

The true radicalism of the right to housing

JESSIE HOHMANN

Introduction

The right to housing grabs few headlines, but at the same time it enjoys a legal status beyond its public persona. Set out as part of the right to an adequate standard of living in the Universal Declaration of Human Rights, it is now codified in the International Covenant on Economic, Social and Cultural Rights. At the regional level, the right is protected in the Revised European Social Charter, and has been implied into the African Charter on Human and Peoples' Rights. A right to housing is also enshrined in over 50 national constitutions, from France to South Africa, Brazil to Vietnam.

The wide scope of its legal protection suggests that we recognise that housing is of fundamental importance to human life. Yet, when I mention that the human right to housing is the subject of my research, people are often sceptical of its significance, and even dismissive of its existence. In fact, there are three common reactions to the suggestion that there is a right to housing. I meet these in conversation with friends and acquaintances, and they are also prevalent in the scholarly literature and debates on human rights.

Three criticisms of the right to housing

The criticisms generally are as follows. First, enforcing a right to housing is inappropriate: the economic implications of the right are enormous and would bring national economies to their knees. Second, the right to housing cannot be enforced by courts, because letting judges make such decisions gives them a policy role only appropriate to an elected legislature. Finally, some allege that housing just isn't a right, and to suggest otherwise is a fundamental misunderstanding of what human rights are.

All three of the criticisms suggest that the right to housing is *too* radical, *too* challenging, in some way. And yet, in the way that the right to housing has been interpreted by courts and by those international bodies responsible for developing it, it appears to hold no such radicalism. Instead, the right emerges as a thin concept, which carries little risk – or promise – within it. It is vaguely defined in human rights documents, and cases have largely failed to clarify it. When the right is adjudicated before courts or international adjudicatory bodies, any protection given is, almost universally, only procedural in nature. Most worryingly, the way the right is

Majuro Atoll, capital of the Republic of the Marshall Islands. Poorer settlements tend to be built on the ocean side of the thin islands, while better-off houses generally face the lagoon beach. It is the ocean side of these islands that are most immediately at risk from rising tides and increasingly intense tropical storms which mark climate change in the islands. Photo: Skye Hohmann.



defined seems to be profoundly disconnected from the actual circumstances of suffering and deprivation that originally motivated its inclusion in the corpus of human rights. In other words, the right appears to have been de-radicalised.

Claiming a de-radicalised right

My research into the right to housing has been motivated, in part, by the question of *why* people continue to turn to this right – to claim it and make arguments in its name – when it has proved so thin and provided so little. These questions propelled my Postdoctoral Fellowship from the British Academy. The results of my research¹ suggest that the right to housing does contain within it the potential for real, and radical, change. Its radicalism does not, however, lie in the three fears expressed above. Rather, these issues act as smokescreens, which keep the debate from progressing in more meaningful ways.

The persistence of these debates on the political and economic radicalism of the right to housing should be questioned further. Here, however, I want to suggest that the true radicalism of the right to housing should be understood as *social* in nature. In order to illustrate my point, I will give three examples drawn from my research.

The true radicalism of the right to housing

What appears most strikingly from my research is that the radical potential of the right to housing does not lie in its economic or budgetary implications. Neither does it lie in any particular tendency to remove matters from the hands of politicians and place them in the domain of the courts. Finally, to argue that the right to housing is not a human right fails to acknowledge its codification in human rights, and must be treated as a wish that the right was not a right, rather than a statement that it cannot be one.

Instead of focusing on these tired debates, I will argue that the right to housing has the potential to change fundamentally the structures upon which our current social organisation rests. It is in this respect that the right is most radical, as the following examples illustrate. The first is the potential for a right to housing to alter fundamentally the role of women in society. The second is the role of the right to housing in rebuilding communities, even nations. The third is the role of the right to housing in responding to the assimilation and acculturation of indigenous and minority groups.

