

‘Housing rights’ and ‘rights to housing’: exploring moral and legal discourses in an era of growing welfare conditionality

Suzanne Fitzpatrick,

10th April 2013

Introduction

- Rights – moral and legal; global and national
- Welfare rights, welfare reform and conditionality
- ‘Housing rights’ and ‘rights to housing’

The triumph of juridification?

- Growing clamour for *fundamental rights*, including social and economic rights, in legal as well as social policy scholarship
- Vocal demands for a ‘*rights-based approach to tackling homelessness*’ – Europe (FEANTSA), US, Australia
- Intuitively appealing – but what precisely do those invoking such rights actually mean? That there *is* such a right or that there *ought* to be such a right?
- Distinction between moral and legal rights – at both global realm and national levels

The global realm

- Natural rights and human rights – international instruments, e.g. UN, EU, Council of Europe
- Moral statements about human beings – they *ought* to have access to these rights, including the right to housing
- *But* are these abstract moral rights:
 - ...self-evident or a mere rhetorical device (‘*rights are trumps!*’)? What is the foundation of their protected status?
 - ...meaningful without enforceability (‘*nonsense on stilts!*’)?
 - ...if enforceable, then undemocratic? – do we want unelected judges determining the allocation of scarce resources?

The national realm

- The ‘social rights’ of citizenship – substantive entitlement to (welfare) goods and services, including housing
- *Programmatic rights* – the ‘right to housing’ often in constitutions; a ‘political marker of concern’
- *Legal rights* – enforceable in court/tribunals; rare to have a legal entitlement to housing, somewhat more common with other welfare goods (especially cash transfers)

Welfare rights and conditionality

- Legal rights to welfare (both ‘universal’ and ‘selective’) are *always conditional*; entitlement is predicated on eligibility
- *Eligibility* based on: ‘club membership’ (citizenship, contribution records); ‘status’ (age, health, disability); means-testing (income, assets)
- What is new is the *intensification* of conduct-related conditionality linked to *personalised behavioural requirements*

ESRC study on 'Welfare Conditionality'

- Five year study – Salford, Heriot-Watt, Sheffield, Sheffield Hallam and Stirling
- The *efficacy* (does it in fact bring about the behaviour change sought) and the *ethicality* (from a range of normative perspectives) of intensifying conduct conditionality in UK welfare
- Linking developments in *housing* to those in *social security, criminal justice and migration*

Welfare Conditionality Methods

- Statistical, substantive, conceptual/normative mapping exercises
- International expert panels
- Key informant interviews with ‘elite’ policymakers and stakeholders
- Six case study cities, in England and Scotland
 - a. Initial consultation workshops with welfare service users and practitioners
 - b. Focus groups with frontline welfare practitioners
 - c. QLR with 8 panels of 60 welfare recipients subject to conditionality (n=480 x 3 waves of interview)

‘Housing rights’ and ‘rights to housing’

- ‘*Housing rights*’ - rights to protect, e.g. security of tenure, unlawful eviction, excessive rent increases, etc.
- ‘*Rights to housing*’ - rights to fulfill, e.g. to provide housing for those who lack it
- Both types of housing-related rights are subject to increased conditionality in the UK, and focused upon in the ESRC study

'Housing rights' and conditionality

- Security of tenure - fixed-term tenancies are weakening the *de jure* housing security of social tenants in England
- Welfare reform (especially the bedroom tax and benefit caps) - weakening the *de facto* housing security of low-income households across the UK

'Rights to housing' and conditionality

- Enforceable rights to settled housing very unusual – UK and France only
- Radical divergence in homelessness entitlements across UK: in Scotland, abolition of 'priority need' at end 2012; in England, compulsory discharge of duty into private rented sector
- In both jurisdictions = homeless applicants 'responsibilised' via housing options

Conclusion

- Maintain critical perspective on all ‘rights talk’
- What precisely do we mean by a ‘rights-based approach’? And does it deliver what we expect it to in practice?
- Examine housing and welfare conditionality through a range of normative ‘lenses’ – citizenship, human rights, social justice and utilitarianism