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# 'The Right to Housing' for Homeless People

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❯ **Abstract_** *FEANTSA has a longstanding commitment to 'a rights-based' approach to tackling homelessness, and this commitment is shared by many working in the homelessness field. Rights-based approaches are intuitively appealing, promising radical solutions to complex issues of housing need and social exclusion. But what precisely do we mean by rights-based approaches, and do they deliver the things we expect them to in practice? This chapter considers the relevance of the centuries-old debate about the existence or otherwise of the 'natural rights' of human beings, before moving on to consider the applicability of universal 'human rights' in the housing and homelessness field. Within the national realm, 'programmatic' citizenship rights, as well as positive legal rights that are 'enforceable' by individual citizens in domestic courts, are critically scrutinised with respect to their efficacy in tackling homelessness. The chapter concludes that, while the notion of rights as 'absolute' can sometimes tend to close down debate, it is crucial to maintain a critical perspective on rights discourses within the homelessness field on both philosophical and pragmatic grounds.*

❯ **Keywords_** *Citizenship, deontology, enforceable rights, homelessness, human rights, legal rights, legal positivism, natural law, natural rights, rights to housing, social rights, utilitarianism*

## Introduction

The European Federation of National Organisations Working with the Homeless (FEANTSA) has a longstanding commitment to 'a rights-based approach to tackling homelessness' (FEANTSA, 2008, p.1). In furtherance of this commitment it has set up an Expert Group on Housing Rights, organised conferences, provided a database of relevant international case law and initiated international judicial proceedings. Most recently, FEANTSA supported the establishment of 'Housing Rights Watch', described as 'a European network of… associations, lawyers and academics from different countries, who are committed to promoting the right to housing to all' (Housing Rights Watch, 2010, p.1).

A crucial contribution to this rights-based work was made by Kenna in *Housing Rights and Human Rights*, published by FEANTSA in 2005. Kenna's book, examines the development and status of housing rights across Europe and internationally, and positions the right to housing as a basic human right, with homelessness defined as the absence or denial of those housing rights. Kenna argues that housing policy is being squeezed by neo-liberal policy agendas that seek to reduce the public sphere and emphasise the role of the market in allocating resources, and contends that housing rights provide a potential counterweight to these trends, offering policy makers a different marker of success, and empowering homeless people and their advocates by providing them with a right of action. However, rights enforcement is often weak and, according to Kenna, those committed to helping homeless people need to focus efforts on ensuring that 'the human rights obligations accepted by States at international level are vindicated at national, regional and local level' (2005, p.29). Available enforcement mechanisms must be utilised and improved; new remedies for human rights violations must be developed; and existing international, regional and national frameworks should be brought into line with each other.

Kenna's book provides a clear articulation of a specific human-rights-focused perspective on tackling homelessness, but a much looser notion of 'rights-based approaches' tends to prevail in the homelessness field and enjoys widespread support. This is understandable: such rights-based approaches are intuitively appealing, promising radical solutions to complex issues of housing need and social exclusion that offer to empower disadvantaged social groups and overcome the stigma of discretionary welfare assistance (O'Sullivan, 2008). However, beneath this ostensible appeal lie fundamental conceptual and empirical questions: what precisely do we mean by rights-based approaches and do they deliver the things we expect them to in practice? 'Rights' can be moral or legal, abstract or specific, enforceable or unenforceable, national or international. The following critique of the concept of

'rights-based approaches' in the homelessness field attempts to take account of this diversity of meaning when exploring the philosophical foundations of 'rights' discourses and their practical application to housing and homelessness.

We begin by considering the relevance of the centuries-old debate about the existence or otherwise of the natural rights of human beings, before moving on to consider the applicability of human rights – which can in many ways be seen as the modern cousin of natural rights – to the housing and homelessness field. The practical and philosophical objections to either of these sorts of moral rights in attempting to address substantive social needs such as housing are considered, and also the defences to such criticisms. Moving from the international or 'universal' realm, we then look at rights discourses in the national or domestic realm. Here it is necessary to consider citizenship rights that are programmatic in nature, as well as positive legal rights that are enforceable by individual citizens in domestic courts. Again the merits and demerits of these forms of rights are considered with respect to tackling homelessness.