Women's social roles

The association of the woman to the home is based on and reinforced by the idealisation of the home as a sanctuary, particularly for the family. In western political philosophies (which legal rules serve to reinforce and

protect) the home operates as a private zone – an important retreat from the pressures of society. A key aspect is that the home is seen as outside the economy. Yet at the same time, the family is viewed as an economic unit. The family is the entity, and the home the location, in which it is assumed that basic human needs of food, shelter and care will be met. To this day, moreover, it is largely the labour of women which powers and sustains the home as a private domain. Because it is assumed that the family unit is the natural provider of basic human needs, these needs are not conceived of as rights due from the state, except in some cases when the family is unable to provide.

What would it mean to undo the *assumption* that women's hidden labour power should sustain a society based on individual family homes, and instead ask what it would mean to consider housing as a publicly provided right? In order to consider what life would be like if housing were not a private, family asset, we need to unpick common suppositions about what things are and are not rights, and the deeply structural social effects those assumptions carry with them. Let me give an example that illustrates not only these hidden assumptions, but also the argument that housing cannot be legitimately considered a right.

In an influential argument on the nature of human rights, Jack Donnelly² provides a 'deconstruction' of human rights that neatly illustrates how certain needs are placed beyond the sphere of human rights entitlement precisely because of their assumed provision by the family: 'charity, compassion, and the support of loving family and friends' are simply not, Donnelly says, human rights due from the state.³ But this statement lacks sufficient specificity, because we must ask what *sort* of support we wish the state to provide, and what sort the family. It is this underlying question that our example of a *right* to housing allows us to consider.

It is for this reason that the right to housing remains a radical proposition, particularly in its 'positive' aspects. To take basic, private needs and translate them into public entitlements challenges not only accepted categories of human rights, but what Engels termed the 'cellular form of civilised society'⁴ represented by the family. Thus, if we took the concept of a right to housing seriously, and thought about housing as a public good, we would be able to examine our deeply held assumptions about women's social (and economic) roles and the part that rights play in sustaining inequalities within and beyond the family. To undertake this examination would provide a powerful space to reimagine the form of society. It would challenge us to ask why we treasure the family home (perhaps with good reason) as a social and economic unit. And it would force us to consider the implications of the physical infrastructure of our neighbourhoods, cities and nations for what is socially and economically possible for individuals and for intimate groups such as the family.

¹ To be published in March 2013 as J. Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart).

² J. Donnelly, 'The Social Construction of International Human Rights', in T. Dunne and N.J. Wheeler (eds), *Human Rights in Global Politics* (Cambridge, Cambridge University Press, 1999).

³ Ibid p. 79.

⁴ F. Engels, 'The Origin of the Family, Private Property, and the State', in R.C. Tucker (ed.), *The Marx-Engels Reader*, 2nd edn (New York, Norton and Company, 1978), at p. 739.



Broad Street, Oxford, might at first appear filled with single family homes yet most of these buildings house shops and student rooms rather than the nuclear family. Photo: Skye Hohmann.

Housing, citizenship, and community

It might be argued that such fundamental, social change is too much to ask from any human right. Yet the right to housing has been invoked in service of just such ambitious social transformation: it was included in the post-Apartheid South African Constitution with this very intent.

In South Africa, a right to housing was explicitly premised on the recognition of its potential to bring excluded citizens within the new, post-Apartheid nation, and to overcome the denial of rights that is the legacy of Apartheid. Apartheid policies were based on a logic of spatial marginalisation, which created and reinforced the political and material dispossession of black and ‘coloured’ South Africans. Relegated to the poorest and least habitable areas, cut off from equal participation and opportunity, and denied any but the most rudimentary services and infrastructure, the overwhelming majority of South Africans lived in inadequate housing, in peripheral townships of informal shanties.

As a direct result, the housing situation in South Africa remains one of dire need and deprivation. Thus, as Constitutional Court Judge Albie Sachs has noted, questions about the right to housing are also questions about how to bring into society those citizens whose lives ‘have been spent in systematised insecurity on the fringes of organised society’.⁵ Implicit in Justice Sachs’ statement is the understanding that the right has the potential to foster new identities, not only for individuals and groups, but for the State itself. As such, the recognition of the right to housing is conceived as a new compact of citizenship in South Africa, and the state’s housing policies are premised, at least in part, on the assumption that the provision of adequate housing will support the development of

individuals as fully functioning national citizens, rather than as a marginalised underclass.

