

# Resisting Dehumanising Housing Policy: The Case for a Right to Housing in England

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## ABSTRACT

This article surveys the development and politics of English housing policy from the 1800s to the present, arguing that housing policy has never placed the needs and interests of the dweller – as a human rights holder – at its centre. Rather, the individual has been an instrument of broader goals or social visions, or envisaged not as a human being per se, but as a productive and pacified worker, a self-regulating and responsible asset holder, or a savvy financial actor whose quest to climb the housing ladder will generate asset wealth and security for herself, and for the state as a whole. The article argues that the right to housing as a human right can act as a touchstone and rallying cry for a more positive housing policy; one that places the equal dignity and moral worth of the person at the centre of all policy questions.

## Keywords:

Right to housing – housing policy – England – social housing – council housing – commodification – financialisation – home ownership – South African Bill of Rights – Committee on Economic, Social and Cultural Rights – *Grootboom* – *Djazia and Bellili v Spain*.

## I INTRODUCTION

The right to adequate housing is a right ‘to live somewhere in security, peace and dignity.’<sup>1</sup> It cannot be explained as the bare right to a roof over one’s head, or protected ‘exclusively as a commodity.’<sup>2</sup> The central and multiple roles that housing plays in the life of any person means that when states fail to respect, protect and ensure this right, it raises a critical set of

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<sup>1</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art 11(1) of the Covenant)* (1 January 1992) E/1992/23 para 7.

<sup>2</sup> *ibid.*

issues about the rights and abilities of people to live and participate in society with equal moral dignity and worth.<sup>3</sup> Thus, the right to housing can guide us to protect the human being and her relationship with housing. This is an important role, as housing policy can all too easily come to focus on the house – and housing in the aggregate – as an instrument for broader policy goals. Behind any policy may lie grand political visions: of urban planning, of the pacification of the masses, of economically self-sufficient citizens, and of increased GDP achieved through harnessing people’s homes into slick financial transactions. Yet when these aspects of housing are foregrounded, the human being to be housed often disappears into the background, or is transformed from a person to a financial actor. When the instrumental roles housing plays come to dominate housing policy, housing becomes something that must be done or given to its occupants, either for their own good, or for the good of other people. In these instances, housing policy and the planning of the built environment take on a ‘dehumanizing capacity’.<sup>4</sup>

Until recently, debates around housing policy in the UK – specifically, for the purpose of this paper, in England<sup>5</sup> – have focussed on housing as an important element of the welfare state, and as a driver of the economy. Discussion of and attention to the morality, identity and character of those to be housed has also been a prominent theme, as I argue below. But discussion of housing as a human right has been absent.

Yet recent striking failures of English housing policy to provide adequate, safe housing press us to re-evaluate the assumptions behind housing policy. The government’s own statistics state that housing is unaffordable in all but a handful of areas of England,<sup>6</sup> and for some, meeting housing costs means foregoing other necessities such as food and heating.<sup>7</sup> The number of houses classed as unfit for human habitation, particularly in the private rental sector, remains high – the most recent government statistics show that 19% -almost one-fifth – of homes failed to meet the Decent Homes Standard, and that in the private rental sector 35% failed to meet this basic threshold.<sup>8</sup> Those forced to live, and sleep, on the streets are only the tip of the iceberg of England’s homeless population.<sup>9</sup> In 2016, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) described the lack

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<sup>3</sup> See J. Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart 2013).

<sup>4</sup> The term has been used by, among others, D. Ley ‘Modernism, Post-Modernism and the Struggle for Place’ in J Agnew and J Duncan (eds) *The Power of Place: Bringing Together Geographical and Sociological Imaginations*, (Unwin Hyman 1989) 56; N Teymur, T Markus and T Woolley (eds) *Rehumanizing Housing* (Butterworths 1988); and more recently the UN Special Rapporteur on Adequate Housing: *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, A/HRC/34/51 (18 January 2017), III C.

<sup>5</sup> Due to the fact that housing is a matter of devolved government, housing policy is not consistent across all parts of the United Kingdom. Neither are the history of social organising around housing, or the dominant housing problems or concerns, analogous across the United Kingdom. I concentrate here on English housing policy.

<sup>6</sup> Housing is defined as unaffordable when average house prices exceed the average salary by seven times. See: Office for National Statistics, *House Price Index, January 2015* (ONS, 24 March 2015), figure 21. See also DCLG, *Chart 574: Ratio of Lower Quartile House Prices to Lower Quartile Earnings by Local Authority 2007, England* (2008) at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/10672/chartmap574.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/10672/chartmap574.pdf) (last Accessed October 20 2017).

<sup>7</sup> See J Hohmann, *Protecting the Right to Housing in England: A Context of Crisis* (JustFair 2016) 13 – 14.

<sup>8</sup> DCLG, *English Housing Survey, Headline Report 2015 – 16* (DCLG, March 2017), 29 See also, Hohmann *Protecting the Right to Housing in England* (n 7)16, 38 – 39.

<sup>9</sup> Hohmann, *Protecting the Right to Housing in England* (n 7) Part 4 (Homelessness).

of available, affordable, accessible, and adequate housing as a ‘persistent critical situation’<sup>10</sup> and criticised the UK for the significant rise in homelessness, with particular reference to England.<sup>11</sup>

In June 2017, England came face to face with the most tragic and devastating consequences of ignoring the need to ensure adequate housing, when Grenfell tower, a 24 floor block of flats in an affluent area of London was engulfed in fire, leading to the deaths of at least 70 people. The tower, originally built as social housing, housed many economically marginalised and racialised inhabitants who had struggled repeatedly to make their concerns about the safety and adequacy of their housing heard.<sup>12</sup> The aftermath of the devastating fire has exposed the State’s failure to value the safety, the rights, and the lives, of households and individuals, and in particular to respect, protect and fulfil a right to housing.

Human rights provide one strategy to resist the dehumanising capacity of housing policy. They insist on a common humanity, and make a demand on humanity as a whole that the person – the human – be the fundamental and undeniable unit at the base of all questions of public policy. Of course, market based approaches also place the individual consumer or investor at the centre of the discourse.<sup>13</sup> However, these discourses are exclusionary, offering rights to particular people through their status as, for example, property owners. Human rights strive, at their best, towards inclusion of people *by virtue of their humanity*, and in doing so, can offer an important critique of structural inequalities and status-based exclusions, at the same time that they force us to acknowledge our mutual political subjectivity and fundamental equality.<sup>14</sup>

In this paper, I survey the historical development of housing policy in the UK, taking England as a specific focus and keeping the political story of housing policy firmly in view. I focus on the political – rather than the legislative, for example – for two reasons. First, this story of housing policy unfolding on the English terrain has not as yet been subject to sustained critique through a human rights lens, and particularly, through the prism of a human right to housing. For this reason, this article seeks to open a conversation by placing this policy history into the domain of human rights scholarship, by offering insights into the right to housing and its potential for policy makers. In doing so I offer preliminary thoughts about the ways a right to housing can be used both to critique, and to reform, the dominant housing policy directions in England. Second, without a robust political commitment to the right to housing, underpinned by social movements, as well as scholars and policy makers, any legal rights (particularly for the marginalised or disempowered) are likely to remain an unfulfilled promise. Human rights as a progressive project must be underpinned by political

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<sup>10</sup> United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland (14 July 2016) E/C.12/GBR/CO/6 para 49.

<sup>11</sup> Ibid para 51.

<sup>12</sup> See, C Hastie, ‘Grenfell’s Tragedy is a Worldwide Truth: Fire is an Inequality Issue’ (Guardian, 11 July 2017) at <https://www.theguardian.com/inequality/2017/jul/11/grenfell-tower-tragedy-worldwide-truth-fire-is-an-inequality-issue> (accessed 23 Oct 2017) and D Foster ‘The Grenfell Disaster has Shone a Light on How We’ve Lost our Housing Rights’ (Guardian, 13 July 2017) at <https://www.theguardian.com/commentisfree/2017/jul/13/grenfell-shone-light-lost-housing-rights-money-spinning-machines> (accessed 23 Oct 2017); Nadine El Enany, ‘The Colonial Logic of Grenfell’ (Verso Blog, 3 July 2017) at <https://www.versobooks.com/blogs/3306-the-colonial-logic-of-grenfell> (last accessed 6 May 2018).

<sup>13</sup> With thanks to an anonymous reviewer for drawing my attention to this point and pushing me to clarify it.

<sup>14</sup> I develop this argument below, and in J. Hohmann *The Right to Housing* (n 3) Part III.

struggle, and this struggle can be played out on what are thought of as policy and political, as well as strictly legal, terrain. Indeed, successful legal struggles normally require prior and ongoing political work to sustain them, and make any legal success meaningful on the ground.<sup>15</sup>

I argue that since its beginning in the early 19<sup>th</sup> century, in localised, private endeavours, through to the present, housing policy (understood in its broadest sense<sup>16</sup>) in England has been top-down and paternalistic. It has been premised on housing as something to be ‘done’ to or for those who need it. The result has been that housing policy is expected to play a role in reshaping the individual, and through her, society as a whole. The effect has been to keep the person and her relationship with housing from the centre of housing policy. This in turn has further enabled, and been further enabled by, visions of housing which have little to do with the individual dweller, and instead amount to projects of national social engineering.

I argue that the enduring, and ultimately dehumanizing vision of housing policy can be critiqued through a human rights perspective that places the idea of the individual as human rights holder at its centre, and that a human rights perspective can also guide the construction of a more positive vision of housing policy.

I begin by sketching the justification for a human right to housing. The focus is on the conceptual understanding of a right to housing, rather than a detailed analysis of specific legal standards in international or regional law and their application,<sup>17</sup> because it is a commitment to the conceptual underpinnings of the right to housing that, as a first step, must be brought into English housing policy. I then survey three different phases of English housing policy: the development of housing policy from 1800 to the Post World War II peak in social housing provision; the commodification of housing as a private asset; and the financialisation of housing. Following this analysis, I give two examples where the right to housing is being used to provide a more positive underpinning for housing policy. The first is under the South African Constitution, and the second under the emerging individual decisions of the CESCR. These examples demonstrate how a commitment to the right to housing could provide a more positive foundation for English housing policy going forward. Finally, I offer some conclusions.