## The Universal Realm: Natural and Human Rights

### Natural law and natural rights

Natural or doctrinal rights refer to a set of universal, inalienable rights held by all human beings (Norman, 1998; Dean, 2002). This conception of rights began to emerge as part of the Western Enlightenment during the seventeenth and eighteenth centuries, building on the ideas of classical philosophers such as John Locke (1690). Bills of Rights in England (1689), America (1789) and France (1789) reflected for the first time an understanding that individuals were the bearers of rights. This liberal tradition conceives of rights as fundamental, bestowed by God or another theological source or by some understanding of the nature of humanity. Natural rights have largely been concerned with people's civil and political rights rather than their social rights to substantive welfare entitlements. Nevertheless, as early as 1791 Thomas Paine argued that 'poor relief' under the Poor Law ought to be replaced with a 'right to relief' (Dean, 2010).

The jurisprudential roots of natural rights are to be found in the natural law tradition, which holds that 'what naturally is, ought to be' (Finch, 1979, p.29). In other words, the law of nature should be used as a standard against which one can measure the validity or rightness of manmade law. Over the centuries, legal theorists have sought to derive this law of nature variously from universal nature, divine nature and human nature. The philosophical roots of natural rights lie in the Immanuel Kant-inspired (Kantian) school of 'deontological' moral philosophy. According to this deontological style of ethics, an action is deemed morally right or wrong on the basis of the natural

or 'universalisable' duties people owe to each other, in line with the 'categorical imperative' to always do one's duty regardless of the consequences. A rights-based approach is most often interpreted as deontological because rights can be seen as rules or 'side constraints' (Dworkin, 1977) that (ethically) limit the actions that can be taken against individuals in order to pursue collective goals.

Deontological ethics are normally understood in contradistinction to consequentialist moral theories. Consequentialism dictates that morally 'good' actions are those that tend to bring about 'valuable states of affairs' (Williams, 1995). The most influential strand of consequentialist ethics – utilitarianism – supports actions that maximise the sum total of societal 'welfare', popularly referred to as the 'greatest happiness of the greatest number' (Norman, 1998). Strongly associated with the utilitarians, and especially with Jeremy Bentham (1789), is the jurisprudential tradition of legal positivism, which firmly rejects natural law and natural rights and insists instead on a strict separation between the 'Is' (manmade, positive law) and the 'Ought' (value judgements on that law). Legal positivist and utilitarian thinkers have highlighted the reactionary implications of the 'absolutist' natural law doctrine and the way in which its speculative character leaves it open to abuse:

> … natural law is at the disposal of everyone. The ideology does not exist that cannot be defended by an appeal to natural law. (Ross, 1974, p.261)

However, utilitarianism is also open to some obvious objections, not least its disregard for the distribution of well-being, and for failing to respect people (in Kant's famous formulation) as ends and not means. These weaknesses go a long way to explaining the continuing appeal of deontological – and specifically human rights-based – philosophical approaches in the modern era.

### The emergence of human rights

Although natural law and natural rights have now largely been discredited as a basis for rights discourses (Turner, 1993), human rights are in many ways their modern successor. Human rights most often find their expression in international instruments, many of which encompass social rights, including rights to housing. For example, Article 25 of the United Nations Universal Declaration of Human Rights (1948) asserts:

> Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services.

While this resolution is not formally binding, it is considered a key part of international customary law and has provided the principal foundation for subsequent debate on universal human rights. Other international instruments do impose obligations on ratifying states, binding in international law, which are relevant to the right to housing.

These include the UN International Covenant on Economic, Social and Cultural Rights (1966) and, at European level, the Charter of Fundamental Rights (European Union) (2000) and the European Social Charter (Council of Europe) (1961, revised in 1996) (see Kenna, 2005, for a detailed discussion of these instruments).

