A home of one's own | Philosophical considerations on the issue of housing

Et eget hjem | Filosofiske betraktninger rundt boligspørsmålet

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Abstract

While architects, social psychologists, anthropologists and historians have conceptualized it in varied ways, little has been made of the issue of housing in philosophy. The aim of this thesis is to demonstrate that many aspects of housing relate directly to fundamental philosophical concepts and questions. I revisit notions of justice, freedom, dignity, equality and privacy through the lens of the house, and make a case for bringing the issue of housing to salience in normative philosophical theorizing. Two simple questions thread their way through the text: What constitutes adequate housing? And, why does housing matter? As possible answers to these questions, I discuss significant characteristics of one's house and use diverse case studies to highlight how such features are meaningfully entangled with ethics, morality, law and politics. I borrow and elaborate on the capability approach to identify features of the adequate house, which I situate within the contemporary landscape, weighing up clashing private, collective and common property rules. My hope – and my normative claim – is that viewed collectively, these features make evident that philosophers ought to consider the issue of housing seriously if they are to engage in conceptualizing and contributing to human welfare. In Chapter 1, I lay the conceptual grounds for an account of housing adequacy, working from the United Nations' descriptions of the human right to housing and its associated provisions. I discuss the capability approach, stressing its focus on essential human functionings and wellbeing, and contrasting it with a basic needs approach: I do so to make the case that a human right to housing understood in terms of needs runs the risk of being minimally defined, thus limiting its defense in ways which conceal housing's true importance. My argument is that housing is physical shelter plus other things that are personal and existentially significant: in Chapter 2, I look at actions which are enabled by adequate housing. The first section, "Considerations on the body", emphasizes essential bodily doings and beings, and studies them in light of our established culture of property rights. The second section, "Considerations on the mind", tackles the phenomenology of being housed, and makes an argument for its mind-related significance. Finally, to justify the human right to housing, I also have to show that the duties it would impose are identifiable and reasonably justifiable, and borne by a specific ensemble of addressees, people or agencies. This is what I set to do in Chapter 3. I identify and describe the housing-related duties and responsibilities which befall on States, municipal authorities and individuals. I then frame architects and professionals of the built environment as overlooked bearers of duties relating to the right to an adequate house. I conclude the research by offering a tentative definition of housing adequacy.

Sammendrag

Mens arkitekter, sosialpsykologer, antropologer og historikere ved ulike tilnærminger har behandlet boligspørsmålet, har problemstillingen i liten grad blitt tematisert innen filosofifaget. Målet med denne oppgaven er å synliggjøre at flere aspekter ved boligproblematikken griper direkte inn i grunnleggende filosofiske tema og begreper. Ved å bruke boligen som linse fokuseres det inn mot forestillingene om rettferdighet, frihet, likhet, verdighet og privatliv, og argumenteres for at boligspørsmålet bør være sentralt for normativ filosofisk teoriutvikling. To enkle spørsmål danner en rød tråd i teksten: Hva er en adekvat bolig? Og, hvorfor er bolig viktig? I søken etter svar på spørsmålene diskuteres sentrale aspekt ved boligen gjennom ulike casestudier som belyser hvordan disse aspektene uvilkårlig knytter an til problemstillinger innenfor etikk, moral, lov og politikk. Argumentasjonen låner fra, og utdyper, kapasitetstilnærmingen ("capability approach") for å identifisere aspekt ved den adekvate boligen som så situeres i en kontemporær kontekst av motstridende private, offentlige og allmenne eiendomsretter. Tekstens normative påstand er at disse aspektene samlet sett tydeliggjør at filosofifaget må tre inn i en grunnleggende diskusjon av boligspørsmålet dersom faget skal bidra til konseptualisering og utvikling av menneskelig velferd. I kapittel 1 legges det begrepsmessige grunnlaget for gjennomgangen av den adekvate bolig. Grunnlaget baserer seg på FNs menneskerettserklæring knyttet til bolig og tilhørende størrelser. Her diskuteres "kapasitetstilnærmingen" med en understreking av dens fokus på velferd og sentrale menneskelige behov, hvoretter det vurderes opp mot en grunnleggende behovstilnærming. På dette grunnlaget bygges det opp et argument om at en behovsbasert menneskelig rett til bolig står i fare for å bli definert på basis av et minimum, noe som vil kunne skjule boligens sanne betydning og begrense rettigheten sine effekter. I teksten argumenteres det for at boligen innebærer fysisk ly og skjerming, men at den i tillegg representerer en rekke andre aspekt av personlige og eksistensiell betydning. I kapittel 2 drøftes det hvilket sett av praksiser som muliggjøres ved tilgang til en adekvat bolig. Den første delen: "Hensynet til kroppen" ("Considerations on the body"), vektlegger viktige kroppslige tilstander og aktiviteter, og ser dem i lys av den etablerte og kulturelt betingete eiendomsretten. Den andre delen: "Hensynet til sinnet" ("Considerations on the mind"), tematiserer fenomenologien ved det å bo, og argumenterer for en sinnsrelatert meningsdanning. Til slutt, for å rettferdiggjøre retten til bolig, godtgjøres det i teksten at de pliktene som følger med en slik rettighet er identifiserbare, at de ligger innenfor en rimelighetsvurdering, og at de er lokalisert til en entydig sammensetting av aktører, individer eller institusjoner. I kapittel 3, fremgår det hvordan man kan identifisere og beskrive de boligrelaterte pliktene og ansvaret de medfører for stat, kommunale myndigheter og enkeltpersoner. Deretter trekkes det frem hvordan de forpliktelser som arkitekter og ande eksperter på bygde omgivelser må ta for retten til en adekvat bolig har blitt oversett. Studien avsluttes med å legger frem en tentativ definisjon av hva som skal forstås med en adekvat bolig.

Declaration

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree.

Except where states otherwise by reference or acknowledgment, the work presented is entirely my own.

Content

Introduction

While architects, social psychologists, anthropologists and historians have conceptualized it in varied ways, little has been made of the issue of housing in philosophy. My aim is to demonstrate that many aspects of housing relate directly to fundamental philosophical concepts and questions. I revisit notions of justice, freedom, *oikonomia*, dignity, equality and privacy through the lens of the house, and make a case for bringing the issue of housing to salience in normative philosophical theorizing. Two simple questions thread their way through this thesis: What constitutes adequate housing? And, why does housing matter?

As possible answers to these questions, I discuss significant characteristics of one's house – of one's *home* – and use diverse case studies to highlight how such features are meaningfully entangled with ethics, morality, law and politics. I borrow and elaborate on the capability approach to identify features of the adequate house, which I situate within the contemporary landscape, weighing up clashing private, collective and common property rules. My hope – and my normative claim – is that viewed collectively, these features make evident that philosophers ought to consider the issue of housing seriously if they are to engage in conceptualizing and contributing to human welfare.

In Chapter 1, I lay the conceptual grounds for an account of housing adequacy, working from the United Nations' descriptions of the human right to housing and its associated provisions. While aware that these descriptions aren't "strictly" philosophical, they constitute the most substantive known attempt at clarifying what a (minimally good, decent or adequate) house should be. I identify a set of key terms, principles and features, which I revisit in all following chapters. I discuss the capability approach, stressing its focus on essential human functionings (to do and be) and wellbeing, and contrasting it with a basic needs approach (to have). I do so to make the case that a human right to housing understood in terms of needs runs the risk of being minimally defined – as protection from the elements, as a roof over one's head, and so on – thus limiting its defense in ways which conceal housing's true importance. A limited view indeed goes along these lines: since "housing" means something different to each of us, it seems impossible to capture the idea of its adequacy in a single human right: this is a view that I challenge. I further explain my situating the discussion within a philosophy of capability, weighing its characteristics and advantages. I wrap up the chapter by speaking of the interdependence of capabilities and rights, and give examples of additional human rights which circumscribe one's right to an adequate house.

My argument is that housing is physical shelter *plus* other things that are personal and existentially significant: in Chapter 2, I look at actions which are enabled by adequate housing. The first section of the chapter, "Considerations on the body", emphasizes essential bodily doings and beings, and studies them in light of our established culture of property rights. I discuss the property-related writings of Jeremy Waldron and Alejandra Mancilla: while they don't directly address the question of housing adequacy, these scholars provide insightful theoretical challenges to liberty rights, often thought to take precedence over a welfare right to housing. The second section of the chapter, "Considerations on the mind", tackles the phenomenology of being housed, and makes an argument for its mind-related significance. I adopt Gaston Bachelard's conception of the "home" and connect it to the capability approach. I use Bachelardian notions, terms and images to show that a right to a mere "dwelling" or a right to "shelter" would not be adequate as it fails to capture the values we see in housing, as well as the existential cognitive functionings we develop and attain through it. In that sense, my account of the human right to an adequate house can indeed be reformulated as an account of the human right to a *home*.

To justify such a right, I not only need to show that it would protect some important interests; I also have to show that the duties it would impose are identifiable and reasonably justifiable, and borne by a specific ensemble of addressees, people or agencies. This is what I set to do in Chapter 3. I identify and describe the housing-related duties and responsibilities which befall on states, municipal authorities and individuals. States are often taken to be principally responsible for the realization of rights – this is a claim which I revisit and further. I then set out to explain why municipal governments should be considered a distinct category of duty bearers of the right to adequate housing, or right to a home. The third part of this chapter considers what individuals owe to dwellers with regard to the realization of this right. Lastly, design practices generate special moral issues which are often overlooked. Professionals in the field of architecture follow policies and incentives that are often institutionally defined; and philosophical theorizing on rights influence the content of such policies. I thus frame architects and professionals of the built environment as bearers of duties relating to the right to an adequate house – I speak of various special ethical dimensions relating to the field of architecture, and the way they link back to the desirable creation of homely infrastructure.

I then conclude the research and offer a tentative definition of housing adequacy.

An in-depth study of the right to an adequate house provides us with a useful basis for distinguishing the "more from the less important" among the many kinds of things housing does for us; for distinguishing the "more from the less important" among the competing, housing-related challenges that have arisen or intensified in recent times. With any luck, this study can lead to

better decision-making methods for prioritizing among the various human needs for an adequate home; and institutions, individuals and professionals are in serious need of a morally informed theory to guide housing-related policies, decisions and designs. It might by extension be the case that this study leads to better decision-making methods for prioritizing among human needs (or, to speak more precisely, among important human functionings and capabilities) altogether – to guide policies at large.[1] Normative arguments about the concepts of occupancy, privacy, equality, sufficiency, mobility, and life illuminate the wrong of housing inadequacy, but they also raise new questions. Does the right to adequate housing differ from other human rights? If housing-related capabilities are essential to human welfare, shouldn't they trump property rights and protections? Does the difference between house and home matter to the conception of the right to adequate housing? Is housing about protecting the body or the mind? Who bears responsibility for ensuring that individuals are decently housed? Are there objections to rise against the philosophical plea for housing adequacy? This thesis represents my attempt at answering such questions.

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[1] Norman Daniels, 1981. In "Health-Care Needs and Distributive Justice", Philosophy Public Affairs, 4:2, page 219.

Chapter 1 Considerations on housing and the human right to housing

Vittorio De Sicca's *Il Tetto* (1955), an artful cinematographic exercise in neo-realist style, centers on one couple's quest to find a home in post-war Rome. The second half of the film sees penniless Luisa and Natale plan the completion of a house of sorts; the city regulations allowing for people to secure their right to a parcel of land and small building if they manage to construct the latter without being stopped by the authorities. The completion of the house is to be secretive and realized overnight – the title of the movie refers to one of the features required for the building to be legally considered as completed, and thus occupiable: four walls, a door, and a *tetto*¸ a roof. At dawn, policemen find the newly erected shack, Luisa and Natale anxiously hiding within. The agents inspect it, walking around its perimeter. They palpate its blocks walls in a methodic way. They knock vigorously on the door, which they then try to open, without success – it is sturdily hinged and fastened. Now I won't spoil the film's ending. Suffice is to highlight a simple intuition here at play: in the eyes of the law, in the eyes of the audience, these four walls, door, and roof are the necessary features of a house. We recognize the space of the house as that which is enclosed within these closed, basic elements. We recognize it as the space of the private; the one where inhabitants are "sheltered" and made safe. In this opening chapter, I refer to "established" definitions of housing and the basic elements said to constitute it. My intention in doing so is to demonstrate that these established definitions ultimately fall short of providing us with true housing adequacy; revealing the limited scope of current conceptions of housing and right to housing constitutes the first step in arguing for a philosophical contribution to and expansion of such conception.

There is little philosophical literature that has tackled the task of defining housing and its constitutive features. In this context, my account starts with the works of definition undertaken by different bodies of the United Nations over the past decades. Their works indeed provide an entry point into the theoretical conceptualization of housing, of its basic features, and of its general importance with regard to the well-being of individuals, thus making the case for its belonging to the family of (UN-recognized) human rights – the right to housing has indeed been recognized in the foundational Universal Declaration of Human Rights (1948). Rapporteurs, scholars, lawyers and policy-makers at the United Nations have examined the issue of housing in variously relevant ways, and have put in place a useful vocabulary of housing-related concepts. Of course, I have just said that established institutional definitions fall short of providing us with a complete account of housing adequacy – my aim is simply to describe these UN definitions, in order to depart from them and widen their scope.

Grounding my philosophical investigation of housing in a broader imagination of human rights as defined and promoted by the United Nations links to another possible advantage. As legal scholar and philosopher Tom Campbell reminds us, we live in morally ambivalent times where "human rights appear as something of a beacon", having come to represent the "moral dimension of globalization, the affirmation of universal standards to which we can look for guidance for the humanization of capitalism, the revitalization of democratic control and the protection of the values that give meaning and importance to human life". They are said to have a "tangible, palpable existence, which gives them a social objectivity in an institutional facticity that enhances their de facto credibility". And as they affirm the "equal worth and supreme value of every human being", they participate in setting the "parameters and goals for any legitimate human organization" – in the case of this study, they can participate in setting parameters for a legitimate, wide-ranging account of housing adequacy.[2]

So, this is the first section of the chapter, where I lay the groundwork for a possible philosophical expansion of the notions of housing and the right to adequate housing.