## II THE RIGHT TO HOUSING AS A HUMAN RIGHT

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<sup>15</sup> See Hohmann, ‘The Right to Housing: A Research Agenda’ in M Moos (ed) *A Research Agenda on Housing* (Edward Elgar, Forthcoming 2019).

<sup>16</sup> Housing policy can be defined broadly as ‘any government action to achieve housing objectives’ or as ‘government intervention in the housing field’. See David Clapham ‘Housing Policy’ in Ray Hutchinson (ed) *Encyclopedia of Urban Studies* (Sage 2010) 307.

<sup>17</sup> For analysis of the right to housing in international, regional and domestic constitutional law, see Hohmann, *The Right to Housing* (n 3); ‘Legal Sources of the Right to Housing’ in DP Forsyth (ed) *Encyclopedia of Human Rights* (Oxford 2009); Padraic Kenna, ‘Adequate Housing in International and European Human Rights Law: A Panoramic View’ (2012) 7 *International Journal of Land Law and Agricultural Law* 4; Michelle Oren, Rachelle Alterman and Yaffa Zilbershats, ‘Housing Rights in Constitutional Legislation: A Conceptual Classification’ in Padraic Kenna (ed) *Contemporary Housing Issues in a Globalized World* (Ashgate 2014).

Human rights are accorded to human beings *as* human beings.<sup>18</sup> This oft-repeated tautology is not an empty statement. Rather, it encapsulates an insistence on the human being as the bearer of inherent qualities that make her human, and as entitled to the protection of those qualities. To put it more simply, human rights protect what it means to be human, and mean that no person should be treated as less than human. To be treated as human, to have human rights, is to experience and be guaranteed human dignity.<sup>19</sup>

Moreover, ‘something significant is gained’ when we make claims in the language of rights<sup>20</sup>. As Mantouvalou argues, the sentence “I have a right to housing” entails a moral imperative that cannot be captured by the sentences “I would prefer not to be homeless” or “It would be good if I had a home”, or even “I need shelter”. Having basic social rights invests these claims with normative weight, and necessarily implies that others have a duty to respect, protect and fulfil these rights.<sup>21</sup>

The existence of, and commitment to, human rights is an insistence that states not cross certain red lines around the person, because to do so has the potential to strip from an individual what it means to be human, in community with others, and expose the person to the risk of being used as a mere instrument by others, in particular by the state.

But why do we need a right to housing, rather than other, associated rights that might incidentally protect our housing, such as rights to privacy or to life?<sup>22</sup> A human right to housing places questions of housing as central, rather than incidental, to any analysis. It forces us to keep sight of the interrelationship between housing and the human. In this way, attention remains on the question of the role housing plays for individuals. Further, it focusses attention on the inherent and fundamental ties between human dignity, freedom, belonging, safety, and security, and the material space in which they can be experienced.<sup>23</sup> The right to housing makes a crucial connection between the human being at the heart of human rights, and the physical conditions and environment in which she lives her daily life.

Despite its ties to the quotidian, its inherent domesticity, the right to housing is not merely about the material conditions of physical infrastructure. As I have argued elsewhere, when individuals lack a right to housing, their privacy, freedom, and even identity can be jeopardised.<sup>24</sup> The denial of housing can amount to the denial of citizenship. This happens not only incidentally, when homeless individuals lose the entitlements of social citizenship, such as proof of address required in order to vote or be enrolled in school,<sup>25</sup> but in the starkest examples when the denial of housing is calculated to strip away the right to belong. For example, in Apartheid-era South Africa, material dispossession was an explicit tool of

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<sup>18</sup> A Gewirth ‘The Epistemology of HRs’ in E Frankel Paul, FD Miller Jr, and J Paul (eds) *Human Rights* eds (Basil Blackwell 1984) 1.

<sup>19</sup> PO Carozza, ‘Human Dignity’ in D Shelton (ed) *The Oxford Handbook of International Human Rights Law* (Oxford 2013).

<sup>20</sup> V Mantouvalou, ‘In Support of Legalisation’ in *Debating Social Rights*, V Mantouvalou and C Gearty (Hart 2011) 106.

<sup>21</sup> *Ibid.* 106-7.

<sup>22</sup> On which see, respectively, Hohmann *Right to Housing* (n 3) Ch 6; and *Olga Tellis v Bombay Municipal Corporation* AIR (1986) SC 180 (Supreme Court of India).

<sup>23</sup> Hohmann, *Right to Housing* (n 3) 142 – 143.

<sup>24</sup> *Ibid.*

<sup>25</sup> See for eg P Rossi and J Wright, ‘The Ghetto Underclass: Social Science Perspectives’ (1989) 501 *Annals of the American Academy of Political and Social Science* 132.

social control and denial of rights.<sup>26</sup> The Indian Supreme Court has held that the ultimate purpose of adequate shelter is to enable individuals to equip themselves ‘physically, mentally and intellectually’ as ‘equal participant[s] in democracy.’<sup>27</sup> Waldron has argued that when homeless individuals have no place to carry out primal human tasks such as sleeping and washing, they are unfree.<sup>28</sup> The lack of freedom is not merely one that touches on the ability to engage in biologically necessary actions, but is instrumental, perhaps even inherent, to one’s ability to belong and to be human.<sup>29</sup>

Thus the right to housing is based on a recognition that when individuals are destitute, when they are homeless and forced to find shelter where they can, when they live in situations where their housing is unsafe, their dignity and humanity is, at best, compromised, and at worst, stripped away. The denial of adequate housing goes to the core of what it means to be a human being in community with others.

Human rights have value as a philosophical or political commitment underlying our social relations. They have value as a benchmark against which policies and laws can be measured. And they have value as hard-law standards, which a state can be held accountable for failing to respect, protect and ensure.

In the English context, the right to housing as a human right has remained absent on all three levels until very recently.<sup>30</sup> This is despite the fact that the UK government has obligations in international law to take steps towards the fulfilment of a right to adequate housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>31</sup> While a right to housing as a legally enforceable right before the UK courts may be important, I argue that, as a starting point, we need at the very least to consider housing as a human right on a conceptual or discursive level, to make a philosophical, political and policy commitment to housing where the person – the dweller – is the central unit of consideration, and her needs, rights and interests are never lost from view or made merely instrumental to other objectives.

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<sup>26</sup> See for eg *Residents of Joe Slovo Community, Western Cape, v Thubelisha Homes and Others* (2010) (3) SA 454 (Constitutional Court of South Africa) paras 191-98; G Muller, ‘The Legal Historical Context of Urban Forced Evictions in South Africa’ (2013) 19(2) *Fundamina* 367; M Strauss and S Liebenberg, ‘Contested Spaces: Housing Rights and Evictions Law in Post-Apartheid South Africa’ (2014) 13(3) *Planning Theory* 428, 429-30; AL Higginbotham, Jr, FM Higginbotham and SS Ngcobo, ‘De Jure Housing Segregation in the United States and South Africa: the Difficult Pursuit of Racial Justice’ (1990) 4 *University of Illinois Law Review* 763, 779–80.

<sup>27</sup> *Chameli Singh v State of Uttar Pradesh* (1996) 2 SCC 549 (Supreme Court of India) 556.

<sup>28</sup> J Waldron, ‘Homelessness and the Issue of Freedom’ (1991) 39 *UCLA Law Review* 295.

<sup>29</sup> *Ibid.* See further Hohmann *Right to Housing* (n 3) 148 – 150.

<sup>30</sup> Activism and advocacy using the right to housing has begun to emerge in the wake of the Grenfell Tower Fire in 2017, in the activism of the Focus E15 Mums campaign, and in recent advocacy work under the framework of international law. See, respectively, D. Foster ‘The Grenfell Disaster has Shone a Light on How We’ve Lost our Housing Rights’ (n 12); Aditya Chakraborty, ‘For Real Politics, don’t look to parliament but to an empty London housing estate’ *Guardian* 23 Sept 2014 at <https://www.theguardian.com/commentisfree/2014/sep/23/real-politics-empty-london-housing-estate> (accessed 20 Oct 2017); and the Social Rights Charity JustFair, whose aim is ‘to realise a fairer and more just society for everyone in England by monitoring and advocating for the protection of economic and social rights, including the rights to health, education, social security, work and an adequate standard of living (housing, food and water).’ JustFair, *JustFair’s Aims*, available at <http://www.just-fair.co.uk/about3-c8i1> (accessed 23 October 2017).

<sup>31</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3. The United Kingdom signed the Convention in 1968, and ratified it in 1976.

### III HOUSING POLICY IN ENGLAND: AN BRIEF HISTORICAL PERSPECTIVE

The development of a system of state provided and subsidised housing is a great achievement of the British welfare state. Beginning before World War I, but increasing through to the 1970s, state provided ‘council’ housing transformed the living conditions and circumstances of millions of English households.<sup>32</sup> In this section I provide a brief history of these developments. Notwithstanding the positive transformation in the living standards of so many, brought about by the growth of social housing, housing policy in England was, from the beginning, premised on the vision of the dweller as a useful social citizen, productive worker, and pacified social citizen. Housing was an instrument through which such citizens were to be created, and managed, in service of these visions

First I trace the development of English housing policy from the early 1800s through to the post-World War II peak in the provision of social housing. The conventional wisdom is that this period was the golden era of the welfare state, when social solidarity was high, the population insisted on ‘Homes fit for Heroes’, and the state agreed.<sup>33</sup> Yet the provision of state subsidised housing had as much to do with creating a certain type of citizen, and producing a stable and productive (even pacified) workforce, as it did honouring the heroes of the nation. After the 1970s, and particularly with the Thatcher government’s ‘right to buy’, homeownership came to dominate the policy agenda. The government supported private purchase, at the same time pushing the population away from state owned housing and towards the ideal of housing as a privately owned asset for the responsible self-supporting citizen, a shift I consider in the next section. Finally I consider how most recently, housing has come to be understood not just in a commodified sense, as an asset, but as a central pillar of the global financial system, with homeowners understood as ‘leveraged investors’, increasing their asset wealth through climbing ever higher up the ‘housing ladder’.