Perhaps of greatest practical consequence for our present purposes is Article 31 of the Revised European Social Charter (1996). Article 31 obliges contracting states to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination and to make housing affordable to all. Crucially, a mechanism for collective complaints was introduced under this charter, which FEANTSA has successfully used, for example to establish that France violated the right to housing for all, particularly with respect to the most vulnerable members of the community (Kenna and Uhry, 2008).

According to human rights advocates, every human being ought to have access to the rights specified in these international instruments, including the right to housing, and nation states, as well as international human rights organisations, ought to ensure their delivery. Human rights then – like natural rights – can be understood as moral statements about human beings.

### The limits of human rights

Three key critiques of human rights, and their applicability in the housing and homelessness field, are considered here.

First, and most fundamentally, intrinsic to the notion of human rights is the idea that they are self-evident, inalienable and non-negotiable: 'absolute' in other words. But are the rights declared by the architects of international and European human rights instruments – particularly social rights such as the right to housing – any less politically contested than other claims about how material resources should be distributed in society? One could argue that labelling such claims as moral 'rights' is a mere rhetorical device intended to shut down debate by investing one's own particular political priorities with a 'protected' status; after all, as Dworkin (1977) put it, 'rights are trumps'. But if one dispenses with theological or other natural law justifications for human rights, then what is the foundation of their protected status? Many human rights supporters argue that they are not anchored in a pre-social natural order or in divine reason, but rather are socially constructed and inter-subjective, rooted in a broad normative consensus about the things that all human beings are morally entitled to in order to attain a basic standard of living and to participate in society (Dean, 2010). But the idea that such a consensus exists at a global level is, at the very least, highly arguable (Finch, 1979; Miller, 1999; Lukes, 2008).

In many ways this debate boils down to the fundamental challenges inherent in justifying universal moral norms in a 'post-metaphysical age' (Lukes, 2008, p.117). Lukes (2008) sets himself the ambitious goal of defending just such a contemporary objective morality, commencing this task by posing the question:

> Can one identify components of wellbeing that are present within any life that goes well rather than badly: conditions of human flourishing? (p.129).

His answer is to look not to utilitarian or Kantian ethics, but rather to the Aristotelian-inspired 'capabilities approach' (Sen, 1992), which seeks to minimise inequalities in the 'positive freedom' that people enjoy to achieve 'valuable functionings' in key aspects of their lives. Lukes' particular interest is in Martha Nussbaum's (2000) development of this approach into a list of ten 'central human capabilities', comprising: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment. Several of these capabilities are highly relevant to housing and homelessness, especially bodily health, bodily integrity and control over one's environment (McNaughton Nicholls, 2010). Nussbaum claims that this list of capabilities derives from:

> … an intuitively powerful idea of truly human functioning that has roots in many different traditions and is independent of any particular metaphysical or religious view. (2000, p.101).

She has since argued that the list gives an account of 'core human entitlements that should be respected and implemented by governments of all nations' (Nussbaum, 2006, p.70). In a similar vein, Norman (1998) argues that a derivative concept of rights can be based on the satisfaction of basic human needs, as there are rational and objective ways of determining what these needs are. At an even more basic level, Turner (1993) argues that, in the absence of natural law, the philosophical foundations of human rights can most effectively be defended via an appeal to the universal nature of human frailty, particularly the frailty of the body.

Such arguments are intuitively appealing, based as they are on the common-sense premise that people have a right to what they need, albeit that positivists might argue that they illegitimately derive an 'Ought' (a value statement) from an 'Is' (a factual statement). However, even if it is accepted that the Is/Ought gap can be bridged by statements about human need, McLachlin (1998) gives good reasons for resisting any simple equation of needs and rights: there are many things we need that cannot be provided to us as of right. Ignatieff (1984), for example, argues that love, belonging, dignity and respect are all things that we need, but they cannot be provided within a formal framework of rights.