Before going into this investigation, I should make a clarificatory point. It must be said from the start that there exists an important difference between the "right to housing" and "housing rights". The former term refers to a moral right; it is a justificatory argument, a condition which relates to licit individual interests, and which is informed by norms or standards. The latter term refers to a legal right; to conditions granted by statute.[3] They are indeed concerned with statutory features, or law entitlements. In other words, housing rights will describe what provisions might be (content definition, legality), but not why they ought to be (content justification, morality). As the present research is conducted within a normative framework, it is more interested in implications and features of a right to adequate housing, and what grounds such a right – simply put, why it exists, and what should be its content in terms of protections and provisions. Yet a necessary step towards content justification consists in content definition. Where is "housing" found in UN literature? How is it defined?

UN-Habitat – the influential United Nations Human Settlements program for human settlements and sustainable urban development – divides housing into three characteristics: (1) basic shelter, (2) secure tenure, and (3) adequacy. The notion of (1) shelter is straightforward. UN-Habitat understands basic shelter to imply that an individual or family has protection

[2] See Tom Campbell, 2004. In "Moral Dimensions of Human Rights", Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations, pages 11-12 and following.

[3] This distinction between moral and legal rights is common in the literature on rights and human rights. Peter King, 2000. In "Can we use rights to justify housing provision?", Housing, Theory and Society, 17:1, page 28.

from the elements, a place to store belongings, and the ability to fulfill basic physical needs such as sleeping, washing, and consuming food. The term "housing" is technically defined as such; as "shelter, lodging", "dwelling provided for people", "something that covers or protects".[4] Here understood at its simplest, housing aims to enable and maintain normal human functioning, and so concentrates on a specific class of obvious disadvantages and tries to eliminate them. It is a building, an enclosure, a material structure that shelters an individual from external elements that are out of her control. These elements include basic weather phenomena; rain, sun, snow, wind; or adverse animals and pathogens. To serve its minimal function, housing must be suitable to the climate. It is not functional if it's too cold or too hot, too humid, too bright or too dark, too cramped or unsanitary. Present-day housing conditions, which I soon detail, often fail to provide such functional house environments. To be sure, other important features of housing relate to "basic" infrastructures and services. Sanitation, lighting, clean water supply and drains, energy for cooking, road access, garbage disposal, sufficient storage, heating or cooling devices, are features that participate in rendering the shelter "habitable". Yet these features dance on the fine line between being basic and participating in adequacy (3), the final characteristic identified by UN-Habitat. When we say that housing should be connected to a particular range of public goods (policing, roads, sewers, transit, education) and social goods (urban scenes, street culture, neighborhood effects), we are already talking about what – in the institutional eye of the United Nations – makes housing adequate, not basic. Both basic housing elements (roofs, walls, floors, windows and doors, along with land) and these additional material assets and services represent large expenditures, whether in an urban or rural context.

Secure tenure (2) refers to legal recognition of one's control over her living space, through ownership or usufruct.[5] Diverse formats of tenure are defined and described at length; geographer Stuart Hodkinson provides us with a simple, succinct way of sorting out these formats. He has identified four categories of housing access, three of which imply secure tenure: mainstream market provision, where individual home ownership or private renting is backed up by state-regulated or funded safety net for those unable to access private market; alternative-additional housing cooperatives, where a legal membership association is created, implying collective management while reducing housing costs within the existing private property system; alternative-substitute self-build, where one buys a plot of land, gains planning permission and builds her own individually-owned private home;

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[4] Merriam-Webster; Cambridge Dictionnary, "Housing", retrieved online 2019-03-24, https://www.merriam-webster.com/dictionary/housing, https://dictionary.cambridge.org/dictionary/english/housing.

[5] UN-Habitat, Office of the United Nations High Commissioner for Human Rights, 2009. In "The Right to Adequate Housing", retrieved online 2020-03-11, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf .

alternative-oppositional squatting, or informal housing, where individuals defy private property and create temporary autonomous living spaces outside of market and state control.[6] There is obviously no legal recognition of an individual's control over her home in the latter category; non-owners such as tenants on the private rental market and in public housing have only limited control over the places that they occupy. Inversely, urban forms of displacement such as gentrification and slum clearance don't affect private property owners.

As I hinted at earlier, the concept of housing adequacy (3) is the most difficult to detail, since adequacy is often thought to relate to cultural norms, technological development, and economic context – this concept thus emerges as the most fitting to further philosophical investigations. Housing is the place where we dwell and sleep in peace. It is the place where we reproduce; the space of the private nuclear household. It thus represents the basic architectural space; for most of us, it is where we develop family relations.[7] Being adequately housed gives people a measure of intimacy, security and stability. Without a home, it is nearly impossible to pursue personal aspirations or to take part in societal projects – it is nearly impossible to find and sustain a professional occupation, get an education, raise children, and so on. Housing deeply relates to well-being, social security and work: it gives us the means to lead good and productive lives. As I said earlier, when we purchase a house or rent an apartment we are also securing access to larger life networks – to a common world infrastructure that connect us with "jobs, entertainment, necessities, visual delights, encounters, barriers, threats, beneficial relationships, educational opportunities, sports facilities, and places that are more or less protected from surveillance".[8] Another key organ of the United Nations, the Committee on Economic, Social and Cultural Rights, has proposed the following seven features to substantiate overall housing adequacy: availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; cultural adequacy; and the aforementioned legal security of tenure. While each feature is explained with great details, in essence they remain irritatingly technical, and end up lacking the kind of appealing evidence which makes one recognize a good as deserving of the special protections that accompany human rights.

Let us consider one last formal report, that of the United Nation's World Health Organization, which describes different significant dimensions of housing in a more evocative manner:

[6] Stuart Hodkinson, 2012. In "The Return of the Housing Question", ephemera | theory & politics in organization, 12:4, page 426.

[7] Kirsi Saarikangas, 1993. In *Model Houses for Model Families*, Societas Historica Fennica, page 7.

[8] Margaret Kohn, 2016. In *The Death and Life of the Urban Commonwealth*, Oxford University Press, page 2.

i. The home: the social and psychological aspects of the house, including safety and privacy.

ii. The dwelling: includes the physical structure and condition of the dwelling, its design and characteristics; the level of occupancy for size, indoor air quality, indoor temperature and humidity, affordability and tenure.

iii. The community: the social characteristics of the community, for example the level of social cohesion, trust and collective efficacy promoted by public places and social facilities.

iv. The immediate environment: includes the quality of urban design, such as access to green space and public services as well as general environmental conditions within neighborhoods. [9]

While the authors of this WHO document don't explicitly refer to the notion of adequacy, the family of terms and concepts they mobilize bring the reader in a position to better appreciate the ways housing – when adequate – ramifies significantly through human life. Note that increasingly urbanizing societies explain the importance of features (iii) and (iv); evaluating housing adequacy outside of such networks – examining a remote countryside dwelling, for example – might discount parameters like community linkages and the quality of neighboring services. Or it might be the case that our remote countryside dwelling, by virtue of being geographically isolated, does not meet the standards to qualify as adequate housing. [10] The importance of connections and other house-related support infrastructures is discussed in more details later; for now, suffice is to point out that "housing" exceeds the architectural features (ii) that it regularly gets reduced to. Certainly, when the *human right to housing* is invoked, it tends to be limited to the understanding that housing simply is basic shelter. Why is it so?

The "centerpiece" of the international human rights framework, the aforementioned Universal Declaration of Human Rights (UDHR, 1948),

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[9] World Health Organization, 2018. In "WHO Housing And Health Guidelines", retrieved online 2020-03-11, https://apps.who.int/iris/bitstream/handle/10665/276001/9789241550376-eng.pdf

[10] Note that this UN attention to urban-related features (and so to the way urbanity is thought to inform housing adequacy) fits a larger cultural trend, where the architectural design of institutions, housing and other built infrastructure is imagined through the lens of the "urban" and its associated proximities, resources, rhythms and values. To think of architecture, or to think "architecturally", is already to think urbanely. Metropolises have become the principal environment for the inception and insertion of contemporary (housing) projects; in other words, the urban environment is now architecture's default or climatic state. The ostensible hegemony of cities is located right at the heart of value-hierarchical considerations about past and present, ruralism and urbanism, feudalism and capitalism, agrarianism and industrialism, and individuality and community. Given this context, contemporary discussions of housing designs and experiences are often oriented towards connection, publicness, exhibition, productivity, performance, and other urban-informed practices: despite claims to "universal" applications, to conceptualize one's right, use and occupation of housing generally implies this space to be situated within cities.

refs to the human right to housing in its Article 25 (1), which reads as follows: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services".[11] Yet it is the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) that constitutes the principal legal instrument for international work on housing access and protection. Article 11 (1) similarly states that

> the State 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.

At present, the ICESCR, a legally binding document, has been ratified by more than 160 countries, which have obligations to fulfil – among other rights – the right to housing. This right is also codified in the Vancouver Declaration on Human Settlement (1976), the International Convention on the Rights of the Child (1990), the International Convention on the Elimination of All Forms of Racial Discrimination (1969) and the International Convention on the Elimination of All Forms of Discrimination against Women (1981). Although it is not traditionally preoccupied with housing in the context of human rights, the UN Centre for Human Settlements has emphasized the principle of universality in terms of housing and human settlements.[12] Other international, national and regional treaties have recognized or referred to the right to an adequate house or some elements of it, such as the protection of one's home and privacy. UN-Habitat notes that all states have ratified at least one international treaty referring to adequate housing and committed themselves to protecting the right to adequate housing through international declarations, plans of action or conference outcome documents.[13] In 2000, the Commission on Human Rights (known today as the Human Rights Council) created the comprehensively named mandate of "Special Rapporteur on adequate housing as a component of the right to an adequate standard of living" – the rapporteurs have since produced several reports on accessibility and adequacy. All aforementioned documents, titles and rights bodies defend the necessity of housing to attain good standards of life for all individuals. To paraphrase Jeremy Waldron, they aim at making it evident that one should treat housing as a matter of utmost concern in relation to fundamental

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[11] United Nations, "Universal Declaration Of Human Rights Article 25 (1)", retrieved online 2020-03-24, http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf .

[12] Scott Leckie, 1989. In "Housing as a human right", Environment and Urbanization, 1:2, page 98.

[13] UN-Habitat, Office of the United Nations High Commissioner for Human Rights, 2009. In "The Right to Adequate Housing", retrieved online 2020-03-11, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf.

humanists and liberal principles.[14] Their success (or lack thereof) in doing so, however, ought to be examined and debated.

In effect, despite the profusion of reports, commissions and other efforts of definition of housing subsequent to both the UDHR and ICESCR, the conception of housing as a right remains weakened by past and present debates on what constitutes a minimal standard, and what constitutes an adequate standard. I take my research to be a comment on and a challenge to the preponderant "shelter reduction" – my term – where a human right to housing is (only) understood as a right to shelter from adverse natural elements – as a right to a roof over one's head, basically. This "shelter reduction" takes the right to housing to be the right to a *minimally functional* house, a basic infrastructure which is to be progressively bettered. A progressive realization characterizes all socio-economic rights: irrespective of the resources available to it, a state should "seek to ensure that everyone has access to, *at the very least, minimum levels of rights*, and target programs to protect the poor, the marginalized and the disadvantaged".[15] Given this minima-oriented focus, it should therefore not come as a surprise that the content of one's right to housing is also primarily understood as a minimum. Regardless of reports and commissions on characteristics of housing (UN-Habitat), features of adequacy (Committee on Economic, Social and Cultural Rights) or significant dimensions (WHO), the justification of the right to housing as a human right in the face of opposition mostly consists in pointing to the vital need for humans to have a physical roof over their head.

Despite its recognition in international treaties, the right to housing has turned out to be chief among the social and economic rights that are least likely to be constitutionalized.[16] By UN-Habitat standards of adequacy, well over a billion people are not adequately housed today.[17] Most governments are failing to ensure that their citizens' housing rights and needs are met. Be it in the richer Global North, or in growing countries of the Global South, very large proportions of both rural and urban population lack suitable homes, in spite of the agreed-upon understanding of shelter as one of the most fundamental human needs. In times of crisis, government expenditures on housing are usually among the first to be cut. Dislodgments linked to conflicts, natural disasters or discriminatory contemporary market pressures are a commonplace reality: millions are forcibly evicted, or threatened with

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[14] Jeremy Waldron, 1992. In "Homelessness and the Issue of Freedom", UCLA Law Review, page 309.

[15] Office of the United Nations High Commissioner for Human Rights, 2008. In "Fact Sheet 33 - Frequently Asked Questions on Economic, Social and Cultural Rights", retrieved online 2020-05-06, https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf.

[16] Kohn, page 75.

[17] UN-Habitat, 2009. In "The Right to Adequate Housing", retrieved online 2020-03-11, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf .

forced eviction, from their homes every year.[18] They take a variety of forms: slum clearance, gentrification, foreclosure, demolition of public housing, and the privatization of public space. Homelessness issues are found across all nations, wealthy or poor. Historic and on-going practices of dispossession result in driving members of minority groups into cities, where their lack of access to private property makes them dependent on precarious slum dwelling or inadequate public housing. House architecture has transformed into an exploitable, financialized commodity, instead of being the basic, protected human right I just described. Shelters are hardly ever provided for free to those who can't afford it. Architects, urban planners, city managers, state officials and property investors are all responsible for the increasing production of unaffordable places, but they don't operate isolated from each other; they jointly participate in broader political and economic processes.[19] Global financial speculation is pressing most governments to deregulate and dismantle welfare services – the commodification of housing is an "indispensable companion" in the commodification of the whole built environment.[20] This sort of brief reporting on housing today indicates a definitive difficulty of sustaining its protections and provisions, even when they are pursued as minimal.