#### ***1. The ‘Foundation of all Social Progress’: The Development of Social Housing in England***

Before World War I, almost 90 percent of British households were in privately rented accommodation, and the remaining 10 percent owned their homes.<sup>34</sup> Homeownership was the preserve of the financially empowered few – the propertied – and was tied to substantial

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<sup>32</sup> A Ravetz, *Council Housing and Culture: The History of a Social Experiment* (Routledge 2001) 2.

<sup>33</sup> For two analyses, both sceptical of this conventional portrayal, see L Hanley, *Estates an Intimate History* (Granta 2012) 79-80; D Wincott, ‘The (Golden) Age of the Welfare State: Interrogating a Conventional Wisdom’ (2013) 91 *Public Administration* 806.

<sup>34</sup> C. Hamnett, ‘Housing the Two Nations: Socio-Tenurial Polarization in England and Wales’ (1984) 43 *Urban Studies* 339, 339.

political power which helped maintain the privileged position of the homeowner.<sup>35</sup> As a consequence of this concentration of ownership, those renting represented a wide swathe of society.<sup>36</sup> However, it was the dire living conditions of the poor and working classes that motivated social reformers, particularly in the context of migration to urban areas as England industrialised<sup>37</sup> (although the squalid and neglected housing available to the rural poor should be understood as a significant factor in that migration<sup>38</sup>). In urban areas in the 19<sup>th</sup> century, poor housing was jammed together, separated only by narrow alleyways, surrounded by pools of raw sewage and mounds of rotting waste.<sup>39</sup> Services such as clean water for drinking or washing were barely available, and when they were, exorbitantly expensive.<sup>40</sup> Housing was seriously overcrowded, ‘people sleeping five or six to a bed, three beds to a room, two or three families to a stair, dozens of houses around one back green.’<sup>41</sup>

Housing conditions clearly represented a threat to human health, as identified in Edwin Chadwick’s 1842 *Report on the Sanitary Condition of the Labouring Population of Great Britain*.<sup>42</sup> One incentive for reform, therefore, was the desire to avoid the devastation wreaked by disease, but the concern was not merely philanthropic. It rested in part on the self-interest of the more privileged citizens, who feared contagion.<sup>43</sup> Sanitation schemes did reduce epidemics, but the clearance of unsanitary slums increased overcrowding as those evicted squeezed into already existing housing, and the living conditions overall barely improved for labourers and the poor.<sup>44</sup>

The links between poor housing and poor sanitation meant that the drive for housing improvements was often only tangentially the subject matter of a social mission.<sup>45</sup> Philanthropic initiatives frequently combined concern with the wellbeing of the poor with apparent disgust in them. Leading social reformers such as Edward Denison (who pioneered the settlement movement), for instance, likened the subjects of their improving projects to ‘the trembling mass of maggots in a lump of carrion.’<sup>46</sup> Descriptions of the time are quick to link physical decay and disease with a degraded moral character. For example, in his *The Condition of the Working Class in England* Friedrich Engels described the notorious slums of the 1840s in fascinated detail. Of the courts and alleyways in the infamous St Giles, he writes:

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<sup>35</sup> See for example L. Holcombe, *Wives and Property: Reform of the Married Women’s Property Law in Nineteenth Century England* (University of Toronto Press 1983).

<sup>36</sup> Hamnett (n 34) 389.

<sup>37</sup> S Szreter, ‘Industrialisation and Health’ (2004) 69 *British Medical Bulletin* 75, p. 80.

<sup>38</sup> E. Gaudie, *Cruel Habitations: A History of Working-Class Housing 1780 - 1918* (Unwin University Books 1974) 21.

<sup>39</sup> See F. Engels, *The Condition of the Working Classes in England* (Oxford 2009) 40. See also Gaudie (n 38) Ch 5.

<sup>40</sup> Gaudie, (n 38) Ch 5.

<sup>41</sup> *Ibid.* 87.

<sup>42</sup> Edwin Chadwick, *Report on the Sanitary Condition of the Labouring Population of Great Britain* (1842) available at <http://www.deltaomega.org/documents/ChadwickClassic.pdf> (accessed 23 October 2017).

<sup>43</sup> P Baldwin, *Contagion and the State in Europe 1830 – 1930* (CUP 2004).

<sup>44</sup> Gaudie (n 38) 85-86.

<sup>45</sup> See J Burnett, *A Social History of Housing 1815 – 1985* (2<sup>nd</sup> ed) (Methuen 1986) 54; Ravetz (n 32) Chs 2-3; D Cowan, *Housing Law and Policy* (CUP 2011) 357; Gaudie (n 38) 85. P. Beresford, *All Our Welfare: Towards Participatory Social Policy* (Policy Press 2016) 29 – 48. This response is far from unique to the English context. Haussmann’s Paris provides one historical example. See for example DP Jordan, ‘Haussmann and Haussmannisation: The Legacy for Paris’ (2004) 27 *French Historical Studies* 87. In the Indian and South African Contexts see Hohmann *Right to Housing*, (n 3) Chs 7 and 8.

<sup>46</sup> G Stedman Jones, *Outcast London: A Study in the Relationship between Classes in Victorian Society* (Verso 1984) 258.



Here live the poorest of the poor, the worst paid workers with thieves and the victims of prostitution indiscriminately huddled together, the majority Irish, or of Irish extraction, and those who have not yet sunk in the whirlpool of moral ruin which surrounds them, sinking daily deeper, losing daily more and more of their power to resist the demoralizing influence of want, filth, and evil surroundings.<sup>47</sup>

Here, poor housing is readily associated with the filth of rotting food and raw sewage. But it is evident that the concern is also with the character of the inhabitants: thieves, prostitutes and the Irish bearing the brunt of moral tarring. The assumption was that the physical decay and degradation of the built environment would drag the inhabitants into ever greater moral decay.<sup>48</sup>

The impetus for reform thus rested on recognition of the squalor, need and deprivation of the poor and working classes. But importantly, reform sought to contain the moral and physical threat the poor and labouring classes appeared to represent.<sup>49</sup>

Early initiatives at improving housing for the poor or labouring classes were led by prominent individuals and were private and local in nature, though often on a grand scale. The model workers' cottages built at Holkham in Norfolk by the Earl of Leicester in the 1820s<sup>50</sup> and even in the 1760s by John Howard on his estate in Bedfordshire,<sup>51</sup> are exemplars. These cottages, their builders agreed, (echoing Chadwick's report) produced in their inhabitants 'moral regeneration, decreased pauperism, disease and drunkenness and increased contentment.'<sup>52</sup> Larger model suburbs were also constructed for factory and industrial labourers from the 1850s. The well-known examples of Saltaire, Bournville and Port Sunlight were envisaged as a 'total solution to the social problems of an industrialised society'.<sup>53</sup> As Burnett notes these schemes were 'serious and highly influential attempts' to better the living environment of labourers.<sup>54</sup> But, as the example of Salt suggests, these model living environments were not constructed for their own sake, nor wholly for the sake of the individuals to be housed in them, but at least in part for the productive, creditable workforce that each produced (and reproduced). Titus Salt 'considered himself well rewarded by the morality and self-respect, the absence of drunkenness and illegitimacy with which his workforce was credited.'<sup>55</sup> Housing thus supported a stable, profitable economy, and it can be argued that its 'use value' to its occupants was only 'tenuously' connected to its function as an 'investment in a healthy and productive labour force.'<sup>56</sup>

An additional layer of anxiety was added to the mix in the early 1900s: that poor housing led to dangerous social unrest.<sup>57</sup> In April 1919, King George V gave a speech to the

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<sup>47</sup> Engels (n 39) 40.

<sup>48</sup> Id. See also M Bowley, *Housing and the State: 1919 – 1944* (Allen & Unwin 1945) 2.

<sup>49</sup> Beresford, (n 45) 37 – 41.

<sup>50</sup> See Burnett, (n 45) 50, 52.

<sup>51</sup> Ibid. 47.

<sup>52</sup> Ibid 52.

<sup>53</sup> Ibid. 181; see further 182 – 83.

<sup>54</sup> Ibid 181.

<sup>55</sup> Id.

<sup>56</sup> TA Markus, 'Rehumanizing the Dehumanized' in *Rehumanizing Housing* (n 4) 7.

<sup>57</sup> Burnet, (n 45) 225; Beresford (45) 37-41. See also T Judt, 'The Social Democratic Moment' in T Judt (ed) *Postwar: A History of Europe Since 1945* (Vintage 2005) 360.

Representatives of the Local Authorities and Societies. He stated that: ‘It is not too much to say that an adequate solution of the housing question is the foundation of all social progress. ... if “unrest” is to be converted into contentment, the provision of good houses may prove one of the most potent agents in that conversion.’<sup>58</sup> Adequate housing functioned as a policy of ‘deliberate anaesthetic’ to wider social realities of inequality and oppression.<sup>59</sup> As such, housing solutions were intended to deal with economic, political and social instability on a societal level.

From the early 1900s, the Westminster government invested heavily in state constructed and subsidised housing, recognising that a combination of the poor’s own efforts, the patronage of individual reformers, and the operation of the market were insufficient to deal with the scale of housing inadequacy.<sup>60</sup> In 1885, the Royal Commission on the Housing of the Working Classes reported.<sup>61</sup> It recognised that the state would have to take collective responsibility for the provision of housing, and that subsidisation might be necessary.<sup>62</sup>

Before 1945, legislation was confined to improvements for the ‘working classes,’ as evidenced by the names of the relevant housing Acts, which included the Labouring Classes Dwelling Houses Act 1866 and the Housing of the Working Classes Acts of 1855, 1890, and 1900.<sup>63</sup> By the inter-war years, such social housing schemes could be described as a legislative scheme for ‘council housing’.<sup>64</sup> Some policy makers saw the aim of council housing as establishing an ideal social mix, harkening back to a romanticised vision of the English village where everyone from the doctor to the labourer lived together in the same street, in the same quality housing.<sup>65</sup> Nevertheless, the reality continued to exclude the most deprived: Inter-war council housing generally provided dwellings for relatively well-off working people, not the most marginalised labourers, immigrants or slum-dwellers.<sup>66</sup> When the worst-off were housed, such as in the wake of slum clearances, concerns were raised about their ‘bad influence’ on other council tenants,<sup>67</sup> and they were often subject to intensive management and segregation in particular parts of estates.<sup>68</sup>

Despite the relatively well-off position of most council house tenants within the working classes, it was not until World War II that the emphasis in social housing provision shifted from the working classes to encompass all sectors of the population. This shift was partly achieved because adequate housing – ‘Homes Fit for Heroes’ – was seen as an entitlement

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<sup>58</sup> Extract from the King’s Speech to Representatives of the Local Authorities and Societies at Buckingham Palace; *The Times*, 12 April 1919 quoted in Burnett (n 45) 219.