The second common critique of human rights concerns their lack of enforceability within current institutional contexts. Scruton (2006, pp. 20–21) powerfully articulates this objection:

> Rights do not come into existence merely because they are declared. They come into existence because they can be enforced. They can be enforced only where there is a rule of law… Outside the nation state those conditions have never arisen in modern times… When embedded in the law of nation states, therefore, rights become realities; when declared by transnational committees they remain in the realm of dreams – or, if you prefer Bentham's expression 'nonsense on stilts'.

Clearly anchored in the legal positivist tradition, Scruton's position is reminiscent of the longstanding jurisprudential argument about whether international law is in fact 'really' law at all (Hart, 1961; Finch, 1979).

Arguing from a very different perspective, Arendt (1973), writing after two world wars had killed and displaced millions of people, exposed the limits and 'hopeless idealism' (p.269) of the human rights discourse, and in particular:

> … the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as "inalienable" those human rights, which are enjoyed only by citizens of the most prosperous and civilised countries, and the situation of the rightless themselves' (p.279).

In his interpretation of Arendt's position, Isaac (2002, p.509) makes the telling point that:

> … those very rights long considered universal and attached, as it were, to individuals by virtue of their very humanity, require for their existence institutional supports that are utterly contingent and by no means universal.

Kenna (2005), writing specifically about housing rights, is somewhat sympathetic to these critiques of the human rights discourse, but focuses on the ways in which this gap could be narrowed through better systems of international governance and accountability in order to realise enforceable human rights beyond the boundaries of the nation state (see above).

However, if such an exercise were to bear fruit, this would bring us to the third key objection to human rights approaches to tackling social issues such as homelessness. The 'rights' expressed in international instruments are, inevitably, broad and abstract in nature rather than detailed, delimited and contextualised. If such abstract rights were in fact to be rendered routinely enforceable via courts (international or domestic) this would amount to a major transfer of policy-making power from the political to the legal sphere. Particularly in the case of social rights such as the right to housing, the granting of wide-ranging policy discretion to the courts implies judges determining the allocation of scarce resources in situations where

'hard choices' have to be made between a range of needy and/or deserving cases (see also King, 2003). The term 'over-socialisation' has been used to describe the situation whereby courts are inappropriately used to decide policy issues (Dean, 2002) and sensitivity to this point lies behind the classic international law distinction between obligations of 'means' and obligations of 'results' with respect to social rights such as housing (Hammarberg, 2008). Aside from the obvious constitutional concerns about judges rather than (one would hope democratically elected) politicians setting broad policy aims and priorities, it would be unwise for those of a progressive political bent to assume that the judiciary is always apt to be on their side (Griffiths, 1991).

In spite of these weaknesses, human rights discourses retain a key strength. As Arendt's work shows, the concept of human rights highlights the needs and distress of 'rightless' people, including refugees and other displaced populations who do not benefit from the advantages of citizenship and the legal protection of a nation state (see below). Furthermore, it is irresponsible, as Isaac (2002) argues, simply to deconstruct and expose the weaknesses of the human rights discourse without proposing alternative, superior ways of pursuing social justice, or at least humanitarian goals, on a global basis (Miller, 1999). So, for all their philosophical and practical limitations, human rights may be considered a 'useful fiction', justified, perhaps ironically, on the consequentialist basis that they do more good than harm, especially in countries where democratic traditions and the protection of minorities remains weak or underdeveloped.

## The National Realm: Citizenship, Programmatic and Legal Rights

### Citizenship and social rights

Our discussion thus far has focused on rights, and particularly housing rights, at the international level. But there are also relevant rights discourses at the national level: in fact, the concept of citizenship rights pre-dates that of human rights by some considerable margin (Dean, 2010).

The classic account of the development of 'social' citizenship rights in the post-war era is by T. H. Marshall (1949), albeit that his evolutionary account (part empirical, part normative) is heavily influenced by the specific UK experience (Turner, 1993). In contemporary debate, social rights – as opposed to civil or political rights – have been defined as substantive entitlements to goods or services owed to individuals by the state (Dean, 2002). The decommodification of goods and services such as

education, health care and a basic income, so that individuals have access to these items independently of their participation in the labour market, is central to welfare regime theory (Esping-Andersen, 1990).