Of course, differences between housing provisions and protections in different parts of the globe persist. Social housing availabilities, rent regulation, affordability issues, zoning laws, public consultation and discrimination control arise as salient challenges in the North. In poorer parts of the South, land allocation, access to construction materials or security of tenure count among the most debated issues. A recent report from the UN Special Rapporteur on the right to (adequate) housing tackles these contemporary considerations. This document examines global housing inequalities through the phenomenon of financialization of housing and its impact on human rights; the recent structural changes whereby "massive amounts of global capital have been invested in housing as a commodity, as security for financial instruments that are traded on global markets, and as a means of accumulating wealth" and the various effects of such historic changes on the enjoyment of the right to housing infrastructures.[21] A retort of sorts to the critique that socio-economic rights as enumerated in human rights documents and treaties provide "too weak of a commitment to material equality", it hopes to outline an appropriate human rights framework for states to address these changes in terms of both domestic and international law; it is also a recommendation of applicable strategies. In her

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[18] Ibid.

[19] Miguel Martinez, 2020. In *Squatters in the Capitalist City: Housing, Justice and Urban Politics*, Routledge, page 8.

[20] Ibid.

[21] Leilani Fahra, 2017. In "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", page 7.

closing section, rapporteur Leilani Fahra unsurprisingly advocates that the human right to a "place to live in security and dignity" be reinforced by states reclaiming housing as a social good, not a commodity or asset for the asymmetrical accumulation of wealth. This recommendation of adequacy has special resonance in a world where housing architecture represents almost half of all global assets and more than twice the global GDP – a significant repository for global capital indeed.[22]

How do these descriptions of housing-related challenges fit my previous allusion to the distinction between minimal and adequate housing standards? Is there a world-wide divide between countries committed to continuous improvement and those working towards providing their citizens with minimum shelter? How should we then identify housing adequacy? In an prior report (2016), the rapporteur uses the term "grossly inadequate housing" to qualify infrastructures that ought to be seen and addressed as unacceptable violations of the right to housing and the right to life – a formulation which fits the aforementioned position that minimally good standards are the focus of the human right to housing.[23] No overarching, explicit definition is offered as to what is meant by "grossly inadequate", but rapporteur Fahra describes the conditions of mission sites as:

> overcrowded conditions, without running water or electricity, amid excrement and garbage, without adequate protection from inclement weather, with no bed to lie on, little food to eat and nowhere to wash or defecate; often threatened by violence, insecurity and stigmatization and, worst of all, forced to watch children suffer and frequently die from prolonged diarrhoea and other effects of life without adequate water, sanitation or housing.[24]

While this sort of depiction fits our imagination of slum conditions in the Global South, we ought to be aware that dire housing conditions are found across Europe and North America too – as exemplified in the following testimony of public apartment blocks in Horner, Chicago, where residents were housed among

> non-functioning elevators, darkened hallways, lobbies and stairwells, broken, boarded-up and leaking windows, broken trash chutes and common areas cluttered with refuse, missing exit, stairway and fire escape signs, broken or missing stairwell doors, defective stairwell handrails, treads and landings, presence of human and animal waste in public areas and open, vacant

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[22] Ibid, page 1.

[23] Leilani Fahra, 2016. In "Adequate housing as a component of the right to an adequate standard of living - A/71/310", page 2.

[24] Ibid, page 5.

apartments, broken screen doors and windows, numerous vacant units and abandoned laundry rooms with open or missing doors.[25]

Both excerpts confront readers with daily, bodily experiences of gross housing inadequacy. These excerpts reveal the magnitude of safety risks and threats to functionality that arise when one's house doesn't meet minimal standards. Yet, as was indicated by the World Health Organization and its four significant dimensions of housing, we must seriously question if physical security should be the sole focus of the right to housing. Accounts of extreme corporeal precariousness – and following calls to enforce individuals' right to "shelter" – are over represented in these United Nations reports, because such reports deliberately tackle extreme housing crisis, where international awareness and interventions can have a greater impact. Utilitarian attitudes might be praised or sulked upon, but the point to be made is that, by focusing on life-threatening study cases, these assessments of housing inadequacy tend to erase more nuanced considerations on human life, and the complex ways in which individuals are tied to housing.

While it is of limited interest to our conversation to imagine an adequate house as that which only provides "bare minimal" equipment or shelter, there might be one overall strategical advantage in speaking of evidently grossly insufficient housing infrastructures as study cases of "adequacy". When contrasted with jails and detention centers infrastructures, it illustrates a misplaced asymmetry in moral indignation when it comes to daily life environments and their appropriateness. Describe a prison cell "without water or electricity, amid excrement and garbage, without adequate protection from inclement weather, with no bed to lie on, little food to eat and nowhere to wash or defecate" to a friend, a state representative, a scholar: regardless of their political allegiance, or their standing on human rights and liberties, they can be expected to regard such conditions of the inmate's built environment as severe human rights violations, not to be tolerated. Little of that sense of urgency is preserved when these conditions are raised as violations of an individual's *right to housing*: rather than "being addressed as egregious human rights concerns requiring concerted attention", they tend to be downgraded to considerations of policy, of infrastructure or of sustainable development.[26] Government officials, writes the Housing Rapporteur, tend to "view housing as one among many program demands competing with highways and sports stadiums for budgetary allocations, assessed by the numbers of housing units or toilets provided", often without meaningful engagement with the lives of those affected.[27] This

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[25] Henry Horner Mothers Guild v. Chi. Hous. Auth. (1993), "824 F. Supp. 808, 810 (N.D. Ill.)", retrieved online 2020-03-11, https://law.justia.com/cases/federal/district-courts/FSupp/824/808/1460486/

[26] Leilani Fahra, 2016. In "Adequate housing as a component of the right to an adequate standard of living - A/71/310", page 6.

[27] Ibid.

view is structurally reinforced and becomes self-evident for legislators and citizens. Highlighting grossly inadequate housing conditions, where one's right to minimal shelter isn't met, brings our attention to a certain double standard that plague the popular imagination when it comes to the importance of the right to housing – allowing us to identify and possibly correct inconsistent first-hand intuitions and attitudes. To be sure, when housing expenditures are viewed as undifferentiated part of a wider pool of costly program demands, the interpretation of one's right to housing – if this right is at all enforced – will tip to the side of a "minimal standards" interpretation.[28]

These past descriptions show that even by minimal standards, much is to be done with regard to the realization of the human right to housing. Despite UN bodies and rapporteurs' best efforts of definition, the awareness of the right to housing and its due protections and provisions remains too often limited to the shelter reduction – to the right to a roof over one's head, with the consequence of widespread, global housing inadequacy; of what many have labeled (once more) a global housing crisis.[29] As I commented, to examine the housing provisions and protections taken to be minimally necessary for individuals also implies to reflect upon the way in which the right to housing is specified: I have chosen to first position the issue of housing adequacy within United Nations human rights literature as it provides characterizations of housing that – despite their sometimes legally oriented technicalities – pretend to universality and provide a certain level of abstraction suitable to my thesis' investigations. As descriptive entry point into the philosophy of housing, this short section of Chapter 1 points to the various reasons called upon when defending the right to a certain standard of housing, be it minimal or adequate; the manners in which we can (or should) go about specifying this standard are explored in this next section. The philosophy of human rights, and so of the normative claims which relate to them, comes with its share of strong disagreements and controversies, but it is an informative and, I argue, ultimately fruitful framework to conceptualize the right to adequate housing nonetheless.

Grounding human rights is a significant part of the philosophy of human rights, along with identifying the rights, their duty-bearers and their arbiters, and so on. It is also a part that brings about its fair share of theoretical dispute; approaches to justification include, among others, grounding human

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[28] Human rights prescribe universal standards in areas such as security, law enforcement, equality, political participation, education, and housing. I refer to this notion of standard throughout the thesis.

[29] Mainstream media headlines such as "Global housing crisis results in mass human rights violations – UN expert" (2020); "Global housing crisis making cities unaffordable" (2019); "How Davos is reacting to the global housing crisis" (2020) or "Global Housing Crisis: What's The Answer?" (2019) signal that severe housing shortages and inadequacy has – yet again in recent history – started to grab public attention; this sort of attention has intensified in light of the current Covid-19 developments.

rights in prudential reasons, practical reasons, moral rights, human well-being, fundamental interests, human needs, agency and autonomy, dignity, fairness, equality, or positive freedom.[30] Given the limited length of the thesis, I consider it best to bracket these disputes and work within the capability framework only. While one should be aware of the complications and criticisms relating to this framework,[31] it has proven enduring and is considered one of the main contemporary justifications of human rights; it has also come to play a major role in political philosophy at large, as well as in normative economics.[32] Appropriately, it is the theory that the Human Development Program of the United Nations (UNDP, 1993) has been using extensively to assess the quality of human life – and, by extension, the respect, protection and fulfilment of human rights – in countries of the world.[33] The concept of capability indeed provides an "important entry-point" for defending the validity of a comprehensive class of human rights concerns; it provides a clear explanation of the importance of "viewing human rights as having legitimacy and validity within the ethical domain", rather than as simply being the "products" of institutional or legal arrangements.[34] This represents one motivation to work solely within the capability framework; another motivation relates to the fact that works of philosophy which tackle the topic of the right to housing directly make

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[30] Influential accounts of the grounding of human rights (aside from the capability approach) include Alan Gewirth's agency-based account (1987), James Griffin's personhood account (2008), John Tasioulas's interest-based account (2007, 2010, 2015), and Charles Beitz's practical account (2009).

[31] Theories traditionally pitted against the capability framework include approaches to moral evaluation such as utilitarianism or resourcism. With their "negative freedom" characterizations, the libertarian rights models of philosopher Robert Nozick and economist Frederic Hayek are often cited in opposition to Sen's and Nussbaum's. One recent example of criticism of the capability approach is found in philosopher Thomas Pogge's argument (2002, 2010) that Sen and Nussbaum haven't shown how their approach can produce a "public criterion of social justice" that would be a viable competitor to more prominent views like the resourcist one. Another example of criticism is found in economist David A. Clark denunciation (2005) of Nussbaum's list as paternalistic and representing the narrow views of a middle-class North American philosopher. Nevertheless, I believe that a capability-based understanding of human rights can be of help in addressing various unresolved issues in ethical debates about human rights. See Thomas Pogge (2002), "Can the Capability Approach Be Justified?"; David Clark (2005), "The Capability Approach: Its Development, Critiques and Recent Advances"; Thomas Pogge (2010), "A critique of the capability approach". See also Ingrid Robeyns (2003), "The Capability Approach: An Interdisciplinary Introduction"; Keith Dowding (2006) "Can Capabilities Reconcile Freedom and Equality?"; Alexander Kaufman (2006), "What Goods Do to (and for) People: Duality and Ambiguity in Sen's Capabilities Approach?"; Christine Koggel (2012), "Is the capability approach a sufficient challenge to distributive accounts of global justice?".

[32] Thomas Pogge, 2002. In "Can the Capability Approach Be Justified?", Philosophical Topics, 30:2, page 167.

[33] Frances Stewart, Emma Samman, 2018. In "Advancing Human Development: Theory and Practice", retrieved online 2020-05-09, http://hdr.undp.org/en/content/advancing-human-development-theory-and-practice.

[34] Diane Elson, Sakiko Fukuda-Parr, Polly Vizard, 2011. In "Introduction: The Capability Approach and Human Rights", Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development, 12:1, page 2.

mention of the capability approach. I am referring in particular to Peter King's "Housing as a Freedom Right" (2010) and "Can we use Rights to Justify Housing Provision?" (2000), or Margaret Kohn's *Life and Death of the Urban Commonwealth* (2016), in which explicit references are made to Sen's and Nussbaum's theories in order to conceptualize material features relating to basic human rights and freedoms. Of course, one should not infer that a framework's relevance to the issue of housing and the right to housing can be demonstrated by thinkers of housing working with(in) it – these thinkers could do so mistakenly, controversially. Yet I believe that King and Kohn both choose to discuss rights through the lens of capabilities and positive freedoms because, as I intend to show here, doing so ultimately supports the argument for a wide-ranging human right to housing; for a human right to adequate housing.

So the capability approach – as pioneered by Amartya Sen and developed by Martha Nussbaum – provides us with a philosophical basis to justify the claims of human rights. What are capabilities? What are the principal tenets of this approach, and how do they relate to minimal or adequate housing standards? As a model about well-being, development and justice, the capability approach captures the *freedoms and opportunities* that are or should be within an individual's reach (what Sen and Nussbaum have called an individual's *capability set*), along with the "underlying variables that explain this set (entitlements, contextual variables, conversion factors)".[35] This theoretical emphasis on capability assumes that freedom isn't defined merely as "negative liberty", or as the absence of state interference, but as the "full ability of people to be and to choose very important things".[36] Such ability is taken to be constitutive of human well-being, or human flourishing, and thus is to be considered of primary moral importance; this aspect of the framework harks back to Aristotle's canon theorizing on human functioning, happiness and flourishing. What matters is what people are capable of. Notions of threshold and sufficiency are to be defined accordingly: one should maximize capacity to a threshold below which no individual is allowed to fall. So prioritizing certain of peoples' beings and doings and their genuine opportunities to realize those beings and doings is an important focus of the capability framework. In explicating his use of the term "capabilities", Sen stresses that we ought to concern ourselves not with what individuals have, do or are, but rather with what they *can* have, do or be – here capabilities function as "options" to achieve valuable "functionings"; to significant activities, skills, attitudes and dispositions.[37] Once again, a person's capability to live a good life is defined in terms of these valuable

[35] Ibid, page 4.