<sup>59</sup> Markus, (n 56) 7.

<sup>60</sup> Burnett, (n 45) 176.

<sup>61</sup> *The Royal Commission on the Housing of the Working Classes 1885*, First Report BPP (CH) 1884-5 [C.4402] XXX 1 - 86.

<sup>62</sup> *Ibid.*

<sup>63</sup> See Hamnett (n 34) 390.

<sup>64</sup> Ravetz (n 32) 2. Council housing can be defined as local authority provided or public housing. See H Carr and D Cowan, ‘The Social Tenant, the Law and the UK’s Politics of Austerity’ (2015) 5 *Oñati Socio-Legal Series* 73, 77 at fn 1.

<sup>65</sup> Hanley (n 33) 79 –80.

<sup>66</sup> Burnett (n 45) 238. This echoes the exclusion of many minorities from welfare provision more generally, for which see Beresford, (n 45) 109 – 115.

<sup>67</sup> S Schifferes ‘Council Tenants and Housing Policy in the 1930s: The Contradictions of State Intervention’ in, M Edwards et al (eds) *Housing and Class in Britain* (Russell Press 1976) 66.

<sup>68</sup> P Kemp and P Williams, ‘Housing Management: An Historical Perspective’ in D Hughes and S Lowe (eds) *A New Century of Social Housing* (Leicester University Press 1991) 130.

of the returning serviceman.<sup>69</sup> Thus, the housing constructed in the immediate post-war period was of good quality, making social housing a tenure of choice.<sup>70</sup>

The commitment to a programme of council housing peaked in the wake of World War II.<sup>71</sup> In the early 1950s, the UK was building 300,000 homes a year, two thirds of which were council houses. In 1975, council housing comprised almost a third of the housing stock, and housed more than a third of the population.<sup>72</sup> This was a major achievement of post-war reconstruction and improvement of pre-war housing conditions. The number of houses built, the achievement of greater social mobility and mix, and the explicit commitment to adequate housing for all led to significantly better opportunities for a multitude of people.<sup>73</sup>

Nevertheless, housing policy at the time focussed on the production of housing and its management, and the place of the individual occupier was as ‘a passive recipient with few express rights.’<sup>74</sup> Policy was paternalistic, and the housing produced often appeared to be disconnected from the aspirations and needs of the individuals for whom it was built. Over time, quantity came to trump quality, and social and physical isolation came to characterise much state provided housing.<sup>75</sup> By the 1970s, high-rise tower blocks ‘became a cliché for the failure of the welfare state policy makers to listen to what people on the receiving end wanted or had to say.’<sup>76</sup>

During this period, housing policy achieved massive, positive, transformations in the living conditions of a great many people. But the human subject of housing policy functioned as an instrument, rather than as a bearer of human rights and of equal moral worth and consideration. Housing policy catered to the creation of a peaceful and productive workforce. It worked to subdue powerful ideas stirred up by workers’ revolutions in Russia and elsewhere. It sought to provide better housing to contain the risk of contagion – both moral and physical. And it sought to reward service to the state, particularly of those returning from the Second World War. Although this era – particularly the immediate post-World War II years – is often considered the golden age of social housing, the history sketched here reveals that the picture is more complex, and that housing policy served to disempower, manage and control individuals, even as it provided a better standard of living around them.

## ***2. Homeownership: the Creation of a ‘Deep and Natural Need’***

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<sup>69</sup> Burnet (n 45) 219 – 20.

<sup>70</sup> Carr and Cowan (n 64) 77.

<sup>71</sup> See Hanley (n 33) 51. See also R Rolnik and L Rabinovich, ‘Late Neo-Liberalism: The Financialisation of Homeownership and the Housing Rights of the Poor’ in A Nolan (ed) *Economic and Social Rights after the Global Financial Crisis* (CUP 2014) 70 – 72. United Nations General Assembly, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context – Addendum – Mission to the United Kingdom of Great Britain and Northern Ireland* (30 December 2013) A/HRC/25/54/Add.2 details the UK’s history of social housing policy at para 12 – 17.

<sup>72</sup> Ravetz (n 32) 2.

<sup>73</sup> Report of the Special Rapporteur A/HRC/25/54/Add.2, (n 71) para 12 – 16.

<sup>74</sup> Cowan (n 45) 83.

<sup>75</sup> Hanley (n 33) 98.

<sup>76</sup> Beresford (n 45) 115; See also Hanley (n 33) Ch 3.

In this context of top-down housing solutions, the idea of rights for occupiers struck a powerful chord. And the right to ownership was presented as the pinnacle of property rights, granting all the agency, status and recognition afforded to those attaining the status of owner.<sup>77</sup> The Thatcher government's 'right to buy', which offered council tenants the right to purchase their home at a subsidised price, was eagerly embraced.

In 1971, even before the number of council house units being built peaked and began to decline, a Government White Paper argued that 'home ownership is the most rewarding form of house tenure. It satisfies a deep and natural need on the part of the householder to have independent control of the home that shelters him and his family.'<sup>78</sup> Homeownership was presented as natural, the self-evident choice of the responsible family man. The White Paper stated that home ownership:

gives [the owner] the greatest possible security against the loss of his home; and particularly against price changes that may threaten his ability to keep it. If the householder buys his home on a mortgage, he builds up by steady saving a capital asset for himself and his dependents.<sup>79</sup>

The picture presented of the dweller is one of an economically self-sufficient actor, taking personal responsibility for his and his family's present and future. The home owner is imagined as having economic agency, and the dwelling is envisioned as the asset supporting that agency.

The White Paper demonstrates a commodified understanding of the nature and role of housing. On this view, housing may play a role as a home, but the house also functions as a private economic asset, which is to provide financial security to the family both in the present and the future, and to make the household autonomous and responsible, employing the 'self-regulatory capacity' of the citizen.<sup>80</sup>

Moreover, subjecting households to the mortgage market imposed on them the restraint of periodic payments, necessarily imposing a discipline of regular work. The ongoing implications of this disciplining are explored further below, when we consider the financialisation of housing and the creation of the 'leveraged investor' as the person at the heart of housing policy in the next section.

The preference of the English household for owner occupied housing cannot, despite the language of the White Paper, be understood as resting on 'a deep and natural need'. Rather, it has been achieved by a sophisticated array of legislative and policy tools, which privilege private homeownership, transfer public housing stock into private hands, and simultaneously make the remaining council housing less well supported and appealing as an option.

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<sup>77</sup> M Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957, Hanley (n 33) 134;

<sup>78</sup> Department of Environment *A Fair Deal for Housing* White Paper (1971) Cmnd 4728 (London, HMSO) 4.

<sup>79</sup> Id. For a global vision of the same argument see H De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Black Swan 2001).

<sup>80</sup> See D Cowan and A Marsh, 'From Need to Choice, Welfarism to Advanced Liberalism: Problematics of Social Housing Allocation' (2005) 25(2) *Legal Studies* 22, 23.

These tools have included not only the ‘right to buy’ policy, which in giving a statutory right of purchase to tenants also compelled the sale of council housing,<sup>81</sup> but also financial deregulation of the mortgage market, and the redirection of public funds from social housing to the private rental market and to promote homeownership.<sup>82</sup> Not all housing has been sold to private individuals through ‘the right to buy:’ a wide range of privatisation techniques have been used. Privatising has involved transferring council housing to charities, for instance, which operate as private providers of social housing called ‘housing associations’.<sup>83</sup> These privatisation initiatives became a national government programme in 1997, increasingly relying on private finance and resulting in the further commercialisation of non-profit housing over time.<sup>84</sup>

The ‘New Labour’ government (1997 to 2010) had a target of selling 200,000 council homes per year, which was complemented by large scale ‘regeneration’ schemes in areas with depressed or ‘failed’ housing markets.<sup>85</sup> These ‘regenerations’ often took the form of the demolition of existing council housing estates, the displacement of their residents, and their replacement with new private housing.<sup>86</sup> The changes in tenure patterns and housing stock infrastructure have, accordingly, occurred not merely through neglect of existing social housing – although the neglect of existing stock emerged, at times, as an explicit policy tool<sup>87</sup> – but through the active use of laws and policies which make it evident that it is the state that has actively constructed, supported and furthered the creation of a housing market in England.<sup>88</sup>

Since 1980, over 2 million social homes have been privatised.<sup>89</sup> Privatisation of council housing increased significantly under New Labour,<sup>90</sup> and recent government policy continues to pursue privatisation and the extension of ‘the right to buy’.<sup>91</sup> The combined effect of these policy changes mean that, now, council housing has become increasingly ‘residual’.<sup>92</sup> One of the effects of this residualisation has been a striking change in those dwelling in housing of different tenure types: where once only the better-off of the working classes enjoyed social housing tenure, now social housing is the lot of the most marginalised and economically disempowered.<sup>93</sup>

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<sup>81</sup> S Hodkinson, P Watt and G Mooney ‘Introduction: Neoliberal Housing Policy – Time for Critical Re-Appraisal (2013) 33 *Critical Social Policy* 1, 7.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*, 8.

<sup>85</sup> *Id.* The effects of the ‘regeneration’ of Liverpool on its urban landscape and its residents are detailed in O Hatherley ‘Liverpool’s Rotting, Shocking, “Housing Renewal”: How Did it Come to This?’ (Guardian, 27 March 2013) at <https://www.theguardian.com/commentisfree/2013/mar/27/liverpool-rotting-housing-renewal-pathfinder> (accessed 23 October 2017).

<sup>86</sup> Hodkinson Watt and Mooney, (n 81) 8.

<sup>87</sup> *Id.* 7.

<sup>88</sup> See, on the construction of housing markets, P. Bourdieu, *Social Structures of the Economy* (Polity, 2005 trans. C Turner) 15 – 16.