The South African example illustrates the value of a right to housing as a discourse and practice of social reconstruction, even of social engineering. Yet the ways in which housing policies can be harnessed in service of social engineering projects point to a darker side of the state’s relationship to the housing of citizens. It is to this point that I now turn.

Housing and indigenous/minority identity

If the right to housing has been used in South Africa to bring people into a new compact of citizenship, housing policies also have a long history as tools to deny and erase the identities and existence of certain communities.

This has particularly been the case for indigenous peoples, over whom housing policies have been used to disastrous effect. On the one hand, states have refused to extend rights, citizenship or entitlements based on the non-conformity of minority housing. A depressingly contemporary example concerns Roma communities in France, who recently challenged the French State’s refusal to grant them housing benefit. The French government argued that in order to gain such housing benefit, Roma need merely give up living in caravans.⁶ Simultaneously, the imposition of settler style housing has been used to deracinate and erase the identity of indigenous communities. From Israel to the Canadian Arctic, the provision of settler housing to indigenous populations has been a sophisticated technique in the quest to erase indigenous culture, even existence. As Peter Read notes, a cottage provided for an Aboriginal family by the Australian state was ‘less a shelter than an instrument of management, education, and control.’⁷

⁵ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and others* (CCT 22/08) [2009] ZACC 16 (10 June 2009) at para 177.

⁶ See the claim made before the European Social Committee in *ERRC v*

France (Case no 51/2008), Decision on merits, 19 October 2009.

⁷ P. Read, ‘Preface’, in P. Read (ed), *Settlement: a History of Australian Indigenous Housing* (Canberra, Aboriginal Studies Press, 2000).

What role might a right to housing play here? A right to housing has the potential to recognise the social and cultural elements of housing, whether they be indigenous ties to ancestral land, or culturally specific forms of housing such as caravans. Indeed, the African Commission on Human and Peoples Rights has begun to respond to such state policies through a sensitive understanding of the cultural elements of housing.⁸ In concert with the insights of the South African example above, keeping sight of the individual social and cultural factors that make housing a home within the right to housing allows us to respond to the imposition of housing on some individuals for the good of the community as a whole.

Understanding the social, the economic, and the political

These three examples lead back to a discussion of the relationship between the social radicalism of the right to housing, and its economic and political radicalism.

Of course, it is evident even from a brief tour through these examples that radical social ideas have economic and political implications. Treating housing as a public good, rather than a privately provided asset, would indeed have major financial implications. In addition, any change to social identity carries with it an opportunity for change in political identity. My point is not that there are no political or economic implications within the right to housing. Rather it is that, because of the exclusive focus on the political and economic arguments which dog – and dominate – debates on this right, the actual social potential is obscured.

The argument that courts cannot legitimately oversee a right to housing has largely been countered by practice around the world. Meanwhile, the fear of the particular economic implications of the right to housing has been overcome by studies illustrating the substantial costs of fully resourced prison and electoral systems, for example, which are necessary for the realisation of other human rights. Nevertheless, these arguments persist, and provide a smokescreen that means that it takes some digging to uncover any social radicalism, and reclaim the possibilities in the right to housing.

For me, the right to housing and the particular debates over it serve as an entry point into a larger debate on the role of social and political change in the realisation of those rights often thought of as particularly economic in nature. Its openness to competing arguments, and the fact that it remains unsettled as a legal standard, provide an opportunity to examine the deeply held assumptions about the relationship between the state and the citizen, and the role of human rights in that relationship. The right to housing's very contested status may provide an avenue of particular power for those (like me) who suspect that one of the real promises inherent in human rights lies in their ability to show us the hidden contours of our assumptions about justice and injustice, inclusion and exclusion, and power and powerlessness.

Dr Jessie Hohmann was a British Academy Postdoctoral Fellow, 2009-2102. She is now Lecturer in Law, Queen Mary, University of London.

Six months after the Tsunami of March 2011, Minami Sanriku, Japan. Nearly two years after the disaster, the majority of residents are still living in temporary housing. While the authorities plan a new town, the delay in realising adequate housing has been a long one.
 Photo: Skye Hohmann.



⁸ Hohmann, *The Right to Housing*, Chap 3 s III.