[36] Martha Nussbaum, 2004. In "Beyond the social contract: capabilities and global justice", Oxford Development Studies, 32:1, page 13.

[37] Amartya Sen, 1993. In "Capabilities and Well-Being", in *The Quality of Life*, Oxford University Press, page 43.

"functionings". Sen highlights the moral significance of a person' *capability* to achieve the kind of life she has reason to value.

That is to say, one of the most important points of the capability framework is that capabilities really are of "crucial importance" for people and that they (and their distribution) should be taken into account when assessing "if life is good for people, or if the government of a state (or a municipality, or county council) is successful in creating the foundations for a good life for all".[38] In the words of Nussbaum, "capabilities, not functionings, are the appropriate political goals, because room is thereby left for the exercise of human freedom", and "freedom has intrinsic value".[39]

Intrinsic to the capability approach is the intuition that there exists an irreducible diversity of ways in which we can be "doing well". Ask a friend how she is doing and the answer will likely be complex, multifaceted: she might comment on her good health and joy regarding a new partner, but also on her worries about an unemployed parent, in addition to some general concerns about a future rent increase, discomforts about the conditions of political liberties in her country, and so on. A capability framework hopes to capture this diversity of beings and doings of each and every individual, to accommodate it. Human development reports like those produced by the United Nations work with comparative rankings of different aspects of human life; the capability approach focuses on ascertaining which of those aspects are central in terms of basic social justice, of well-being, freedom, of human progress and dignity – which, up to some threshold level, ought to be guaranteed to all persons.[40] Note the close connection with human rights, which are thought to be based on "the conviction that there are liberties and interests so basic that every society should secure them irrespective of its traditions, history or level of economic development".[41] Indeed, Nussbaum

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[38] Ibid, pages 43-46.

[39] Martha Nussbaum, 2011, In "Creating Capabilities: The Human Development Approach", Feminist Economics, 9:3, pages 25-26. Note that, in light of this importance given to the notion of freedom, scholars of rights have proposed to frame the entire catalog of social rights in terms of freedom; in a "negative" manner. Thomas Pogge, economist Albert Hirschmann or legal scholar Cass Sunstein have thus spoken of "freedom from want," "freedom from poverty," "freedom from disease", and so on. Sen and Nussbaum's emphasis on choice is an emphasis on freedom arises in part as a reaction to, among other, a human rights grounding focusing on basic needs: the intuition is that aiming to meet needs treats individuals (beneficiaries) as *passive recipients*. A focus on needs cannot provide a sufficient role for freedom and human activity. On the other hand, promoting capabilities empowers them to *freely* act themselves. I speak more of a basic needs approach to human rights further on in this chapter.

[40] Sen's and Nussbaum's work on capabilities indeed helps us to clarify how the idea of human dignity (and, in particular, of the sorts of opportunities human dignity requires) can substantiate a theory of human rights. An "emphasis on dignity and capabilities" can, Nussbaum contends, avoid important "limitations" that characterize traditional theories based on "rationality" and "reasoning". Elson, Fukuda-Parr, Vizard, page 4.

[41] Jeremy Waldron, 2009. In "Rights", in *Companion to Contemporary Political Philosophy*, Blackwell Publishing, page 745.

has called capabilities and human rights "close relatives".[42] Her political-liberal conceptualization of the capability approach is informed by her interest for and study of constitutional law, which also asks: which are the basic entitlements that states want to secure for each and every citizen? The capability framework emerges as a way to answer this question. As opportunities, capabilities constitute *spheres of choice* that should be put in place for people. Choice is a key feature of the approach. Take the example of the aptly-named freedom of conscience (or freedom of religion), which can be described as a "space of opportunity" that one can avail oneself of, not as a compulsory functioning.[43] This capability doesn't entail that one ought to go out and function in accordance with religion; it represents a space of true opportunities that you can avail yourself of, if you choose to. Or take the example of fasting, which is often used to exemplify and explain the open-endedness of capabilities: most of us might expect that, for someone to be flourishing is already for her to be eating the right amount of food that we associate with a human diet – yet some religious individuals consider it essential to fast for some periods of time, as they believe that one shouldn't be well nourished for all parts of one's life. Similarly, most of us might expect that, for someone to be flourishing is already for her to be living in the kind of building that we associate with a comfortable and safe home environment – yet Brahmin initiates reject the necessity of being housed and, as spiritual wanderers, seek to practice a form of voluntary or purposeful homelessness; they don't consider this state an impoverishment but a mirroring of the most desirable spiritual state. One strength of the capability framework is that such religious individuals can agree to the enforced guarantee of a human capability to bodily health (adequate nutrition and housing) or a human capability to control one's material environment (adequate housing), since these capabilities infers an opportunity that individuals are free to take, a choice that they are free to make.

Let me insist here on the crucial difference between human "capability" and human "functioning". The crucial distinction between a capability and a functioning is that in the first case the individual has a (real) possibility to do or be (or feel) something, and that in the other, she has realized the capability and is or does (or feels) this something.[44] Martha Nussbaum

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[42] Nussbaum, "Creating Capabilities: The Human Development Approach", page 293.

[43] Irene Van Staveren, 2007. In *The Ethics of Efficiency*, Human Development and Capability Association in Groningen, page 20.

[44] Certain capabilities necessarily must be turned into functionings, or the individual can't live a "recognizably human life at all". Interestingly, some functionings end up excluding others: once an individual has made a choice to "actualize a functioning" in a said way, various others functionings are thus made impossible. Take for instance choosing to pursue a full-time education – this usually excludes choosing to pursue another education at the same time. Alternatively, think of a person converting to Judaism, who then can't (still) be a Christian or a Muslim. See Per-Anders Tengland, 2020. In "Health and capabilities: a conceptual clarification", Medicine, Health Care and Philosophy, 23:1, page 25.

claims that any sound, comprehensive ethical conception of welfare, flourishing and justice should make room for spheres of choice, where what matters is that a person chooses to pursue X, that she doesn't have X thrust upon her. This matters greatly to the defense of rights in a modern world where every nation is irreducibly plural and people have different comprehensive conceptions of value. Citing influences from ubiquitous John Rawls, Nussbaum explains that moral and political principles like human rights and capabilities ideally ought to command an overlapping consensus of all reasonable comprehensive doctrines.[45] To figure out what people could possibly agree on is a real challenge; most people don't and can't agree on a list of *functionings* that constitute human flourishing – but for them to agree on the fact that every human should have certain core opportunities is feasible.[46] Nussbaum's own list of ten core capabilities (one that, she contends, should be enshrined in every country's constitution) include life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment.[47] Each capability is defined, and, importantly, is considered equally important.[48] Each capability is the moral entitlement of every human being on earth.[49] The human capabilities which relate most directly to a philosophical discussion of housing and the right to housing are bodily health and integrity and control over one's (material) environment – the capability approach has not as yet been explicitly applied to housing as an enabling or constraining force for realizing the functions that Nussbaum identifies as essential. Like their eight equivalents, the two capabilities of bodily health and integrity and control over one's environment retain a level of abstraction, allowing each country – or cultural groups, minorities,

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[45] Martha Nussbaum, 2011. In "Perfectionist Liberalism and Political Liberalism", Philosophy & Public Affairs, 39:1, pages 5-8.

[46] To be sure, it is often hard to tell if a person really has the opportunity for X being or doing, except by seeing whether a sufficient number of them go out and do it – this relates to a "measure" problem, to an epistemological one. Theoretically, there remains a valid argument to be made in support of a focus on opportunities, and not on functioning. Nussbaum proposes to assess opportunity by looking at the distinction between internal capabilities and combined capabilities. The latter implies having developed powers such as that, under suitable circumstances, an individual can go out and choose to pursue X. So the combined capability is defined by the individual's internal capability plus her suitable opportunities for the actual choice of that function.

[47] Nussbaum, "Creating Capabilities: The Human Development Approach", pages 33-59.

[48] To read their description at length, see for example https://www.iep.utm.edu/ge-capab/#H3. While describing this list as "tentative" and "expendable", while assuring that it could be revised and carved in different ways, Nussbaum argues that "considerations of justice require that we demarcate morally relevant from morally irrelevant and morally bad capabilities". Her list is an attempt at doing so. Amartya Sen similarly recognizes that not all freedoms to which individuals attach importance (these freedoms that would contribute in some way to enhancing the quality of their lives) are freedoms to which human beings can lay claim as a matter of right. These freedoms must be "ethically" and "socially" important enough to provide reasons for others to pay serious attention to it. Amartya Sen, 2004. In "Elements of Theory of Human Rights", Philosophy and Public Affairs; 32:4, page 432.

[49] Ibid.

individuals – to spell them out further according to their own history and traditions.

A good justification of human rights should avoid as far as possible controversial assumptions about religion, metaphysics, ideology, and intrinsic value. By making "capabilities" the goal, and not "functionings", the capability approach accommodates itself with a form of pluralism; as I said above, one can agree to a certain opportunity without agreeing to use it. In a somehow paradoxical way, being universalistic here is being pluralistic (accommodating specificity). The capability approach and human rights share a common motivation – their direct focus on the dignity and freedom of the individual, and their pursuit of a universalistic framework that isn't rendered meaningless because of its so-called openness and abstraction.[50] As theoretical ground for the existence and definition of human rights, the capability approach leaves room for interpretation and reflection, and so for consensus. By protecting spaces of opportunities, it ensures robust protections for the ability of people to organize in different ways. This has a clear advantage for an account of adequate housing, which specific features can vary significantly across culture. I will soon come back to this idea, with different types of houses. Without defaulting to a minimal "roof-over-one's-head" description – a conception of housing that would ensure consensus because of its minimal definition – we can refer to (at least) the two capabilities of bodily health and control over one's environment; we can refer to the "thick but vague" description of beings and doings associated with these capabilities.[51]

In short, the capability approach points to a definition of housing adequacy which doesn't relate to what people have, but rather what they can do and be. Consensus can likely be reached without resorting to a housing-as-shelter reduction. Contrast this approach with another human rights theory cited by bodies and reports of the United Nations, such as the ICESCR: the "basic needs" approach, which prioritizes the satisfaction of fundamental necessities for living – those "basic social goods", which everyone should have access to.[52]

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[50] A critique of sufficientarist doctrines – within which I include the capability approach – goes along this line: the choice of the absolute level of sufficiency is morally arbitrary. If that would be the case, this implies that the whole doctrine is resting on a morally arbitrary factor. However, I don't think it fair to equate (by definition) an "abstract" or a "vague criterion" with an "arbitrary" criterion. As the current discussion of capabilities hopefully shows, significant outcomes can follow from and be achieved through an open, vague framework.

[51] Angela Kallhoff, Martha Nussbaum, 2001. In "Martha C. Nussbaum: Ethics and Political Philosophy : Lecture and Colloquium in Münster", Lit Verlag, page 66.

[52] While the capability approach is often contrasted to the basic needs approach, note that the latter is taken to be the path-breaking precursor to many contemporary, multidimensional approaches to evaluating (dis)advantage, *including* Sen's capability approach. For a description of the basic needs approach and the way it generally relates to socio-economic human rights literature, see, among other, Frances Stewart (1989), "Basic Needs Strategies, Human Rights, and the Right to Development", page 347-374; Frances Stewart (1985),

Basic social goods (shelter, food, health, education, work) correspond to a level of human living above a "basic" minimum, and so ought to be given the protections and considerations that are attached to human rights. Thus, unlike the capability approach's grounding of human rights in essential human opportunities for being and doing, this "basic needs" approach grounds human rights in essential human needs. Human rights are thought to be best understood and justified through the idea of basic needs common to all human beings, but of course, not all needs can ground rights directly.[53] In *National Responsibility and Global Justice* (2007), David Miller examines the "global minimum" that individuals can claim as a "matter of justice", with the intention to tackle the problem of correctly specifying the content of rights that relate to this global minimum; of specifying minimal basic social goods while avoiding cultural or societal bias.[54] He refers directly to the right to be housed to illustrate his differentiated understanding of basic needs and what he calls societal needs. I copy the complete quote here:

> Shelter from the elements is a universal human need, while in some societies, but not others, this takes the form of a need for a fixed dwelling place – in societies like our own, a homeless person has unmet needs (and is harmed) even if she is adequately sheltered from the elements. But can this socially relative need be used to ground a human right? To deal with this problem, I propose to draw a distinction between basic needs and societal needs, where the former are to be understood as the conditions for a decent human life in any society, and the latter as the more expansive set of requirements for a decent life in the particular society to which a person belongs. Only basic needs can be appealed to in order to ground human rights. Societal needs, by contrast, are used to justify what I earlier called rights of citizenship—the larger set of rights, possession of which guarantees someone's position as a full member of a particular society, and whose content will vary somewhat from one society to the next.[55]

"Planning to Meet Basic Needs", pages1-13; Paul Streeten (1981), "First Things First: Meeting Basic Needs in Developing Countries", pages 3-45. Martin Hapla (2018), "Theory of Needs as Justification of Human Rights", page 1-21; David M. Trubeck, "Economic, Social and Cultural Rights in the Third World: Human Rights Law and Human Needs Programmes", pages 205-271; Philip Alston, Gerard Quinn (1987), "The Nature and Scope of a States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights", pages 156-222. Amartya Sen referred to the basic needs framework in various papers; commenting, for example, on John Rawls' misplaced emphasis on the means to achieve the valued ends of life, Sen writes that "while primary goods are, at best, means to the valued ends of human life", the capability approach is rather "concerned with correcting this focus on means" by directing attention, instead, to "the opportunity to fulfill ends and the substantive freedom to achieve those reasoned ends". See Sen, "Elements of a Theory of Human Rights", page 332.

