in England’ *Urban Studies* 47(8), 1703-1723

Johnsen S., Fitzpatrick S. and Watts B. (2014) *Conditionality Briefing: Homelessness and ‘Street Culture’* <http://www.welfareconditionality.ac.uk/wp-content/uploads/2014/09/Briefing_Homelessness_14.09.10_FINAL.pdf> (accessed 22/07/2015)

Lacionne M. (2014) ‘Assemblages of care and the analysis of public policies on homelessness in Turin Italy’ *City: analysis of urban trends, culture, theory, policy, action* 18: 1, 25-40

Lane L. and Power A. (2009) *Soup runs in central London: The right help in the right place at the right time?* London: LSE Housing

Langlois M-O (1996) ‘The substantial burden of municipal zoning: the Religious Freedom Restoration Act as a means to consistent protection for church-sponsored homeless shelters and soup kitchens’ *William & Mary Bill of Rights Journal* 4:3, 1259-1287

May J., Cloke P. and Johnsen S. (2005) ‘Re-phasing Neoliberalism: New Labour and Britain’s Crisis of Street Homelessness’ *Antipode*  37(4), 703-730

Milligan C. and Wiles J. (2010) ‘Landscapes of Care’ *Progress in Human Geography* 34(6), 736 – 754

Mitchell D. (1997) ‘The annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in The United States’ *Antipode* 29, pp. 303-355

Mitchell D. (2003) *The Right to the City: Social Justice and the Fight for Public Space’* London: Guilford Press

Peck J. and Tickell A. (2002) ‘Neoliberalising Space’ *Antipode* 34, 380-404

Randall G. and Brown S. (2006) *Evaluation of Building Based Services and other rough sleeping programmes in Westminster* London: City of Westminster

Smith N. (2001) ‘Global social cleansing: post liberal revanchism and the export of zero tolerance’ *Social Justice* 28(3), 68-74

Social Exclusion Unit (1998) *Rough Sleeping: Report by Social Exclusion Unit.* London: HMSO

Thompson L. (1988) *An Act of Compromise* London: SHAC/Shelter

Valverde M. (2005) ‘Taking 'land use' seriously: toward an ontology of municipal law’ *Law Text Culture* 9, 34-59

Westminster City Council (2005) *Soup Run Scoping and Mapping Report*

Westminster City Council (2007) *Westminster City Council Rough Sleeping Strategy 2007-2010*

Westminster City Council (2009) *Westminster Cathedral Piazza Draft Action Plan*

Westminster City Council (2011) *Transforming Lives: Westminster City Council’s approach to rough sleeping*

Westminster City Council (2013) *Rough Sleeping Strategy 2013-2016*

Westminster Housing Commission (2006) *Report of the Westminster Housing Commission*