Housing has famously been described as the 'wobbly pillar of the welfare state' (Torgersen, 1987) because it is still provided predominantly through market mechanisms in most developed economies (Bengtsson, 2001). Nonetheless, there has been a great deal of debate in recent years about a 'right to housing' in a variety of national contexts, although what is meant by such a right is often far from clear (Bengtsson, 2001).

### *Programmatic and legal rights to housing*

A key distinction must be drawn between legal or positive rights to housing on the one hand, and programmatic rights on the other. Legal rights are enforceable via domestic court systems at the behest of individual citizens, whereas a programmatic approach 'binds the State and public authorities only to the development and implementation of social policies, rather than to the legal protection of individuals' (Kenna and Uhry, 2006, p.1).

Programmatic rights are thus important in so far as they 'express goals which political actors… agree to pursue' (Mabbett, 2005, p.98). In this vein, Bengtsson (2001, p.255) describes the right to housing as a 'political marker of concern', arguing that rights to housing can only be understood within specific national contexts, with legalistic rights implied by selective welfare regimes, and programmatic rights (which he terms a more social concept of rights) associated with more universalistic regimes. Interestingly, Bengtsson highlights that this interpretation of the right to housing reflects Marshall's (1949) original (but often misunderstood) conception of social rights as obligations of the state to society as a whole, rather than as claims that must be met by the state in each individual case.

It is important to note that programmatic rights to housing, although unenforceable by the individual citizen, can find legal expression, very often in constitutional provisions (Fitzpatrick and Stephens, 2007). For example, in a number of European countries, including Belgium, Finland, Portugal, Spain and Sweden, there is a 'right' to housing contained in the national constitution, although there are seldom legal mechanisms provided to enable homeless individuals to enforce that right. The Swedish constitution 'includes the word "right" but this was never interpreted to mean that there was an enforceable right to housing for the individual citizen' (Sahlin, 2005, p.15).

From a legal positivist's point of view, such rights are barely worthy of the name, as captured in the common law maxim 'no right without remedy'. Their interest would lie solely in positive rights (sometimes called black-letter rights) enforceable by individual citizens via the relevant domestic court system. Such rights are far from common in the homelessness field – in the sense of an enforceable right to accommodation for those who lack it[1] – and where they do exist are almost always limited to emergency accommodation (Fitzpatrick and Stephens, 2007). Thus, local authorities in Germany have a legally enforceable obligation (under police laws) to accommodate homeless persons who would otherwise be roofless. In Sweden there is a right to emergency shelter under social services legislation. Polish social welfare law obliges communes to offer help to homeless people, including shelter in hostels, refuges and other institutional settings. Hungarian social welfare law requires local authorities to provide accommodation in shelters for people whose 'physical well-being is at risk'. A single jurisdiction within the US – New York City – provides a legally enforceable right to accommodation for the 'truly homeless' who have absolutely nowhere else to go.

With respect to enforceable rights to permanent or settled housing for homeless people, at present these appear to be limited to the UK and France.[2] The more longstanding arrangements in the UK, first established in 1977, provide that local authorities must ensure that accommodation is made available to certain 'priority need' categories of homeless people, mainly families with children and 'vulnerable' adults (Fitzpatrick *et al*., 2009). From the outset, the UK courts held that homeless applicants can challenge local authorities' decisions under this legislation by way of judicial review, and over the past few decades a very substantial body of administrative case law has been generated by the statutory homelessness provisions (Robson and Poustie, 1996). Homelessness applicants are also entitled to an internal review of the decision on their application, with a statutory appeal to a relevant court (on a point of law) additionally provided in England and Wales. In Scotland only, there is now the ambitious target that all 'unintentionally homeless' people will be entitled to settled housing by 2012, achieved via a gradual expansion and then abolition of the 'priority need' status. England seems to be moving in almost the opposite direction, with a very strong push towards 'homelessness prevention' in recent years and an associated sharp decline in statutory

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[1]  It is important to distinguish here between 'housing rights' (e.g. protection from unlawful eviction and harassment) and 'the right to housing' (for homeless people who lack accommodation) (Bengtsson, 2001; Bernard, 2008).