<sup>89</sup> DCLG *Table 678 Social Housing Sales: Annual Sales by Scheme for England 1980-81 to 2014-15* (DCLG 12 Nov 2015).

<sup>90</sup> See N Ginsburg ‘The Privatization of Council Housing’ (2005) 25 *Critical Social Policy* 115, 115, Table 1.

<sup>91</sup> See Hohmann *Protecting the Right to Housing in England* (n 7).

<sup>92</sup> See P Malpass and A Murie, *Housing Policy and Practice* (MacMillan 1982) 174. See also R Forrest and A Murie ‘Residualization and Council Housing: Aspects of the Changing Social Relations of Housing Tenure’ (1983) 12 *Journal of Social Policy* 453; Hamnett (n 34) 398.

<sup>93</sup> Hamnett, *id.*

Despite the strong language of rights attached to the ‘right to buy’, human rights are absent from this discourse. The rights at stake here are the rights of the consumer. Housing as an asset is premised on the private acquisition of property, not on human rights as rights to equal dignity and moral worth, and not on social solidarity as implicit in the provision of ‘homes fit for heroes.’ But it is not only the role of housing which is altered when housing’s purpose is understood as private and individual. The role of the occupier changes too: with the commodification of housing has come the commodification of the person. In a political economy where, as Hobsbawm writes, political participation is replaced by market participation, what counts is the person’s market power and potential market contribution.<sup>94</sup> The conceptualisation of the house as consumer asset, rather than primarily or fundamentally as home, is tied up with the understanding of the individual as a consumer: it is not a coincidence that social housing is now a ‘product’.<sup>95</sup>

The vision of home owner as consumer has had a clear impact on the way social housing, and most importantly, its occupants, are understood. If we come to identify, or even give identity to, individuals through the commodities they purchase,<sup>96</sup> those without their own commodities, or without purchasing power over commodities, are relegated to a lesser subjectivity through their lesser or ‘failed’ consumer status.<sup>97</sup> Tenants, for example, suffer in a world of commodified housing not only because of the disinvestment in social housing which has accompanied privatisation, but because tenancies become a lesser form of tenure. The lesser value accorded to tenancy has a knock on effect to the tenant. The ‘consumer power’ that comes with individual homeownership is not enjoyed by the tenants, thereby compounding the economic and political powerlessness that is associated with the status of non-owner.<sup>98</sup>

In the most egregious of examples, those outside the market cease to be part of the warp and weft of the social fabric. An inability to participate actively in the economic system fundamentally diminishes their equality in society, their status as persons, and accordingly the worth, care and attention they are afforded in and through social policy and by others more broadly. They are not considered, or accordingly, protected, as human beings of equal dignity and moral worth.

The characteristics ascribed to these ‘failed’ consumers mirror those of the undesirable resident of Victorian St. Giles: sexual promiscuity, criminality, and racialised deviancy.<sup>99</sup> As Clarke and Newman write, ‘[c]ertainly, Victorian fears and fantasies about the disorderly, dangerous and depraved lower orders have uncomfortable similarities with contemporary obsessions with the urban ‘underclass’ in its many guises (hoodies, chavs, single mothers, the feckless and the workshy)’.<sup>100</sup> These groups can be ‘discursively ghettoised – hived off from the general population as a special problem.’<sup>101</sup> Once conceived

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<sup>94</sup> See E Hobsbawm, *Globalization, Democracy and Terror* (Abacus 2008) 104. See also N Rose, *Powers of Freedom: Reframing Political Thought* (CUP 1999) 164 – 65.

<sup>95</sup> Cowan and Marsh (n 80) 39. In December 2016, I sat on a panel at the Housing Law Practitioners’ Association Annual conference with the Mayor of London’s Senior Housing Policy Advisor, who described in detail the innovative ‘products’ being constructed as part of city’s housing policies.

<sup>96</sup> See Y Gabriel and T Lang, *The Unmanageable Consumer* (3<sup>rd</sup> ed, Sage 2015) 92.

<sup>97</sup> Z. Bauman, *Consuming Life* (Polity 2007) 69; Hobsbawm (n 94) 87.

<sup>98</sup> Forrest and Murie (n 92) 464.

<sup>99</sup> Rose (n 94) 88.

<sup>100</sup> J Clarke and J Newman ‘The Alchemy of Austerity’ (2012) 32 *Critical Social Policy* 299, 310. See also Beresford (n 45) 135 – 36.

<sup>101</sup> Carr and Cowan (n 64) 80.

of as a special problem, special solutions can be put in place to manage and contain them. The ‘undeserving’ poor, immigrants, the dependant – for instance those with disabilities or unemployed young people – once again emerge as the subject of projects of improvement and/or restraint. In current housing policy, this attitude manifests in policies such as the ‘bedroom tax’, which sees housing benefit cut for those deemed to be ‘under occupying’ council housing.<sup>102</sup> It manifests in policies which enable local authorities to place homeless individuals in areas distant from their social and familial ties, their children’s schools and their places of employment.<sup>103</sup> These policies treat the residents of social housing as less than full members of the political and social fabric, and call into question any commitment to their human rights, their dignity and their equal moral worth.

The commodification of housing thus results in the opening of a wide gulf between the failed consumer, relegated to residualised social housing, and the able market consumer of housing. The effect on the ‘failed’ consumer is at best paternalistic, at worst derisive. And it has strong echoes in previous housing policy that catered generally to the better off working classes, and tended to ignore the most marginalised and disempowered. But the effect on the ‘able’ consumer is also profound, and it points to continuities in English housing policy, rather than fundamental shifts.

In the next section, I argue that the financialisation of housing – the instrumentalisation of housing as security for and on global financial markets – perpetuates housing as an instrument for economic progress. In instrumentalising housing in this way, housing remains a tool to achieve greater societal aims, driven from the top, and aimed at producing certain kinds of individuals, who will contribute in particular ways to society.

### 3. *The ‘Leveraged Investor’: Housing Financialisation*

In the 2011 housing strategy for England, then Prime Minister (David Cameron) and deputy Prime Minister (Nick Clegg) wrote that ‘one of the most important things each generation can do for the next is to build high quality homes that will stand the test of time.’<sup>104</sup> As such, it was ‘right for government to step in and take bold action to unblock the market.’<sup>105</sup> Accordingly, the government had two main aims in its housing strategy: first, economic

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<sup>102</sup> Reduction of housing benefit for those occupying council housing and deemed to have a ‘spare room’ was introduced in April 2013 and is commonly referred to as the Bedroom Tax. The Department for Work and Pensions *Evaluation of Removal of the Spare Room Subsidy: Interim Report* (DWP Research Report No 882, July 2014), found that in 50% of cases, affected households were forced to make cuts to other household essentials or incur debts in order to be able to pay the rent, and 20% of households had been unable to meet the increased rent at all. For further analysis of the impact see K Gibb, ‘The Multiple Policy Failures of the UK Bedroom Tax’ (2015) 15(2) *International Journal of Housing Policy* 148; Hohmann *Protecting the Right to Housing in England* (n 7) 13; S Moffatt et al ‘A Qualitative Study of the Impact of the UK “Bedroom Tax”’ (2016) 38(2) *Journal of Public Health* 197.

<sup>103</sup> The Localism Act of 2011 allows Local Housing Authorities to place homeless households or individuals outside their own authority. For analysis, see D Garvie, ‘Location, Location: How Localism is Shunting Homeless Families Out’ (The Guardian, 7 February 2012) at <https://www.theguardian.com/housing-network/2012/feb/07/location-localism-homeless-families-shelter> (accessed 23 Oct 2017).

<sup>104</sup> Her Majesty’s Government, *Laying the Foundations: A Housing Strategy for England* (November 2011)

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<sup>105</sup> *Id.*

growth through housing,<sup>106</sup> and second, to ‘spread opportunity in our society.’<sup>107</sup> Although ‘quality homes that will stand the test of time’ are needed, the action the government proposed to take was to promote general economic growth achieved through housing, and the amorphous ‘spreading’ of opportunity.

Where, then, do the individuals and households fit in this housing policy picture? Recent housing policy imagines, values and promotes the home owner as an entrepreneurial financial actor, a ‘leveraged investor.’<sup>108</sup> The homeowner has been subject to a subtle, yet fundamental, reinvention. Rather than the ‘thrifty, prudential owner’<sup>109</sup> who, as the 1971 White Paper put it, ‘builds up by steady saving a capital asset for himself and his dependents,’<sup>110</sup> the house as asset is now the platform from which the homeowner is enticed – and expected – to enter the broader global financial market. The homeowner as leveraged investor both supports and perpetuates a global financial market that is ‘funded, insured and to an extent marketed and managed,’ by financial services which link households’ everyday activities into the world of global finance.<sup>111</sup>

The English approach to housing’s commodification through schemes promoting homeownership and ‘unlocking the market’ is merely one manifestation of a much larger, global trend in which housing has come to be a fundamental element of the global financial system.<sup>112</sup> Contemporary housing finance derives not only from national savings but from global financial markets: housing is, accordingly, ‘financialised’ becoming ‘critical’ to, or even a ‘central pillar of’ the broader financial market itself.<sup>113</sup>

The financialisation of housing is dependent on loans against the value of the house, generally, that is, on mortgages. A house owned outright by the occupier is, in and of itself, no use in a financialised housing system unless or until further borrowing is made against the asset. It is where the loan against the value of the house links in to the global financial circuit that ‘economic growth through housing’<sup>114</sup> can be pursued.

The Westminster government has actively pursued policies of housing finance.<sup>115</sup> These include policies and programmes designed to finance, or encourage the financing of, the cost of housing through the provision of loans (such as mortgages) or grants (such as tax exemptions)<sup>116</sup> which are made possible by and enforced in law. As the UN Special Rapporteur on Adequate Housing notes:

Financialization is made possible through the legal enforcement of agreements between lenders and borrowers. It relies on legal systems governing property

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<sup>106</sup> Id., viii.

<sup>107</sup> Id., v.

<sup>108</sup> P Langley, *The Everyday Life of Global Finance: Saving and Borrowing in Anglo-America* (OUP 2008) Ch 8.

<sup>109</sup> Id., 195.

<sup>110</sup> White Paper, 1971 (n 78).