[53] David Miller (2007), "Human Rights: Setting the Global Minimum", in N*ational Responsibility and Global Justice*, OUP Oxford, page 194.

[54] Ibid, pages 163-164.

[55] Ibid, pages 182-183.

Miller's passage spells out one clear strategy for grounding the human right to housing. Such defined, this right entails the minimal material conditions "for a decent human life" in *any* society, regardless of its housing-related cultural or societal specificities. Since decency and dignity depend on social norms that we should expect to vary to some extent from place to place, since moral beliefs are culturally relative, they shouldn't be used to theorize features of housing adequacy and its related features.[56] According to this view, the human right to housing (or, following the passage cited here, the basic right to shelter, to a structure that adequately protects from the elements) is informed by the "unprejudiced", universal needs of human beings understood as biological creatures.[57] Further discussing housing norms and nomadic lifestyles, Miller stresses that shelter is a human right, while the right to a "fixed dwelling place" is a right of citizenship, since the feature of "fixity" is a need shaped by norms that apply only in particular social settings. This results in a very small window of features informed by the "intersection of all sets of societal needs".[58] Yet we have seen with the capability approach that we need not to resort to this sort of minimal definitions to ground the human right to housing. Housing adequacy can be an integral part of the human right to housing according to the capability framework, because adequacy isn't tied to functionings that are relative to specific communities and societies.[59] It is tied to agreed-upon human capabilities, capturing both the freedoms and opportunities that are within a person's reach and the contextual, pluralistic factors that inform these freedoms and opportunities.

While the outcome of exercising one's capabilities might play out differently due to an individual's situation, I should stress one more time that this difference does not at all mean that core essential functions which are required to be human don't exist. Here the challenge lies in speaking meaningfully of housing adequacy, while accepting that there remains an indeterminate and open aspect to a capability framing of it. If the adequate house can look like anything and everything, what can we really say of its capacitating qualities? Are there really no architectural features that are central to adequacy? These are tempting and harrowing questions. I will

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[56] Miller writes: "Having a secure home is a condition of a decent life in societies like ours, but in nomadic societies, for instance, another norm would take its place. So if we define needs with reference to standards of decency, it seems that they too will vary from place to place". Ibid, page 182.

[57] Ibid, page 199.

[58] Ibid, page 183.

[59] Capability theorists assert what resourcists deny; that a public criterion of social justice should take account of the *individual rates* at which persons with diverse physical and mental constitutions can convert resources – basic goods – into valuable functionings. Here a focus on resource distribution appears to be insensitive to differences in people's abilities to convert resources into pursuing their ends; a capability approach does not strive for equality of well-being in this strict sense. I speak more of this in the section on dwellers (right-holders) of Chapter 3. Pogge, "Can the Capability Approach Be Justified?", page 167.

retort by shortly reaffirming the following. One's house may take the form of a tent-like yurt (Central Asia), a six meter-square box (chambre de bonne, France), an underground grotto (Guadix cave houses, Spain), a see-through scaffolding ("Transparent House", Japan), and so on. They may be two people per bedroom, or four, or six, or no bedroom at all; there may be individuals living with a spouse, a sibling, a friend, or no one at all. Some dwellers might shut their windows tight and blinded, while others will want fresh air and abundant light throughout the seasons. Not all people at all times in their lives will live in a fixed, permanent house – they might choose a life of travel, from one hotel to the next, or follow the nomadic traditions of their ancestors. We could go on listing the infinite shapes, materials and colors which constitute one's adequate version of a "house", yet none of these differences diminish the importance of being adequately housed, or of ensuring that adequate houses can be accessed fairly by all, when and if they wish to do so. Once again, Sen's and Nussbaum's capability framework supports the important assertion that there are (housing-related) core capabilities essential to human functioning that must be protected, whilst also acknowledging that the material and spatial shapes these take – that the way they are played out, developed, accessed – are context-specific, change over time, or may not ever be exercised. We can begin to set the above-mentioned tempting and harrowing questions aside.

Human rights are often critiqued as problematically expressive of Western values, mores, and norms; as tinted by Western cultural particularity, as inclined towards dominant modes of being and doing, and so on. Again, as it focuses on outcomes (achieved standards of living) without detailing the specific means of attaining and achieving them, the capability approach fares pretty well in the face of such a critique. Nevertheless, we can recuperate this critique and apply it specifically to a study of housing adequacy and the right to housing: can one really theorize housing adequacy from a narrow experience of housing such as mine? I have some familiarity with the big cities of the Global North – New York, London, Vienna, Paris, Los Angeles, and so on – where I have lived for various extended periods of time. I have a concrete sense of what it is like to be "adequately" housed in such places, but when it comes to (understanding) experiences of being housed in non-Western geographies, climate and cultures, I'm in no position to make assertions about how people in those places should live, or what matters the most about their specific ways of dwelling. While this lack of practical knowledge reveals some limit to my research, I trust that conceptualizing features of the human right to adequate housing through the lens of the capability approach allows me to surpass the supposed limitation of geographic, climatic and cultural specificities – this very limitation that Miller intended to surpass by grounding human rights in a minimal account of human needs. To be sure, even while emphasizing the opportunities to achieve essential beings and doings, it remains challenging to provide a "truly cross-cultural" analysis of housing. Ethnocentrism and cultural

hegemony can rear their ugly head at all stage of the analysis. Yet the philosophical considerations which were raised in this brief examination of the capability framework (and its grounding of human rights) point to promising conceptualizations of adequacy. As I intend to show in the following chapter, there are capability-related features and functionings of housing which can be depicted with precision while allowing for plurality in their "construction", or built form.

I have spoken of the interactions between human rights and capabilities, and suggested that the capability approach provides an advantageous framework for evaluating the human rights position of diverse individuals and groups by making room for cultural diversity. It also makes room for the *interdependence* of all the capabilities, and allows some movement on how achievable the full set of capabilities actually is.[60] At this point, I want to use the capability framework to examine three rights which relate closely to the right to housing: the human right to work, the human right to religious freedom, and the human right to the security of the person. My intention is to demonstrate that a sound philosophical argument for the adequacy of housing must account for these additional dimensions of housing, and explain this notion of interdependence between housing and other goods; this notion of interconnectedness of capabilities, of rights. Put another way, my intention is to demonstrate that the adequacy of housing is partly circumscribed by other rights. Relevantly, United Nations' Leilani Fahra published a report on that very topic (2016), where she argues for the "indivisibility and interdependence" between one's human right to life and the human right to adequate housing.[61] Denouncing the conceptual "misunderstanding" which supposes that the right to life imposes primarily negative obligations on states, rather than positive obligations, Fahra insists on a Nussbaumian, "holistic" conception of human rights where a "clear connection" between a dignified life and the realization of *all* human rights

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[60] Ortrud Lessmann, Felix Rauschmayer, 2016. In "The Capability Approach and Sustainability", Routledge, page 45.

[61] The report was clearly presented as providing an occasion to assess the effect of the division of the unified rights in the Universal Declaration of Human Rights into the two categories of *liberty* rights and *welfare* rights. It encouraged a pluralist take on the duties and expenditures conventionally associated with human rights. An appreciable number of political philosophers have commented on problematic value-hierarchical thinking when it comes to liberty and welfare rights – I am referring to what has been called the "rights ladder", where liberty rights emerge as "superior to" or "more forceful than" welfare rights. Under this view, liberty rights are the kind of rights which matters the most, and so ought to be the first objects of institutional protections and concerns. Henry Shue, Elizabeth Ashford, Thomas Pogge, James Nickel and Charles Beitz have provided well-formulated accounts that challenge this notion. One important argument to take from their conceptualization of rights is that, regardless of them being categorized as a liberty or welfare right, every right will likely entail *both* negative and positive duties. I point out to their respective "The Alleged Dichotomy Between Positive and Negative Rights and Duties" (2009), "The Duties Imposed by the Human Right to Basic Necessities" (2007), "Shue on Rights and Duties" (2009), *Making Sense of Human Rights* (2006) or *The Idea of Human Rights* (2009) for further theoretical specificities.

is recognized.[62] Nussbaum's version of the capability approach as a whole indeed emphasizes positive enablement; that it is, "the responsibility of public policy not simply to refrain from interfering in people's lives", but also to provide the adequate material and institutional support to enable people to "choose" to how live well, to "choose" who to be.[63] And since each of the ten core capabilities on Nussbaum's list is equally centrally important, and a shortfall in any area is significant in itself, the scope for governments to make trade-offs between the rights they ground (for example, on the basis of quantitative cost-benefit analysis) is limited. In effect, the list is "emphatically, a list of separate components", in that one cannot compensate for a lack of one by more of another – although Nussbaum makes it clear that there exist important linkages between these capabilities.[64] Present-day international rapporteurs, bodies and legislators insist on qualifying human rights as having similarly equal, connected status; as being indivisible, non-hierarchical. In that context, indivisibility and interdependence simply imply that the denial of one human right – or capability – invariably impedes enjoyment of other human rights – or capabilities. These various notions are at play in my following examination of (1) the right to work, (2) the right to religious freedom and (3) the right to the security of the person, with some comments on health and healthcare.

(1) Engaging in work directly improves people's capabilities ("self-esteem, exercise of capacities, learning-by-doing").[65] I will speak of work in two steps – first, work as employment; second, work as a significant occupation at large.

For most people, employment is the only source of acquiring the means for their livelihood – without this, either "human resources are wasted through bad health, suffering, or even death, or redistribution is required to provide people with a livelihood without making use of their contributions, which is also wasteful".[66] Martha Nussbaum refers to employment in her description of the aforementioned core capability relating to control over one's environment; more specifically, over one's material environment. It is described as such:

> Having the right to seek employment on an equal basis with others; […] in work, being able to work as a human, exercising practical

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[62] Fahra, "Adequate housing as a component of the right to an adequate standard of living", page 4.

[63] Katharine Gelber, Francesca Panzironi, 2012. In "The Capability Approach: Development Practice and Public Policy in the Asia-Pacific Region", Routledge, page 38.

[64] Martha Nussbaum, 1999. In *Sex and Social Justice*, Oxford University Press, page 42

[65] Van Staveren, page 20.

[66] Ibid.

reason and entering into meaningful relationships of mutual recognition with other workers.[67]

At the beginning of this chapter, I said that adequate housing also works towards securing access to important services and goods; that adequate housing should be located within reach of medical, educational and other types of facilities. Using a capability vocabulary, we can say that adequate housing should secure access to "options" to achieve valuable "functionings; that adequate housing should be located within reach of significant activities, allowing for diverse skills, attitudes and dispositions. By that logic, an adequate house should be located within reach of one's place of employment – if their place of employment is, of course, outside the home.[68] Terms like "within reach" and "near" are open to interpretation, but travel to and from the workplace shouldn't be unreasonably long – the word "megacommute" has been coined to refer to and denounce commute times exceeding ninety minutes per way.[69] In the face of ever more privatized cities, of dreadfully expensive downtown real estate, lower and middle class individuals end up moving into houses located in the suburbs, and endure long commutes to their job place, because it is the only opportunity they have to afford enough space for themselves or their family. Modes of commutes can be private (one's own car or bicycle; one's own legs) or public (buses, metros, trains and so on) – in all cases they must be within "reasonable" geographical reach to one's front door.[70]

Following Nussbaum, I stress that one's non-exclusion from the labor market, and the related financial, social and emotional capital that follow from this inclusion, are of *vital* importance for all individuals nowadays. Recognized in both the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the human right to work has been

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[67] Martha Nussbaum, 2011. In "Creating Capabilities: The Human Development Approach", page 33.

[68] Interestingly, recent calls for a right to work from *home* have occupied a portion of the public debate on employment. Citing benefits such as letting us arrange our work more easily around the rest of our life (erasing or greatly reducing our "commute" time and so reducing pollution, more freedom to use our break and free time, rearrange our work hours), transforming our urban geography, reducing housing disparity across the country, rejuvenating local streets and town centers, these defenders of the "right to work from home" illustrate how advantageous a decentralised economy could be – how advantageous doubling housing as place of employment could be. See James McAsh, 2020. In "The Right to Work From Home Should Be a Demand Far Beyond the Pandemic", retrieved online 2020-05-16, https://novaramedia.com/2020/05/15/the-right-to-work-from-home-should-be-a-demand-far-beyond-the-pandemic/.

[69] Alex Schafran, 2012. In "The Long Road From Babylon To Brentwood: Crisis and Restructuring in the San Francisco Bay Area", UC Berkeley: Institute for the Study of Societal Issues, page 194.

[70] Mikayla Bouchard, 2015. In "Importance of Place: Transportation Emerges as Crucial to Escaping Poverty", retrieved online on 2020-02-25, https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html.

utilized in legal cases against forced home displacements in urban areas.[71] Evicted claimants referred to the necessity of moving to cities in order to find employment – and thus to the necessity of dwelling within reach of the place where they were employed. In *The Death and Life of the Urban Commonwealth*, Margaret Kohn relates the following story:

> On July 13, 1981, the chief minister of Maharashtra, India, announced that all pavement dwellers would be evicted from public property. Their makeshift shelters would be destroyed and the inhabitants would be sent back to their villages. One of the pavement dwellers was P. Angamuthu, a landless laborer who migrated to Bombay in 1961 in order to find work. He left Salem, Tamil Nadu, because of a drought which exacerbated unemployment and hunger in his village. He found a low-paying job in a chemical company. Unable to afford even the most basic dwelling, he paid a "landlord" for plastic sheeting and access to a bit of pavement adjacent to the Western Express Highway. Some of his neighbors were construction workers who built the highway and then remained after it was finished. He lived there with his wife and three daughters until July 23, 1981, when his shack was destroyed and his entire family was forced onto a bus to Salem. Unable to find work, he soon returned to Bombay.[72]

The excerpt demonstrates that the condition of working poverty is one of double precariousness: marked by insecure employment and insecure housing (a condition maintained to this day). P. Angamuthu was one of many petitioners who challenged the state-enforced dispossession and deportation. The petitioners defended the legitimacy of their claim by invoking their human right to employment: in statements that strongly parallel a defense of capabilities, they argued that one's meaningful enjoyment of life rests on her ability to find work, and the need to work is what forces individuals to be housed in informal slums. To evict them from their city homes, to send them back in remote settlements basically condemn them to chronic and involuntary unemployment – a harmful consequence that the Supreme Court of India did ultimately acknowledge. Shelter alone is not enough. People must be able to live in areas where they can find work and gain their living, and thus survive and flourish. Being included in the labor market also means being housed near it. Obviously, to be employed without an appropriate house to retreat to is unmanageable. How can I perform in the workplace if I have nowhere to sleep in peace? How can I keep a job if I can't secure one space to wash myself and cook? Interestingly, by filling in the city's in-betweens, by constructing a little shack near a factory or construction site (their spaces of employment),

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[71] Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment (UNDR); the right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right (ICESCR). https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx .

[72] Kohn, pages 31-32.

workers like P. Angamuthu rightfully engaged in "leveraging the power of proximity", this crucially capacitating power which enabled them to gain a slightly larger share of the value being produced in the city and make a living – thus (being closer to) accessing the means to achieve their essential human functionings.[73]

A recent headline from the Washington Post reads: *Homeless, living in a tent and employed: The rise of tent encampments is changing the face of American homelessness. Inside one, Monica Diaz struggles to keep her full-time job – and her dignity.* This headline euphemizes the violence and indecency of a system where one has to sacrifice one of two essential enablers of capability (housing or work) in order to subsist. The sacrifice of either would undermine their freedom and wellbeing: this shows us that a system which forces a choice between two essential enablers is deeply flawed. The article does a great job at highlighting how being employed and being housed are interwoven, reporting on Monica's plight after losing access to her subsidized unit: "after Lynnhill [housing] was shuttered, and she was living on the streets for the first time, she held onto her Price Rite job for months. But her appearance deteriorated from sleep deprivation and infrequent showering, and she was fired for poor hygiene."[74] The reciprocity – or "concurrent escalation" – is made easy to conceptualize.[75] Monica speaks of the correspondingly dehumanizing experiences of not being able to keep her job because of her homelessness; of not being able to keep her house because of her poor employment conditions. Her brave testimony makes it clear that happiness and a sense of self-worth are conditional on both physical and financial security (and autonomy). *Homeless, living in a tent and employed* shows us that exclusion and dispossession from both housing and labor market are utmost matters of justice, and that they call for the assistance concomitant with human rights. Again, this confirms that housing adequacy ought to be theorized in close relation to the right to work. Note however that the interdependence between the right to adequate housing and the right to employment doesn't imply that they affect each other symmetrically: evidence suggests that the disruptive effects of housing loss on job loss are considerably greater than the reverse.[76]

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[73] Given the key relation between employment and housing I just described, their "unlawful" occupation of public land indeed arises as legitimate. In addition to an effective rectification of an allocation of land and housing infrastructure which results in insufficient levels of wellbeing for so many, the recognition of their informal dwelling acts as a "legitimate demand for repayment of a debt" (think of their grossly uncompensated contribution to the city's economy). This line of thinking shows how the actions of poor people housed in slums are morally unlike those of property owners or developers who encroach on public lands – the latter aren't pursuing work; aren't owed a debt. Kohn, page 55.

[74] Terrence McCoy, 2019. In "Homeless, living in a tent and employed: The changing face of homelessness in the U.S", Washington Post, page 11.

[75] Matthew Desmond, Carl Gershenson, 2016. In "Housing and Employment Insecurity among the Working Poor", Social Problems, 63, page 3.

[76] Ibid, page 11.

Then again, "to work" refers to much more than "to be employed". Many people who are not employed nevertheless work (subsistence farmers, homemakers, domestic care-givers, gig-economy workers, and so on): these are individuals which are likely to work *at* home. This means that specific housing features will have an important impact on their ability to work. For example, a freelance designer is going to need some work-specific space in order to carry out her projects properly. Similarly, care-givers are going to need of housing which is conducive to providing the necessary care. This should also be accounted for in a discourse on adequacy.

(2) The right to work is not the only right that implies a reasonable geographical proximity to one's house. Take the right to religious freedom and practice, or liberty of conscience – a freedom which is mentioned as part of Nussbaum's fourth core capability of senses, imagination and thoughts: being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise.[77] Some Jewish rituals can for instance only be carried out when there is a minyan (group of ten adult males).[78] Combined with the rules forbidding driving on Sabbath, this demands that members of a Jewish community must be housed "near" one another; they must be housed in a concentrated physical space. Without such proximity, adequate participation in Jewish religious life is rendered difficult. In the case at hand, being included in the Jewish community also means being housed near it. This represents a telling example of how the adequacy of housing can be circumscribed by the human right to freedom of thought, conscience and religion.

(3) In Martha Nussbaum's writings on (core) capability, housing is referred to as a means of "control over one's environment", as well as a means of guaranteeing *bodily health and integrity*; people need to be capable of having good health, "adequate shelter" and nourishment, and to be free from assault and attack. The opening descriptions in this chapter illustrated the importance for bodily health of a house that isn't too cold or too hot, too humid, too bright or too dark, too cramped or unsanitary. Human health is taken to be a "holistic multi-dimensional phenomenon", made up of "basic abilities and subjective well-being, and of fundamental states and processes"; as biological creatures, humans need to be sheltered to various degrees from the environment in order to remain healthy.[79] Most of the time, housing is a condition required for good health; it is a real, immediate,

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[77] Nussbaum, "Creating Capabilities: The Human Development Approach", page 33.

[78] Peter Kankonde, Lorena Núñez, 2017. In "Migration and the Sacred in Greater Rosettenville, Johannesburg", in *Routes and Rites to the City*, Palgrave Macmillan, page 61.

[79] In addition to "a supportive natural environment; acceptable weather and climate conditions; infrastructure, energy, and technology", Tengland proposes to include in his description of physical environment the "home", with, interestingly, its domestic appliances, tools, and utensils. See Tengland, pages 25-26.

practical possibility – an opportunity – for good health, a state which we value and consider important. These are fairly uncontroversial statements. When it comes to imagine the relationship between an adequate house and adequate health, we need little explanations or analysis; but what about the second aspect of the capability – bodily integrity? In this subsection, I dissert on and develop the connection between the rights to bodily integrity, sleep, and housing. Striking case studies representing the experience of homelessness in (once again) India are examined. These manifest the different struggles, needs and circumstances that homelessness represents; the different attitudes, activities and dispositions that it hinders. Particularly, they reveal the philosophical issues at stake when theorizing on one's vital need for sleep, which I frame as part of the human right to security of the person. This right informs back on certain features of the adequate house. My intention is to highlight another way in which adequate housing isn't, once again, a mere material resource, but the space which, *inter alia*, can act to enable (or constrain) the function of sleep, this function required for a healthy, well-lived human life.

As Hobbes reminds us, "even the strongest must sleep".[80] *Cities of Sleep* is a 2015 film documentary on India's vast, complex and covert sleep economies, a film which brings the question of housing firmly into the realms of capabilities and freedoms. In the words of its director, Shaunak Sen, it tells the story of individuals for whom securing a safe sleeping spot "often becomes a question of life and death".[81] The so-called cities of sleep are insurgent sleeper's communities, where thousands of poor people pay rent to secure a spot in one of the vast bastis (slums) or jopad-pattis (settlements composed of shacks with amenities, shelters), while others dwell with relatives or in the interstices of the city, in its storage rooms, sidewalks, roofs, parapets, alleys, and compound walls.[82] The film follows Shakeel, a homeless and jobless migrant, in his frantic daily (nightly) search for a bed, and iron-fisted entrepreneurial Ranjit, the founder of a popular

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[80] Thomas Hobbes, 1651. In *Leviathan*, xiii, Andrew Crooke, 1-2.

[81] Shaunak Sen, 2015. In *Cities of Sleep* [film], https://vimeo.com/206782584.

[82] In India alone, over 75 million people live in urban slums; in its largest metropolitan areas, an estimated 40 percent of residents live in informal settlements (the latest official report from Indian officials is the 2011 census). India is currently the only country in the world known to protect the right to sleep, following a ruling in 2016 by the country's Supreme Court – though the European court did recognize the right to a good night of sleep under the right to life in 2001. The U.S. government has also referred to the right to life when arguing that because sleeping is a "universal and unavoidable consequence of being human" that is "necessary for human survival," penalizing homeless individuals for sleeping in public when they cannot access shelter space constitutes cruel and unusual punishment. See Maseeh Rahman, 2013. In "India's Slumdog census reveals poor conditions for one in six urban dwellers", retrieved online 2020-03-09 https://www.theguardian.com/world/2013/mar/22/india-slumdog-census-poor-conditions; Dorothy I. Riddle, 2015. In "Moving Beyond Duality: Enough for Us All", page 57; Simon Gwynn, 2019. In "Eve Sleep calls on government to recognise human right to slumber", retrieved online 2020-03-20, https://www.campaignlive.co.uk/article/eve-sleep-calls-government-recognise-human-right-slumber/1594835.

makeshift cinema shelter, who also doubles as a wise and self-conscious social commentator. We are plunged into the hustle and drama of two informal sleep shelters: one located on the pavement of the complex ecosystem that is Delhi's Meena Bazar; one located beneath the Loha Pul, a bridge that spans the river Yamuna. We often watch tired men drift off to sleep in Shaunak Sen's study. We watch them enraging at being unable to master their own drowsiness. In Ranjit's improvised theater, which jarringly combines entertainment, rest, and community, we watch them pay 10 rupees ($0.16) to find refuge in six hours of sleep as Bollywood films play back to back, drowning the cacophony of the bridge traffic overhead in music, songs and dialogues, in scenes that confer another meaning to the "right to silence". These are truly intimate, detailed testimonies. Well-being, dignity, opportunity, integrity and freedom are here understood as "approximations of principles" in a brutal "world of action" where absolute principles are "ultimately irrelevant".[83] *Cities of Sleep* presents its viewers with a stunning philosophical meditation on the power of sleep.[84] Capability and freedom are understood through sleep: we are told that it is the ability to decide when and where to rest that makes a person truly capable, free: "to figure out someone's power, observe the way they sleep", "if you want to seize control over someone, never let them sleep".[85] We muse upon control over one's environment when we are told that "the whole city is divided on sleep", and that "the only difference between private and public property is sleep, because if you sleep in a place for a few nights, you develop an affinity to it, it becomes yours".[86] We reflect on our own relationship to wellness, wakefulness, and equality; on the mind, subjectivity, and sanity, when working-class and migrant laborers are described as "escaping the cage of their laboring being, drifting between dream, film, recovery, and rest, and resuming the control of marzi (will) – however fleetingly – in the time-space of slumber".[87]

The portrayed existential importance of the sleeping shelters, which become true homes for their occupants, the prejudice, pessimism, anguish and solitude of those who can't find a roof, these show how many "options" to achieve valuable "functionings" tie back to the possibility of being soundly

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[83] Benjamin Barber, 1984. In *Strong Democracy: Participatory Politics for a New Age*, University of California Press, page 84.

[84] Observations overhead in the documentary evoke those of academic scholars, who too posit how "sleep emerges as a complex entanglement of thresholds that ventriloquize death and police sickness and health, and (con)fuses body and soul, both threatening and ensuring our psychical and corporeal integrity, opening the self onto the dislocated texture of our dreams, […] in this equal world that every man has experienced". Simon Morgan Wortham, 2013. In *The Poetics of Sleep: From Aristotle to Nancy*, Bloomsbury Academic, page 15.

[85] "Only the man who sleeps and wakes as and when he wishes, is free in the truest sense of the word." Sen, *Cities of Sleep* [film], https://vimeo.com/206782584.

[86] Ibid.

[87] Sahana Ghosh, 2017. In "Review of Cities of Sleep", directed by Shaunak Sen, Multimodal Anthropologies, 119:3, page 543.

housed. Sleep tints our relationship to the world. *Cities of Sleep* is striking because it helps us to see sleep's political stakes and normative dilemmas extremely clearly. By focusing on homelessness' (and sleeplessness') consequences on corporeal vulnerability, on normal human functioning, on possible beings and doings, it helps us to acknowledge – and, most importantly, to *experience* – the importance of dwelling. So sleeping – not a trifle? The basic right to physical security is conceptualized as a human right which protects the holder from "serious threats" to her body security. One can't function and flourish if someone else can credibly threaten her with physical violence. Such threats to physical security are said to be among the gravest and the most wide-spread hindrances to the enjoyment of any right worldwide.[88] This right is usually invoked against threats of murder, rape and beating, but, in light of the bodily violence portrayed in *Cities of Sleep*, I want to insist that it need not be invoked against these types of abuse only – think of being woken up against your will, or being sleep-deprived and relentlessly prevented from resting. Think how chronic sleep disruptions result in difficulties processing information, memory loss, paranoid tendencies, extreme mood swings, lessened affective functioning, accidents, and a deficient immune system.[89] Yet again, using the capability framework when conceptualizing bodily integrity and the right to adequate housing allows us to move beyond "minimal" interpretations of the right to bodily integrity (interpretations which reserve the right to extreme cases of violence), and rightfully extend its considerations, provisions and protections to sleep-related harm and violations. These intuitions were formalized by, funnily enough, the Supreme Court of India, which in 2012 explicitly recognized sleep as a human and legal right, while examining the case of a police raid on an encampment of sleeping protestors. They judged that "an individual is entitled to sleep as comfortably and as freely as he breathes". [90] Violence is not just a matter of killing or raping people. It is also a matter of intimidation, degradation, exclusion, depredation, and deprivation; and testimonies like Shakeel's are a direct proof of that. For him – and for almost all of us –, access to adequate housing already represents a guarantee of environmental conditions suitable for sleep: warmth, dryness, silence. It prevents undesirable interventions and interruptions; its preserves capabilities.