[2]  There are some other cases where the point is arguable, for example it has been posited that 'there are groups among those currently homeless in Finland for which it can be argued that they have an individual right to housing' (Helenelund, 2008, p.26). However, cases where such rights have in fact been enforced are extremely rare.

homelessness 'acceptances', leading to fears that certain local authorities may be engaged in unlawful gatekeeping that has denied some homeless households their statutory rights (Pawson, 2009).

A vociferous protest campaign in France resulted in emergency legislation being passed in 2007 to establish a legally enforceable right to housing (known as the DALO). From 2012 all social housing applicants who have experienced 'an abnormally long delay' in being allocated accommodation can apply to an administrative tribunal to demand that the state provides them with housing, and certain priority categories, including homeless people, have benefited from these rights since 2008 (Lacharme, 2008). This legislation was passed quickly in response to media pressure and there are concerns that its vagueness in key areas, as well as the complexities of the administrative framework in France, will frustrate its implementation (Loison-Leruste and Quilgars, 2009).

### The limits of legal rights to housing

There are some obvious reasons why enforceable legal rights to housing may be viewed as a progressive step in addressing homelessness. First and foremost, they may be seen as a preferred alternative to what Goodin describes as 'more odious forms of official discretion' (1986, p.232). Those who administer welfare goods or services such as housing have power over claimants because they have an effective sanction against them (Spicker, 1984), and it can be argued that legal rights-based approaches create a counter-hierarchy of power by giving service users a 'right of action' against service providers (Kenna, 2005). Rights-based approaches can thus be viewed as a bottom-up form of regulation that permits service users a central voice in holding service providers to account.

A second and linked argument is that providing welfare benefits such as housing as a matter of discretion stigmatises recipients, whereas receiving them as a matter of right does not. When service users are beneficiaries rather than rights holders, there is an implied debt of gratitude as the beneficiary is unable to honour the powerful norm of reciprocity. As such, the giver gains status, and the receiver loses it (Spicker, 1984). Rights-based approaches, it is argued, overcome this problem of stigmatisation (Dwyer, 2004) and safeguard the self-respect of welfare recipients (Rawls, 1971) because they reflect their equal status as citizens rather than their unequal status as dependants (Spicker, 1984). Legal rights thus become a key instrument in supporting a 'politics of recognition' that affords dignity to those living in poverty and using welfare services such as housing (Lister, 2004).

But there are counter voices. Enforceable legal rights such as a right to housing may be thought to contribute to the 'juridification of welfare', such that social policy becomes 'over-legalised', frustrating its fundamental purposes (Dean, 2002, p.157). There may also be practical limitations to legal rights-based approaches, with Goodin (1986), for example, highlighting the costs and difficulties faced by service users attempting to realise those rights. According to this view, legalistic approaches are fundamentally flawed as they place the burden of responsibility for ensuring that rights are met in the wrong place, redistributing power to those people least likely to be able to use it:

> In purely rights-based systems, the rights holders alone have legal standing to complain if officials fail to do their correlative duties. It seems to be sheer folly, however, to make their getting their due contingent upon their demanding it, since we know so well that (for one reason or another) a substantial number of them will in fact not do so. (Goodin, 1986, p.255)

Moreover, enforceable legal rights may be viewed as not only inefficient but also unnecessary, with good progress on addressing homelessness seeming to have been made in a number of countries in their absence. In Ireland, for example, a legal rights-based approach was explicitly rejected in favour of a social partnership model that appears to have worked reasonably well in reducing levels of homelessness (O'Sullivan, 2008). Irish commentators argue that rights-based frameworks encourage an adversarial rather than a problem-solving approach on the part of both local authorities and advocates (O'Sullivan, 2008), directing power and resources into the hands of the legal profession and away from service provision (see also De Wispelaere and Walsh, 2007).