<sup>111</sup> SJ Smith, ‘Owner Occupation: At Home with a Hybrid of Money and Materials’ (2008) 40 *Environment and Planning A* 520, 520.

<sup>112</sup> Report of the Special Rapporteur on adequate housing A/HRC/34/51 (n 4) ; Rolnik and Rabinovich, (n 71) 58 – 65 See further De Soto (n 79) 73.

<sup>113</sup> Rolnik and Rabinovich, *ibid* 62 – 63. See also M Aalbers, ‘The Financialization of Home and the Mortgage Market Crisis’ (2008) 12 *Competition and Change* 148.

<sup>114</sup> *Laying the Foundations* (n 104) viii.

<sup>115</sup> See Report of the UN Special Rapporteur A/HRC/25/54/Add.2, (n 71) para 20 – 21.

<sup>116</sup> Rolnik and Rabinovich, (n 71) 60.



rights, zoning laws and contracts and also on an increasingly complex system of international and regional treaties governing the terms and conditions of investments and government actions that may have an impact on profitability.<sup>117</sup>

Notably, the legal regime governing global investments is normally designed to trump or exclude human rights concerns, penalising parties when they reject investment for reasons of social or environmental justice, for example.<sup>118</sup>

Such policies and their enforcement through law, have helped loop homes into global financial flows, which both enable the purchase of mortgages in England, and which trade in those mortgages across the world.

The financialised housing system depends on speculative trading on mortgage debts. Where once a mortgagor issued the mortgage, collected and monitored payments, and held the asset - the house - on their balance sheet until the interest and principal was paid off, now, assets are broken down into bundles of risk factors.<sup>119</sup> This practice both spreads risks broadly, and enables profit to be made not only from the asset but from risks themselves.<sup>120</sup> Housing's materiality - its tangible, solid, presence, is de-materialised, broken down and rendered into intangible bundles of asset and risk. As Smith writes, 'The UK model is a financial markets model whose rationale is to blur the boundary between (fixed) capital and (fluid) money.'<sup>121</sup>

The buying and selling of mortgage debts enables the bricks and mortar homes of individual occupiers to become security for global financial transactions. Accordingly, the continued profitability of the financial system rests to a large extent on perpetuating the purchase of mortgages. This also means that the profitability of the financial system rests heavily on perpetuating an ideology of homeownership,<sup>122</sup> both as the preferred lifestyle choice, and because it is presented as a way to enable households to access their share of increasing asset wealth.<sup>123</sup> Given that the global financial system is insatiable, demanding ever more to generate increased wealth, and thus the domestic economic growth that is the stated aim of housing policy - at least in the 2011 Westminster incarnation - buying a home is not enough. Rather, property ownership is presented as a ladder. The assumption is that a first home purchase is merely a step onto the first rung, from which the homeowner will seek to climb higher, each rung representing a more expensive home, and therefore a more valuable asset. A central commitment in the Conservative party manifesto of 2015 was 'to help more people *onto and up* the housing ladder.'<sup>124</sup> Homeownership remains the unquestioned policy preference, but people should also strive to own ever better (that is, more valuable) housing assets.

In parallel to the ways that social housing has been denigrated in earlier Westminster policies, current policy strives to make leveraged investing through home owning appealing,

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<sup>117</sup> A/HRC/34/51 (n 4) para 51.

<sup>118</sup> Ibid para 52 - 55.

<sup>119</sup> Ibid para 20; Langley, (n 108) 153.

<sup>120</sup> Langley Ibid.

<sup>121</sup> SJ Smith, (n 111) 520.

<sup>122</sup> Langley (n 108) 193 - 194.

<sup>123</sup> SJ Smith, (n 111) 15.

<sup>124</sup> Conservative Party, *The Conservative party Manifesto 2015* (2015) 51.

while rendering the alternatives unattractive and poorly supported.<sup>125</sup> Recent initiatives in this respect centre around an extended right to buy for tenants, the policy of the forced sale of high-value council houses, and increased rents and decreased security of tenure for sitting social housing tenants.<sup>126</sup> At the same time, the financialization of housing has inflated property prices to the extent that the prospect of purchasing a home, or even renting on the private market, is now illusory for many, particularly for those in major global cities such as London or Sydney.<sup>127</sup> Financialization has led to ‘unprecedented housing precarity.’<sup>128</sup>

As homeowners are always considered as potential sellers, moving on up the housing ladder, so too in the world of financialised housing, the relationship between the material (the house as security) and the immaterial (the financial transaction) is at best fleeting. It is in the very speed and number of transactions that more value is generated. As Lokjine writes: ‘the *profitability* of a given economic sector will depend ...on the *rate of profit* and the *speed of rotation* of the capital invested.’<sup>129</sup> In the whirl of transactions, the fixed-point of the materially existing house appears tangential, and it is easy to forget that the owner-occupier, the mortgagee, is the lynch-pin of the system. What happens to the owner occupier, *as a person*, appears to be irrelevant to the financial system: her reasons for purchasing her house, her need for a safe, secure home for herself and her family, her ties to neighbours, schools, relatives or cultural life are obscured. The gulf between the financialisation of housing, and housing as a human right to protect and ensure the dignity and equal moral worth of individuals and families is wide, and has led the United Nations Special Rapporteur on Adequate housing to remark that a financialised housing system cannot, by its nature, ensure the right to housing of individuals.<sup>130</sup>

But the disappearance of the owner-occupier from the picture also has had explosive implications for the globalised financial system: speculative mortgages came to fuel a financial bubble with little relationship to their actual value or the risk attendant on them.<sup>131</sup> A collective amnesia appeared to seize financial actors and their regulators that the owner occupier at the heart of the matter could seldom afford her mortgage. Even when the financial crisis hit, Sassen reminds us: ‘the source of the subprime mortgage crisis, as discussed in financial circles, pertains to the secondary financial circuit rather than the fact of millions of households losing their homes to foreclosure.’<sup>132</sup> In other words, the crisis is seen as a crisis for the system, not primarily for individuals and their relationships to house as home and shelter.

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<sup>125</sup> SJ Smith (n 111) 524.

<sup>126</sup> See the Housing And Planning Act, 2016.

<sup>127</sup> A/HRC/34/51 (n 4) para 26, para 35.

<sup>128</sup> Ibid para 5.

<sup>129</sup> J Lokjine, ‘Contribution to a Marxist Theory of Capitalist Urbanization’ in CG Pickvance (ed) *Urban Sociology: Critical Essays* (Tavistock 1976) 132 [emphasis in original]. See also R Rolnik, ‘Late-Neoliberalism: The Financialization of Homeownership and Housing Rights’ (2013) 37 *International Journal of Urban and Regional Research* 1058, 1059; S Sassen, ‘When Local Housing Becomes an Electronic Instrument: The Global Circulation of Mortgages – A Research Note’ (2009) 33 *International Journal of Urban and Regional Research* 411, 411.

<sup>130</sup> United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, (10 August 2012) A/67/286.

<sup>131</sup> S Nasarre-Aznar, ‘A Legal Perspective of the Origin and the Globalization of the Current Financial Crisis and the Resulting Reforms in Spain’ in Kenna (ed), *Contemporary Housing Issues in a Globalized World* (n 17) 37-50.

<sup>132</sup> Sassen (n 129) 420.

Yet, as Langley forcefully reminds us, the ‘extraordinary gyrations’<sup>133</sup> that gripped capital markets after the global financial crisis arose ‘out of ruptures in the ordinary payment routines of mortgagors.’<sup>134</sup> The crisis was, and is, a crisis for ordinary people. As the UN Special Rapporteur on Housing reports, ‘Financialized housing markets have caused displacement and evictions at an unparalleled scale: in the United States of America over the course of 5 years, over 13 million foreclosures resulted in more than 9 million households being evicted. In Spain, more than half a million foreclosures between 2008 and 2013 resulted in 300,000 evictions. There were almost 1 million foreclosures between 2009 and 2012 in Hungary.’<sup>135</sup> In the global south, evictions and displacement are also caused by global financialization of housing, which subverts housing and land as social good in favour of their value as commodities.<sup>136</sup> In the UK, high levels of foreclosure and eviction were forestalled by the government’s bailout of a number of banks.<sup>137</sup> This action, however, also led to increased austerity measures, at the same time that it implicated the government further in global housing financialisation.<sup>138</sup>

The global financial crisis showcased in a spectacular way the inequalities at the heart of the financialised housing system. Greater inclusion in financial markets cannot be equated with greater equality. ‘Creative’<sup>139</sup> mortgage products designed specifically for those who would normally be excluded from the mortgage market had enabled the selling of ‘sub-prime’ mortgages, often at highly disadvantageous rates and terms, to poorer households.<sup>140</sup> These have the effect of ‘redlining’ those who are socio-economically disadvantaged.<sup>141</sup> Poorer and minority households remain subject to discriminatory treatment in the market through the imposition of higher interest rates and other penalising terms and conditions.<sup>142</sup> In the English housing system, inequality is ‘amplified’ rather than diminished.<sup>143</sup>

The dignity and worth of the person seeking safe, adequate and secure housing have been pushed aside in a quest for ever greater investment profits, both for firms and for governments whose policies – and not only their housing policies – rest on a financialised housing system. Social housing, insofar as it functions outside the financialised housing system, is of no use to it, and so must either be commoditised and made ripe for financialisation, or must fall by the wayside. Although tenants of private rental accommodation are often living in housing purchased as an investment, as the UN Special Rapporteur on Housing has noted, financialised housing has no need for an occupier. She writes that financialised housing ‘is valuable whether it is vacant or occupied, lived in or devoid of life.’<sup>144</sup> Housing is dehumanised to the point where its actual, practical use to the individuals who might live in it and build their lives outwards from it, is of little concern.

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<sup>133</sup> Langley (n 108) 233

<sup>134</sup> Id.

<sup>135</sup> A/HRC/34/51 (n 4) para 5.

<sup>136</sup> Ibid, para 6.

<sup>137</sup> J Swaine ‘Bank Bailout: Alistair Darling unveils £500billion rescue package’ The Telegraph, 8 Oct 2008 at <https://www.telegraph.co.uk/finance/financialcrisis/3156711/Bank-bailout-Alistair-Darling-unveils-500billion-rescue-package.html> (last accessed 5 April 2018).

