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

Suzanne Fitzpatrick,
8th May 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, Canada

- 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 European 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; 5 UK universities
- 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*
- Six case study cities, in England (n=4) and Scotland (n=2)
- 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
Publications