Bengtsson (2001) also raises doubts about the benefits of legalistic rights to housing by highlighting the distinction with the more programmatic (or social) approach found in universalistic housing and welfare systems, such as in Sweden. In these universalistic systems, he explains, 'instead of granting citizens the formal right to go to court and try to play trumps' (p.265), the state intervenes in the 'functioning of the general market in order to make it fulfil better the housing needs of all households' (p.261).

On the other hand, international evidence suggests that enforceable statutory rights frameworks, such as those pertaining in the UK, make it far more difficult for social landlords to exclude the most vulnerable households from the social rented sector, as happens in a number of European countries including Sweden (Fitzpatrick and Stephens, 2007). Moreover, Tars and Egleson (2009) argue that legal rights to housing for homeless people (particularly the very strong version of such rights found in Scotland) provide benefits not only for the direct recipients,

but also for the wider population as a result of the 'psychological cushion of knowing there is a social safety net [which] is an essential component of maintaining basic human dignity' (p.213).

Finally, while there is always the danger of a naïve legalism that assumes that one can 'magic away' housing problems simply by legislating for a right to housing, one can equally argue that enforceable legal rights may be a potent force in leading positive policy change. For example, in the case of the French enforceable right to housing it has been commented that:

> enforceability of the right is no substitute for the measures needed to increase social welfare resources, regulate markets, or join up national and local policies. But we saw it as a necessary driver to ensure that the right to housing received real priority, and beneficial policy decisions. (Lacharme, 2008, p.23)

It may reasonably be concluded, to borrow a legal metaphor, that the 'jury is still out' on the relative benefits and disbenefits of legalistic rights to housing for homeless people. This is essentially an empirical question, requiring primary research that systematically compares the outcomes and experiences of homeless households in national housing systems where such rights do and do not exist.[3] Relevant research would focus not simply on legal processes and outcomes, but also on substantive experiences and outcomes from the perspective of homeless households themselves, and also, arguably, from the perspective of other households in housing need. This last point relates to persistent concerns within the UK, for example, that there is a 'moral hazard' intrinsic to the statutory homelessness framework, whereby it generates 'perverse incentives' for households to have themselves defined as homeless in order to gain priority access to social housing (see Fitzpatrick, 2008, for a detailed consideration of these perverse incentive arguments).

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[3]  One of the authors is engaged in doctoral research that attempts to contribute to filling this evidence gap by comparing the experiences of homeless households in the (strongly legal rights-based) Scottish system with the (non legal rights-based) Irish system.

## Conclusion

This chapter has attempted to summarise the complexity of the concept of rights within the homelessness field. It has sought to demonstrate that it is perfectly possible to object to natural and/or human rights, on either philosophical or pragmatic grounds or both, but be in favour of clearly delimited legal rights to housing for homeless people. Conversely, one may be in sympathy with the discourse of moral rights, but be sceptical with respect to the 'juridification' and atomisation associated with individually enforceable legal rights. If one is promoting a rights-based approach to tackling homelessness, then it is necessary to be clear about the scope and nature of the sort of rights-based approach one is taking, as all approaches have distinctive limitations and strengths.

One overarching point to emphasise in drawing this chapter to a close is that, while the notion of rights as 'absolute' and 'trumps' can tend to close down debate, we contend that it is at least as important to maintain a critical perspective on rights discourses as it is on any other discourse in the social policy and housing fields. In particular, one must avoid the assumption that rights are a taken-for-granted good, or that, even if they do not do much good, at least they can do no harm. On the contrary, social rights that are enforceable by courts, especially those that are abstract and open-ended, can potentially undermine democratic control over public policy decisions by investing policy discretion in the hands of (unelected) judges and by limiting the room for manoeuvre of (democratically elected) govern-ments and parliaments. Of course, in practice, it may well be the case that social rights such as the right to housing do far more good than harm when viewed from a progressive political perspective: we suspect that this is likely to be true with respect to specific, clearly articulated rights to housing for homeless people. But this is a hypothesis worthy of detailed investigation rather than an indisputable assertion calling for uncritical acceptance.

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