<sup>138</sup> A/HRC/34/51 (n 4) para 22.

<sup>139</sup> Rolnik and Rabinovich, (n 71) 68.

<sup>140</sup> Id., 68 – 69.

<sup>141</sup> Ibid 87.

<sup>142</sup> A/67/286 (n 130) III.

<sup>143</sup> M Edwards, ‘The Housing Crisis and London’ in M Edwards et al (ed) *Housing and Class in Britain*, (n 65) 228.

<sup>144</sup> A/HRC/34/51 (n 4) para 30.

#### IV The Right to Housing as the Foundation for a More Positive Housing Policy

The right to housing – as a rallying cry and as a principle underpinning all housing policy – can place the individual, her agency, dignity and personhood, back at the centre of housing policy. The right to housing, in this sense, can function as an important insistence on the person behind the social tenancy, subsumed behind that monolithic, freighted, phrase: the ‘council estate.’<sup>145</sup> The right to housing provides a counterpoint to the financial sleight of hand that makes the owner-occupier all but disappear from view while her house becomes a convenient source of potential tradable value on the global financial mortgage circuit. How might the right to housing provide for a person-centred housing policy, or reign in housing policies that treat the dweller as merely incidental?

Like any human right (or any policy measure) alone, the right to housing does not provide a silver-bullet solution to all housing problems. However, we can find examples that demonstrate how the right to housing can be used to guide governments towards housing policy that takes account of the equal moral worth and dignity of the human being, and that makes the dweller and her need for safe, adequate housing, the central unit of concern. The first example stems from the protection of the right to housing under the South African Constitution. The second is drawn from the Committee on Economic, Social and Cultural Rights’ approach to the commodification and financialisation of the right to housing in the Individual Complaint *Djazia and Bellili v Spain*<sup>146</sup> under the ICESCR Optional Protocol.<sup>147</sup> Both examples illustrate that the right to housing requires housing policy that does not treat human beings, and particularly, the most marginalised and vulnerable, as merely instrumental to larger goals of economic and social policy.

##### 1) *The South African Constitutional Court’s Approach to the Right to Housing and South African Housing Policy*

Recognising that the denial of access to housing was an explicit tool of exclusion and discrimination in South Africa’s Apartheid-era State, the 1996 post-Apartheid Constitution includes an explicit, judicially enforceable right to housing in Section 26.<sup>148</sup> Section 26(1) states that:

Everyone has a right to have access to adequate housing.

Which is followed by Section 26(2)’s requirement that:

The state must take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of this right.

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<sup>145</sup> Hanley ( 33) 97.

<sup>146</sup> CESCR Communication No 5/2015, E/C.12/61/D/5/2015 (5 July 2017).

<sup>147</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008) (2009) 48 ILM 262.

<sup>148</sup> For analysis of the complex legislative and policy framework that created and maintained spatial injustice, marginalisation and the resulting ‘illegal’ occupation of land in South Africa, see Muller (n 26); A Sachs, ‘The Creation of South Africa’s Constitution’ (1997) 41 New York Law School Law Review 669, 671 – 72; M Strauss and S Liebenberg (n 26) 429-30; AL Higginbotham, Jr, FM Higginbotham and SS Ngcobo (n 26) 779–80, and Joe Slovo (n 26) paras 191–98.

Section 26(3) prohibits arbitrary evictions, and requires a court order before any eviction or demolition. As a whole, Section 26 must be interpreted within a Constitution that aims to be socially transformative, and which is premised on social justice.<sup>149</sup> The right of the child to shelter is also included in Section 28(1)(c). While shelter is a barer form of provision than adequate housing, Section 28 is not limited by the progressive realisation standard introduced in Section 26(2).

The South African Constitutional Court's has sought (not always successfully) to strike a balance between appropriate deference for State housing policy, attentiveness to the serious lack of resources in the state, and making the right to housing meaningful in the context of severe housing deprivation rooted in a legacy of social and spatial injustice.

In the path breaking *Grootboom* judgment,<sup>150</sup> the Constitutional Court evaluated the reasonableness of the government's housing policy against its obligations for the right to housing. It held that the right requires:

available land, appropriate services, such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself ... There must be land, there must be services, there must be a dwelling.<sup>151</sup>

Access to adequate housing would, the Court further noted, involve private parties who must be enabled by the state 'by legislative and other measures to provide housing.'<sup>152</sup> The Court stated that government obligations would be different for those with the financial means to pay, for whom 'the state's primary obligation is unlocking the system, providing access to housing stock and ... facilitat[ing] self-built houses through planning laws and access to finance' and for those without financial means, for whom the socio-economic rights of the Constitution become key.<sup>153</sup> The Court stated that *action* will be fundamental to meeting the state's obligations: merely having law on the books will not be enough, and such laws will need to be implemented through policies.<sup>154</sup>

In the same case the Court set out that it will take a 'reasonableness' approach to interpreting the state's obligation for realising the right. That is:

the precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure

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<sup>149</sup> On the transformative aims of the South African constitution, see Sandra Liebenberg, 'Needs, Rights and Transformation: Adjudicating Social Rights in South Africa' (2006) 17 Stellenbosch Law Review 5. The Preamble to the Constitution States that:

We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to - Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights...

<sup>150</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* (2001) (1) SA 46 (South African Constitutional Court).

<sup>151</sup> *Ibid* para 67.

<sup>152</sup> *Ibid* para 35.

<sup>153</sup> *Ibid* para 36.

<sup>154</sup> *Ibid* para 42.

that the measures they adopt are reasonable ... A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable.<sup>155</sup>

Crucially, for the argument advanced in this paper, reasonableness must be assessed against the State's underlying human rights commitments, and the principles that they protect. The Court stated that:

The right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. ... Furthermore, the Constitution requires that everyone must be treated with care and concern.<sup>156</sup>

Ultimately, in the *Grootboom* case, the Court held that the State's housing policies failed to meet its obligations under Section 26 of the Constitution. This was because the housing plan had not taken account of all segments of the population, particularly falling short in providing a plan for the worst off, such as the plaintiffs in the case, who were homeless and destitute.

The inclusion of a right to housing in the South African Constitution has not solved of the state's housing problems, which remain significant. A wealth of legislative measures and policy initiatives have been launched, but spatial injustice, entrenched poverty and marginalisation continue, and have even increased since the adoption of the Post-Apartheid Constitution.<sup>157</sup> Nor has the Court's approach to interpreting and enforcing the right to housing been free of criticism. I, among others, have argued that the Court has left the normative content of the right empty, resulting in a thin right which can be used to review procedural action but has little substance: reasonableness turns on the steps taken, rather than the results achieved.<sup>158</sup> Strauss and Liebenberg have argued further that the Court's jurisprudence has failed to come to terms with the systemic issues that underlie the violation of the right to housing, and that the Court's oversight of housing policies fails to grapple with the fact that 'decision-making processes, which value notions of economic efficiency over substantively just housing outcomes, can have potentially devastating social, material and spatial consequences for vulnerable communities'.<sup>159</sup>

Despite these shortcomings, what the Constitutional Court's approach does demonstrate is that the right to housing can be used as the guiding principle to help create a more positive

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<sup>155</sup> Ibid para 68 – 69.

<sup>156</sup> Ibid para 44.

<sup>157</sup> See for eg J Dugard, T Madlingozi & K Tissington 'Rights Compromised or Rights Savvy? The use of Rights-Based Strategies to Advance Socio-Economic Struggles by AbahlalibaseMjondolo, the South African Shack-Dwellers Movement' in H Alviar Garcia, K Klare and L Williams (eds) *Social and Economic Rights in Theory and Practice* (Routledge 2015), 25-6; Strauss and Liebenberg (n 26) 432-33.

<sup>158</sup> See for eg Hohmann, *The Right to Housing* (n 3) 99 – 108 and Ch 5; S Liebenberg 'Engaging the paradoxes of the universal and particular in human rights adjudication: The possibilities and pitfalls of 'meaningful engagement'' (2012) *African Human Rights Law Journal* 12(1) 1, 23; Strauss and Liebenberg (n 26) 443.

<sup>159</sup> Strauss and Liebenberg (n 26) 443, references omitted.

housing policy. In the *Grootboom* case, the Government was held to be failing in its constitutional obligations due to its failure to take account of the needs of the most marginalised and the worst off. In other cases, the Court has used Section 26 and the reasonableness test to give voice to marginalised communities in the context of housing policy through requirements for consultation and participation in schemes for housing regeneration, for example.<sup>160</sup>

Similar requirements could be incorporated into Westminster housing policy to ensure that it keeps the individual, and particularly the marginalised and vulnerable, firmly in view as a subject of care and concern, dignity and freedom. Such underpinning principles could (and in fact are beginning to) be used to contest the deracination of poorer communities, the silencing of their voices, and the ‘regeneration’ of their housing for luxury flats and investment opportunities, which have resulted in evictions and forced relocations, and – in the case of the Grenfell Tower Fire – staggering loss of life.<sup>161</sup>

## 2) *The CESCR Decision in Djazia and Bellili v Spain*

The Committee on Economic, Social and Cultural Rights has only recently begun to consider individual complaints under the Optional Protocol to the ICESCR. In its recent decision, *Djazia and Bellili v Spain*,<sup>162</sup> the Committee considered whether the eviction of Mohamed Ben Djazia, Naouel Bellili and their two infant children from their privately rented flat, which resulted in their homelessness, breached Spain’s obligations under Article 11 of the ICESCR.

Article 11(1) provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The CESCR has interpreted the right to housing, as an element of the right to an adequate standard of living, as requiring seven elements, each of which must be at least minimally enjoyed. These include security of tenure, habitability, and affordability.<sup>163</sup> Evictions,

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<sup>160</sup> See *Joe Slovo* (n 26), and *Occupiers 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and Others* (2008) (3) SA 208 (South African Constitutional Court).