A human right to bodily integrity emphasizes the importance of personal autonomy and the self-determination of human beings over their own

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[88] See Henry Shue's argument for physical security as a basic right in Henry Shue, 1980. In *Basic Rights. Subsistence, Affluence and U.S. Foreign Policy*, Princeton University Press, pages 21-21.

[89] Dorothy I. Riddle, 2015. In "Moving Beyond Duality: Enough for Us All", iUniverse, page 57.

[90] Dhananjay Mahapatra, 2012. In "Right to sleep a fundamental right, says Supreme Court", retrieved online 2020-03-07, https://timesofindia.indiatimes.com/india/Right-to-sleep-a-fundamental-right-says-Supreme-Court/articleshow/12025358.cms.

bodies; being able to sleep without interruptions is empowering. To have a house of one's one – if adequate – constitutes the most unwavering manner to insure a good night sleep. I trust that the *Cities of Sleep*'s case studies related above make a convincing case for tying back the adequacy of housing to a right such as the human right to the security of the person. Some statements on sleep and capabilities might read as self-evident, but they remain relatively absent from philosophical characterizations of both housing and bodily integrity. This might be explained by the fact that so much of philosophers' energy spent on theorizing the forms of doing and being that constitute the human form of life has focused on *distinguish it* from other forms of life. With its emphasis on bodily-related functions and freedoms, the capability framework also reminds us that a human being is nothing else but a kind of animal. In that context, it acts as a precious reminder. Considerations on sleep – on a "banal" activity that relates to our embodied conditions, to our bodies, to our animal nature – have fell behind abstracted considerations. Why philosophizing on sleep and tiredness, on hunger and thirst, on hygiene and excretions, on needs for warmth and shade, when these activities remind us of that being human is also a "base", "bestial", "carnal" mode of being? At times, scholars and legislators of the right to housing have gone as far as to denounce the emphasis on need, subsistence and life, which, in their own words, "made the petitioners [seeking to defend their right to an adequate home] seem more like animals than human beings".[91] We should put aside these ideas that issues of true moral significance are nonconcrete, civic, decorporealized. If one follows my argument for the adequacy of housing and its close link to bodily integrity, one will see that it entails a complete rejection of this sarcophobia.

To conclude this chapter, I want to put forward one last reflection on the subject of the core capability of bodily health and integrity and the rights to housing, health and healthcare. First, take poet Eileen Myles' comment on modern-day New York, where she describes how

The homeless are wandering
the streets of our nation's
greatest city. Homeless
men with AIDS are among
them. Is that right?
That there are no homes
for the homeless, that
there is no free medical
help for these men. And women.
That they get the message
—as they are dying—
that this is not their home?
And how are your
teeth today? Can

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[91] Kohn, page 32.

you afford to fix them?
How high is your rent?[92]

The excerpt compellingly juxtaposes the issues at stake when individuals can't access (or afford) both housing and healthcare – beyond the plain injustice of the system, the feeling of exclusion, the anguish, the life-or-death mattering. What's more, *An American Poem* hints at contexts where claims on resources between house and health goods are possibly competing ones. The money you spend on rent is money you don't put on dental procedures; you'll have to pick. Asking people to choose between housing and health is, of course, a false choice. We can and should enjoy both housing and health. Both are considered supportive or constitutive of human capabilities, and are strategically important contributors to well-being and the development of capabilities. Conversely, the characteristics which *distinguish* them include predictability of need, epistemological complexity and universality.[93] What grounds these distinctions between healthcare and housing matter? Do these distinctions matter? This is my very short attempt at reflecting upon the reasons which explain the asymmetry of philosophical attention given to healthcare adequacy. In effect, we find plenty of theorizing about the right to adequate health and healthcare, and almost no theorizing about the right to adequate housing. I provide some thoughts on why this is the case.

I have spoken on the common understanding that, independently of our place of birth (nationality) and our state at birth (genetic constitution), a very large majority of us needs to be housed, and will need to be housed until we die. In that sense, housing is regarded as a "course-of-life" need, one which people "have all through their lives or at certain stages of life through which all must pass".[94] Whatever our chosen goals or tasks, we readily understand that we'll need to be housed. As was discussed with the capability approach, we readily understand that finding ourselves in a situation of home inadequacy will greatly reduce the range of opportunity we have within which to construct life-plans and conceptions of the good "we have a reasonable expectation of finding satisfying or happiness-producing".[95] There is certainty about the necessity to put a roof over one's head – it is a permanent condition – and so we plan accordingly. From an early age we

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[92] Eileen Myles, 1991. In "An American Poem", in *Not Me*, Semiotext(e), page 69.

[93] For additional characteristics, refer to housing scholar Peter King's description in his 2011 "Application of Political Philosophy in Housing Research", Housing, Theory and Society, 28:2, pages 112-113.

[94] Other human "course-of-life" needs include food, clothing, exercise, rest, companionship or a mate (in one's prime) – in a sense they overlap with Sen's or Nussbaum's capabilities. A deficiency with respect to these needs is thought to "endanger the normal functioning of the subject of need considered as a member of a natural species". See David Braybrooke, 1968. In "Let needs diminish that preferences may prosper", in *Studies in Moral Philosophy*, Oxford, page 90.

[95] Daniels, page 219.

readily understand housing as this lasting, practical need, and organize our finances and projects around it. We likewise develop the experience to determine what we need or desire in a home beyond basic amenities: what type, location or style best suits our individual requirements. We know what we like and what general steps are to be undertaken to get what we like; we come to find ourselves in a better position *to demand the requisite goods* to fulfil our housing needs. Therefore, we perceive home adequacy to be epistemologically simple. This perception is facilitated by our constant association with our home – we most likely always are "in habitat" – and with general housing standards, which are depicted in straightforward ways in our immediate environments or media. In terms of predictability of need, healthcare can easily be conceptualized in contrast to housing. Disease is a particular abnormal condition; health is the "normal" state that we expect and hope to sustain. My intent is not to equate normality with permanence or universality, but to point out that healthcare needs are much more unpredictable, and are often brought to salience – to our attention and imagination – only when one necessitates care. Some people will have recourse to extensive health treatments in various instances over their lifespan, some won't at all. Unfortunate individuals will require special medical monitoring and care from their birth onwards; a permanent condition to be sure, but one that isn't shared by the population at large. Given that we have to add treatments for disease (unpredictable) to preventive care (predictable), we can't fully plan for the provision of healthcare — that might befall us. Many won't think of such needs before they are made manifest to them through some physical or mental disorder. This might explain why these needs are perceived as being more aleatory, underspecified, opaque – and thus in need of expert (medical and philosophical) clarification.

In all cases, the capability framework's openness suggests that while we can suppose our need to be housed in relation to certain human functionings, we can't identify the specific means to the desired outcomes beforehand. A conceptualization of housing that follows from creating "spheres of opportunities", for enabling capabilities, implies that these housing-enabled choices (or housing-related needs) also be aleatory, underspecified, more opaque – or, to use Martha Nussbaum's qualification, thick and vague. This pulls a right to adequate housing a little closer to the right to health and healthcare, and so calls for bettered accounts of adequacy of the former.

In this opening portion of my thesis, I have laid the groundwork for a philosophical study of housing adequacy by presenting some of its definitions and characterizations as established by bodies and reports of the United Nations. I have spoken of the right to housing and sought to contextualize its existence as a human right by referring to Amartya Sen's and Martha Nussbaum's capability approach, which I detailed and contrasted with a basic needs' approach. I have done so in order to account

for the common, minimal interpretation of the human right to housing, an interpretation which severely limits the opportunities, provisions and protections associated with capability-based rights. I have talked about the ways different human rights such as the right to work, to freedom of conscience and to bodily integrity influence the nature and content of the human right to housing, and I have given examples illustrating these various mutual influences. I have briefly commented on the asymmetry between theorizing on health and healthcare adequacy and housing adequacy, and suggested that the capability approach allows us to call for deeper investigations of the right to adequate housing. In Chapter Two, I propose new considerations and analyses on the human body and mind, in order to further account for the adequacy of housing and one's human right to an adequate house.

Chapter 2 Housed: considerations on the body and on the mind

I have divided this chapter in two distinct sections: body and mind. While in practice, housing-related functionings make it hard to neatly separate considerations which have to do with mental capabilities and physical ones, there is some logic in examining them separately. The first section includes reflections that are based in a certain tradition of political philosophy (considering notions of freedom and flourishing against today's powerful property rights, among other things), while the second section takes more of a phenomenological angle. In all cases, they further my claim that housing and human capabilities are deeply, essentially intertwined – and that adequate housing should hence benefit of the protections and provisions that accompany human rights.

Housed: considerations on the body

Bringing a corporeal focus to the issue of housing has one significant advantage: it enables us to see how bodily considerations actually lie behind a lot of our moral intuitions and actions. While it does tie back to minimal imaginations of the human right to housing (I discuss shelter, lack of roof, severe deprivations), it makes it apparent that current, property-oriented legal protections and actions ought to be revised – they ought to better consider the consequences at stakes when one lacks a house. I first turn to Jeremy Waldron. His *Homelessness and the Issue of Freedom* (1991) remains to this day one of the most rigorous and spirited philosophical studies of the issue of housing – the argument has led prominent housing scholars to revise their libertarian position on the existence of a human right to housing.[96] A text dealing with the nature of vagrancy and public and private ownership, it reveals the complexity of space occupation in cities, as well as the impacts of housing inadequacy on human dignity, welfare and liberty. In the following section, I test Waldron's argument as a tool for advocating one's right to adequate housing. I then shortly draw on Alejandra Mancilla's works on the right of necessity – with a special attention to Locke's conception of property – to substantiate and extend Waldron's analysis.

Waldron begins by stating his desire to revise the liberal discourse surrounding an (ever more limited) individual right to be in a place. In a manner which echoes that of famed philosophers of welfare rights, he expresses his frustrations at the lofty-sounding but ultimately inconsistent commitments of liberal theorists, which are here accused of glossing over

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[96] Peter King, 2011. In "Housing as a freedom right", Housing Studies, 18:5, page 661.

the questions raised by the absence or the gross inadequacy of housing; by homelessness. These questions relate to the "most basic principles of liberty", and so ought to preoccupy us every bit as much as more familiar worries about torture, the suppression of dissent, and other violations of human rights.[97] Waldron proceeds to detail people's situated nature, which brings him to call for a complete requalification of what is understood as dignified – adequate – occupations of spaces.

What, then, is implied by people's situated nature? All actions must be situated. This follows from the simple fact that "everything that is done has to be done somewhere".[98] As embodied beings, we are always located; we are not free to perform an act unless there is some place we are free to perform it *in*. Such statements are banal, but to Waldron they hint at the possibility of speaking of housing as one of the most significant goods, if not "the most significant".[99] Or, to rephrase this in a language of capability, they hint at the possibility of speaking of housing as one of the most significant enablers of essential human functionings. We saw in the previous chapter that human rights are interrelated and interdependent; a right to a safe, situated place corresponds to the freedom of exercise of all others rights.[100] The idea at play for Waldron is that an individual who has no home is completely and at all times at the mercy of others. There is no place governed by private property rules or increasingly stringent public property rules where she is allowed to be and do at will. She cannot make use of her most basic functionings as she literally has no right to be anywhere. If our conceptions of human freedom or autonomy are to relate to a person's most vital interests and functionings, we can see how the situated nature of individuals points at the special importance of housing in relation to the exercise of most basic capabilities.[101] Now think of actions that we usually do at home (as they are actions that we undertake only in private). Taking a nap or a bath, preparing lunch for the children, having sex. These are actions or activities which are usually closed off to those who lack a house, or are not adequately housed. These actions and activities aren't thought of as significant in the "noble" sense associated with freedoms that fit the general imagination of what human rights are supposed to protect (religion, free

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[97] Waldron, "Homelessness and the Issue of Freedom", page 296.

[98] Ibid.

[99] Waldron, quoted in King, "Housing as a freedom right", page 666.

[100] Again, to rephrase this in a language of capability, we could say that a right to a safe, situated place corresponds to the freedom of developing, achieving, attaining most of the (ten) essential capabilities listed by Nussbaum.

[101] Think of the abovementioned human functionings which capabilities make possible: these functionings are also situated (they must be in order to be at all operative). We can reason similarly to Waldron. A place to be is understood as a basic right, and the kind of place that matches the extensive list of situated central human functional capabilities is *more* than a basic space to sleep, wash and urinate. If it is to fit Nussbaum's extended list of capabilities, a place to be becomes recognizable as housing, not shelter. Once again, the right to adequate housing (and not only to a mere place) follows from this framework.

speech, political participation, and so on). There may not seem anything "particularly autonomous or self-assertive or civically republican or ethically ennobling about sleeping or cooking or urinating".[102] We rarely find them referenced in philosophical treaties or doctrines. Still it very much matters when people are not free to perform such actions. Maybe we think that sleeping and excreting aren't dignified actions – a supposition that I challenged when spoking of the *Cities of Sleep* – but we can nevertheless agree that there is something profoundly, inherently undignified about preventing someone from performing these actions. If a person needs to urinate, what she needs above all as a dignified person is the "freedom to do so in privacy and relative independence of the arbitrary will of anyone else".[103] Waldron wants his readers to realize that housing literally corresponds to the freedom to be in some place – *at least one place*; one's home – to undertake basic human functionings. [104] And, as we saw in Chapter 1, if we are not at liberty to undertake these basic functionings, we are not, properly stated, able to live at all.[105] Consequently, impairment of normal functioning through housing inadequacy constitutes a fundamental injustice: a harmful restriction on one's capabilities, on her individual freedom – on individual opportunity relative to our "normal, species-typical" opportunity range.[106] Or, to put it plainly, impairment of normal functioning through housing inadequacy constitutes a severe human right violation.