<sup>161</sup> Examples of the appeal to housing as a human right can be found in the Focus E15 Mums’ Campaign, where a group of single homeless mothers have contested their removal from London, and the gentrification of the Newham with strong reference to the right to housing. See the website of the Focus E15 Mums <https://focuse15.org/> (last accessed April 5 2018) and Focus E 15, Archives Grenfell Fire (last visited March 21 2018) <https://focuse15.org/category/grenfell-fire/>; See also Pidcock, Laura ‘Having a Home is a Right, Not an Investment Opportunity’ (New Statesman, 4 Sept 2017 <https://www.newstatesman.com/microsites/housing/2017/09/having-home-right-not-investment-opportunity>

<sup>162</sup> (n 146).

<sup>163</sup> UN CESCR General Comment No 4 (n 1). For further analysis see Hohmann, *Right to Housing* (n 3) 20 – 29.

when they occur, should not render the evictees homeless.<sup>164</sup> Further detail of the State's obligations for Article 11(1) are set out in Article 2(1) of the Covenant, which details that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 11(1), read in conjunction with Article 2(1), includes both positive and negative aspects, and imposes immediate obligations as well as those that may be realised over time. Immediate obligations include non-discrimination in the enjoyment of the right,<sup>165</sup> and the provision of the minimum core of each of the elements of the right.<sup>166</sup> Progressive obligations, meanwhile, require the state to make progress toward the full realisation of the right.<sup>167</sup> The right to housing under ICESCR, should, therefore, oblige states to ensure that all individuals, regardless of economic or social power, have access to adequate housing in order to enjoy the right, and to make progress towards the better enjoyment of the right.

The Ben Djazia/Bellili family had rented a privately owned apartment under a fixed term tenancy since 1998.<sup>168</sup> Mr. Ben Djazia had been applying for social housing for over a decade,<sup>169</sup> after becoming unemployed, he lost entitlement to unemployment benefits, and the family fell into arrears.<sup>170</sup> When the tenancy expired, they had nowhere else to go and remained in the property.<sup>171</sup> The family were evicted after court proceedings, and while the Court urged both local and regional social services to take all appropriate measures to prevent the destitution of the family, upon eviction they were made homeless.<sup>172</sup> After 10 days in temporary accommodation, they were forced to live in the family car for a time.<sup>173</sup>

The Committee found that the state was obligated to provide suitable alternate accommodation, and this required them to take all necessary measures to that end, to the maximum of its available resources. In this respect, the decision reflects the long-standing prohibition in international law on forced eviction which will render the evictee homeless.<sup>174</sup>

While this requirement in itself may require changes in Spanish law more important with respect to housing policy is in the Committee's statement that the State party must take measures to tackle the structural causes of homelessness and housing vulnerability.<sup>175</sup> In particular, the Committee criticised the State's housing policy on two fronts. First:

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<sup>164</sup> UN CESCR General Comment No 4 (n 1) para 18 and UN CESCR General Comment No. 7: The Right to Adequate Housing (Art 11(1)): Forced Evictions (20 May 1997) E/1998/22 para 16.

<sup>165</sup> UN CESCR General Comment No 3: The Nature of States Parties' Obligation (Art 2, Para 1 of the Covenant) (14 December 1990) E/1991/23 para 1.

<sup>166</sup> *Ibid* para 10.

<sup>167</sup> *Ibid* para 2.

<sup>168</sup> *Djzaia and Bellili v Spain* (n 146) para 2.1.

<sup>169</sup> *Ibid* para 2.2.

<sup>170</sup> *Ibid*.

<sup>171</sup> *Ibid* para 2.4.

<sup>172</sup> *Ibid* para 2.8.

<sup>173</sup> *Ibid* para 2.19.

<sup>174</sup> See further UNCESCR General Comment No 4 (n 1) para 18 and UN CESCR General Comment No. 7 (n 164) para 16.

<sup>175</sup> *Djzaia and Bellili v Spain* (n 140) para 17.2.



The Committee considers the State party's arguments as insufficient to demonstrate that it has made all possible effort, using all available resources, to realize, as a matter of urgency, the right to housing of persons who, like the authors, are in a situation of dire need. For example, the State party did not explain that denying the authors social housing was necessary because it was putting its resources towards a general policy or an emergency plan to be implemented by the authorities with a view to progressively realizing the right to housing, especially for persons in a particularly vulnerable situation.<sup>176</sup>

That is, although the state would have been able to provide a justification for the denial of social housing to the family, this policy justification would *itself* have had to comply with the State's obligations under the right to housing. Harkening back to the South African approach, the Committee also noted that the policy would have to take particular account of the vulnerable or those in situations of dire need.<sup>177</sup>

Second, the Committee criticised the State's housing policy specifically on the grounds of the commoditisation and financialisation of social housing stock. The Committee noted that, despite having given the reason as the need to 'balance the budget'<sup>178</sup>:

the State party has not explained to the Committee why the regional authorities in Madrid ... sold part of the public housing stock to investment companies, thereby reducing the availability of public housing, despite the fact that the number of public housing units available annually in Madrid was significantly fewer than the demand, nor has it explained how this measure was duly justified and was the most suitable for ensuring the full realization of the rights recognized in the Covenant.<sup>179</sup>

While the Committee acknowledged that the State had a 'certain latitude'<sup>180</sup> in disposing of its resources and making budgetary decisions, and that in times of serious economic crisis backward steps might be possible,<sup>181</sup> such steps – and in particular, the sale of social housing – had not been proven necessary in this case.<sup>182</sup>

This bold statement on the part of the CESCR indicates that the Committee will scrutinise a state's housing policies in the broadest sense, as well as reinforcing the UN Special Rapporteur on Adequate Housing's position that a financialised housing system by definition violates the right to housing.<sup>183</sup> The Committee's approach demonstrates how the right to housing can be used to place the individual human being at the centre of the policy question, and to hold the state to account when it fails to do so, even while acknowledging that States have latitude in their policy decisions.

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<sup>176</sup> Ibid, para 17.5. With thanks to JC Benito Sanchez, for providing me with a translation from the Spanish in advance of the English version of the case. See *The CESCR Decision in M.B.D. et. Al v Spain: Evictions without Suitable Alternative Accommodation* at <https://medium.com/@jcbensan/the-cescr-decision-in-m-b-d-et-al-v-spain-evictions-without-suitable-alternative-accommodation-98cb39ad049e> (accessed Oct 23 2017).

<sup>177</sup> *Djzaia and Bellili v Spain* *ibid*.

<sup>178</sup> Ibid para 17.5.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid. para 17.6.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> UN Special Rapporteur on Adequate Housing A/67/286 (n 130).

The decision is particularly important in that it demonstrates how the right to housing can be used to counter action that is justified on the abstract basis that it will make more housing available through financialisation and market growth, while in the concrete instance making marginalised individuals and families homeless. Such reasoning based on human rights principles could be used, for example, to counter the sale and privatisation of social housing, particularly where the benefits cannot be shown to flow to the most marginalised and vulnerable individuals and communities.

## V CONCLUSION

The dehumanising capacity of housing policy is all too clear in the policy history traced above. Grand visions of social change through housing have often rested on philanthropic paternalism. These visions are problematic, especially when they are imposed not for the good of the individual, but for the larger good, and are at their worst when imposed out of self-interest. Similarly, the commodification and financialisation of housing have been underpinned by discourses that remove the person as a human being with a need for safe, adequate and secure housing, from the centre of housing policy replacing her with a consumer or ‘leveraged investor.’ The commodification of housing relies on a conception of individuals as consumers of housing, placing the emphasis on the house as asset. In the case of financialisation, the emphasis is on the financial instrument for the good of the financial system as a whole. Absent an ever increasing thirst for homeownership, which for most can only be slaked with a mortgage, global economic growth through housing financialisation cannot be sustained. As such, financial institutions – and many national governments – have an incentive to perpetuate policies of homeownership in market conditions. Yet, despite deep ideological commitments by governments to homeownership as an inherent good,<sup>184</sup> financialisation enables the removal of the occupier as a person of any individual worth or agency, and perhaps even more startlingly, enables the removal of the occupier as a unit of any significance at all.<sup>185</sup>

Human rights, however, place the individual and her agency, dignity and personhood at the centre of every question. Although open to interpretation and political negotiation as to their meaning, scope and content, human rights create lines that governments cannot cross, and ensure certain standards of decency – of humanity – for each person. As a human right, the right to housing offers a powerful response to the dehumanising tendencies of housing policy. Taking a human rights approach to housing policy, we could draw on examples from South Africa, and the individual Complaints mechanism under the ICESCR. In South Africa, housing policy is measured explicitly against the principles of human rights, and these principles, which are enshrined in the Constitution, can be used to ensure that housing policy takes account of the rights and needs of the most marginalised and worst off, and to give voice to those most in need of housing. The CESCR, which is only now beginning to develop a body of case law on the right to housing under Article 11(1) of ICESCR, has already demonstrated that the right can be used to insist that policies that render individuals and families homeless, in service of larger economic or political goals, will be impermissible. In this way, they insist on the equal moral worth of each person.

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<sup>184</sup> Conservative Party Manifesto 2015 (n 124); Department for Communities and Local Government *Homes for the Future: More Affordable, More Sustainable* (2007) Housing Green Paper July Cm. 7191; *Laying the Foundations*, (n 104); 1971 White Paper (n 78).

<sup>185</sup> A/HRC/34/51 (n 4) para 30 – 33.

When the discussion of housing shifts from the personal, familial or household level to those macro levels where housing is understood in the aggregate, the policies and discussions around it can all too quickly become divorced from any consideration of the people who live in it. In England, the dehumanisation of housing policy in the present is one manifestation of a chain of historical processes, in which housing has played a role in the creation of productive and pacified workers, self-sufficient asset holders, and leveraged investors. Yet at its heart, any discussion or conception of housing should be about the human person who lives, or will live, in the house, even when other interests will often play a role. The material fact of being housed has a crucial connection with our enjoyment of privacy, the construction of our identities, our ability to exercise autonomy and freedom, and participate in society as full human beings and legal subjects.<sup>186</sup> We can make a commitment to the role housing plays in the dignity and equal moral worth of the human being when we make a commitment to treating housing as a right, and placing the dweller at the centre of every policy question. The right to housing, thus, offers a touchstone for the creation of a more positive housing policy, one that takes into account every person as a human person, not just for her potential as a productive worker, self-regulating and responsible asset holder, or savvy financial actor.

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<sup>186</sup> See further Hohmann, *Right to Housing* (n 3).