Objectors to this sort of account will point out that *Homelessness and the Issue of Freedom* presents a philosophical defense of one's right to a place, not a house. While this point is worth raising, I think that there is a strong case to be made that, since Waldron frames his account around the notion of "home"-lessness (or "house"-lessness), he *is* discussing the issue of housing – he is, for a fact, describing people who lack an adequate house. There therefore is "a common sense" association between Waldron's discussion of place and housing. Following such reasoning, it would be perverse to argue that a "place to be" need not to be the same as housing. In all cases, this objection generally builds on the intuition that the important actions and activities which we carried on in our home could simply be carried on elsewhere: this greatly diminishes the significance of housing adequacy in a rights perspective, as individuals who are not properly housed are at liberty to undertake these important actions elsewhere. Such refutations have also been prompted against homeless individuals and anti-homelessness activists when they invoke the human right to a *house*. The reply goes along the line that being housed is not the only condition or space to undertake situated acts like cooking, sleeping, showering, and so on; under that view, a defense

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[102] Waldron, "Homelessness and the Issue of Freedom", page 296.

[103] Ibid, pages 321-322.

[104] King, "Housing as a freedom right", page 666.

[105] Ibid.

[106] Daniels, page 219.

of housing-related bodily considerations simply proves the importance of our individual right to some kind of place – this doesn't mean that this place should be a house. This place might be a public space, like a municipal restroom, a street bench or a subway platform; it could be a primitive shelter, a hut, a roof. Yet the above-mentioned principles of capability, of dignity and autonomy, imply a sense of civilized life, of quality of life that does evoke something more than a temporary shack or a city square. Furthermore, it is hardly possible to ignore the current, severe forms of policing one's actions in public places. A large number of rules prohibit behaviors that we have identified as necessary to the accomplishment of elementary functionings – think of barbecuing in a city park (one must eat), bathing in a retention basin (one must wash) or urinating in the street (one must excrete). We are forbidden to carry out such acts in almost all public spaces. The laws and policies regulating what one is free to do in these spaces appear to be as stringent and exclusive as those exerted by private land owners. This puts individuals back in a position where they have to ask for permission – from public authorities – to undertake the basic functions that make life possible, thereby violating their personal freedom to do so. So the right to undertake these basic functions seems to demand more than the right to be in a public space, or "any space" – it implies the possibility of being housed.

Jeremy Waldron's line of argument does a good job of highlighting the problems that arise from using liberty-welfare distinctions when theorizing on "different kinds" of rights. Liberty and welfare are so highly intertwined that it hardly makes sense to say that rights must be grounded in one or the other. His framing of the issue of housing (or lack thereof) hints at promising challenges to libertarian canons, especially those which focus on the limits of private property.

To stress that point, I now briefly turn to another scholar: a comparable approach has been undertaken by political philosopher Alejandra Mancilla. Her work on the basic right of necessity makes the argument for a complete revision of the actions and goods that are prioritized or held as "sacred" by individuals and institutions today; as Waldron, she positions her account against stringent protections of property, though her concern is one of global justice, not of personal freedom. Yet I believe that her work can help us to further conceptualize the kind of wrong enacted when authorities prioritize property rights over one's human right to housing. As I go on to develop in Chapter 3, this turns out to have potent implications for the duties of State and municipalities, especially with regard to policy-making and the enforcement of housing-related laws. Mancilla's cosmopolitan right of necessity resuscitates a certain school of medieval thought, which recognized that rules and laws could be overridden by urgent – necessary – subsistence needs. What is at play when we speak of the right of necessity? This right entails that individuals whose basic rights to subsistence are not realized should be entitled to "take, use and/or occupy the material resources

required to guarantee their self-preservation or the means necessary to obtain the latter".[107] Take the usual simple scenario: while on a hiking trip you get caught in a snow storm without proper clothing. You are alone, exposed, stranded, frozen. You spot a hut in the distance; you go there and find its door locked. You then proceed to break one window, crawl in and find shelter until the storm passes. The underlying principle is that, in times of great necessity – your body risking hypothermia, and so on –, it is morally acceptable for you to (damage and) occupy somebody else's property. As Mancilla, I trust that few would dispute this moral acceptability. Yet, what appears to be of significance in this study case is that the exercise of one's right of necessity should be limited to "rare" emergency cases. Situations like sheltering from storm are indeed abnormal; their protagonists find themselves "outside" normal rules, "outside" the set of actions that ethics usually permit. When the snow storm comes, your right to shelter trumps the property rights of the hut owner because getting access to this hut is a matter of life and death.[108] Under ordinary circumstances, the opposite holds: one's property rights will outweigh someone else's housing needs. A homeless individual like Monica Diaz, whose story I alluded to in the previous chapter, will of course be severely punished if she attempts breaking into a flat or a family home; she'll also be punished for squatting. Yet it should be clear by now that contemporary rules and laws which prohibit interference to property rights lead to other people's basic rights being violated. How are States and law-enforcing authorities to adjudicate between such competing claims? Can we think of a system to differ between instances of necessity and gratuitous violations of goods which belong to another – and if so, what does it tell us of housing adequacy? If the right to shelter is a basic component of the right to life, then shouldn't it systematically trump property rights? Should it trump both private and public property rights?

Although 95.9 percent of constitutions in developing countries recognize the right to private property, only 40.2 percent recognize the right to housing.[109] We face a clear structural divide between both rights, with the consequence of widespread housing inadequacy. In this context, Mancilla's theorizing on the right of necessity functions in a similar manner to Waldron's defense of situated and dignified bodies. It highlights the permissibility and importance for those whose bodily needs remain unmet to act to guarantee their survival, given that they live in a socioeconomic regime which doesn't create the conditions within which the basic right to subsistence is realized for all – within which everyone finds sufficient opportunities for development and flourishing. It also reveals the problematic emphasis that individuals and

[107] Alejandra Mancilla, 2016. In *The Right of Necessity: Moral Cosmopolitanism and Global Poverty*, Rowman & Littlefield, page 4.

[108] Ibid.

[109] Courtney Jung, Evan Rosevear, 2013. In "Economic and Social Rights across Time, Regions, and Legal Traditions: A Preliminary Analysis of the TIESR Dataset", Nordic Journal of Human Rights, 30:3, page 4.

institutions place on ownership and its associated protections; it makes evident that this emphasis should clash with some of our deepest moral commitments and intuitions. Necessity justifies the actions of vagrant or acquisitive outlaws like Monica. When a homeless person seeks shelter in the empty vestibule of a bank or a neighborhood park, she has a legitimate reason for violating property rights due to necessity, and so shouldn't be punished for her actions. One of the moral intuitions at play is that it isn't wrong to "appropriate someone else's surplus property in order to provide for one's own need when viable legal alternatives are not available".[110] In societies such as ours, where "ordinary circumstances" consist in severe housing inadequacy co-existing with extreme wealth and luxurious dwelling – according to numbers collated in recent years, "more than 11 million homes lied empty in Europe alone, enough to house all of the continent's homeless twice over"[111] –, resorting to a justly recognized right of necessity would be productive and far more common. From this angle, the revised acceptability of different modes of space occupation provides us with an opportunity to challenge what we qualify as "surplus" housing property. If the owner does not use, occupy, or even assert her right to property over some period, it might be the case that such a place ought to be made available for homeless people to inhabit. I believe that radical redistribution here arises as a credible moral action to undertake.

In *The Right of Necessity: Moral Cosmopolitanism and Global Poverty*, Mancilla conceptualizes the right of necessity as a check on any system of property rights – the right is described as both a privilege and a claim against others; in cases that matter to our discussion, a claim against the owners of a targeted property, who are not to interfere with the legitimate actions of the needy to occupy their building.[112] What interests me the most in her analysis is its indication of a change in the meanings attached to property relations. Even when defending the right of necessity, or self-preservation, the selected historical theories (Grotius, Pufendorf and Locke are frequently referred to) still posit private property as a good of existential significance – a conception which differs from today's increasingly marked economic significance. A house is not a standing reserve, or an investment opportunity to speculate on, but the armature for self-integrity and bodily security. Human freedom, autonomy, welfare, dignity, agency – these notions are to be safeguarded by enforcing strong property rights, because strong property rights suppose a basic guarantee against domination. One's home can be

[110] Sonia Katyal, Eduard Peñalver, 2010. In *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law*, Yale University Press, page 56.

[111] Rupert Neate, 2014. In "Scandal of Europe's 11m empty homes", retrieved online 2020-03-17, https://www.theguardian.com/society/2014/feb/23/europe-11m-empty-properties-enough-house-homeless-continent-twice.

[112] Temi Ogunye, 2017. In "Can the Right of Necessity Be Both Personal and Political?", retrieved online 2020-03-18, https://krisis.eu/can-the-right-of-necessity-be-both-personal-and-political/.

conceived of as a typical form of "existentially significant" property, because controlling one's own home is an immediate expression of one's will. This approach to property places a special emphasis on built infrastructures, or land, because the right to property protects a physical space in which the "arbitrary will of another person does not prevail".[113] Freedom is not something which just occurs in thought: it requires some physical domain outside the person's own mind where she can actualize her will by carrying out his purposes.[114] Here we seem to find ourselves back in the philosophical debate of what counts as "existentially significant", and so it isn't clear that an individual's right of necessity ought to be prioritized over another's right to property at all time. Or is it?

As a concluding remark, and as one possible (start of an) answer, let us refer to John Locke's foundational account – he after all formulated an extremely influential defense of private property; one that has been assimilated into most Western legal traditions.[115] Locke claims that the law of nature commands the preservation of all mankind. Self-preservation is the natural end of human beings; the right to preservation included a right to the means for preservation.[116] Property is a means to that end. So a right to preservation, or a right of necessity, is also a right to someone else's property, when this property can bring about shelter and physical security. In hindsight, we can frame the statement as being about a right to someone else's property, when this property can enable the formation and attainment of essential capabilities. According to this Lockean schema, the right of necessity does have priority over the natural right to property. However, this priority changes if private property and protected ownership increase overall flourishing by increasing productivity. The concern is the following: if it brings about the proper incentives for society's development, private property must be favored, because such development would ultimately benefit everyone, starting with the needy. In that context, state institutions indeed have the authority and responsibility to adjudicate conflicts that emerge between individuals asserting subsistence rights and others seeking to protect their property.[117] These institutions must adjudicate by seeking

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[113] Kohn, page 41.

[114] In effect, private property was thought to play an important role; that of securing a space free from the arbitrary power of others. Some republican theorists also emphasize productive property as it could guarantee independence by providing the material basis for self-reliance. So we can think of justifying both private property and political association as essential forms of self-defence against the domination of others. I explore these notions in the second part of Chapter 2, where I address housing considerations which relate to the human mind (human will, emotions, sense of identity, memory, and so on).

[115] James Tully (1983), *A Discourse on Property: John Locke and His Adversaries*, Cambridge University Press, page 113.

[116] John Locke (1689), *Second Treatise of Government*, Awnsham Churchill, paragraph 87.

[117] Given the current scale of dire housing inadequacy globally, and the inevitability of the resistance from those whose property will become vulnerable to appropriation by the needy, violence is expected to arise – a consequence that Alejandra Mancilla recognizes and

overall sufficiency and social good. As said, I discuss housing-related duties borne by governments in details later; for now, suffice is to say that the tension between (1) embodied functionings and the right which protects and assures them (necessity, life, subsistence – and housing, or shelter), and (2) the right to property should be continually gauged by both individual and societal standards.[118] In a world in which many human beings experience severe and chronic deprivations, and in which housing has emerged as a mere good of economic significance, we should de-emphasizes the implicit inviolability of one's right to property, and instead think about property as a social and political framework for regulating access to adequate housing; for securing a distribution scenario where everyone is sufficiently provided for. And until they are so, I think that we ought to celebrate trespassing and infringements for what they really are: individuals' affirmative, necessary actions to secure the physical conditions for the realization of their body-related capabilities.

In this second half of the chapter, I double-down and make a case for the importance of housing in light of considerations of the human mind.

Housed: considerations on the mind

> Houses? But, to be precise, they were houses that were no longer there. Houses that had been demolished from top to bottom. Near the bedroom partitions there still remained, along the whole length of the wall, a grayish-white streak; across this there crept up in worm-like spirals that seemed to serve some unspeakably disgusting digestive function. The gaping, rust-covered channel of the water-closed pipe. The stubborn life of these rooms had not allowed itself to be trampled out. It was still there. One could see it in the colors which it had slowly changed, year by year: blue into a mouldy green, green into grey, and yellow into a stale, drab, weary white. And from these walls once blue, and green and yellow, framed by the tracks of the disturbed partitions, the breath of these lives came

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ultimately accepts. Questioning if deprived individuals can use force if others interfere with the exercise of their right of necessity (a claim that I am disposed to sympathize with) is a necessary step in the sound defense of this right. Due to my research's limitation I refer to Ogunye's analysis for a critique of the practical and political implications of prioritizing the right of necessity, including that of violent conflict – an implication described as "remedy worse than disease". The risk is that the radical actions necessary to secure immediate needs end up being in tension with Mancilla's cosmopolitan aim. See Ogunye, "Can the Right of Necessity Be Both Personal and Political?", retrieved online 2020-03-18.

[118] In other words, our normative baseline should be recalibrated in terms of social property rather than private property. Social property here does not mean the abolition of private or personal property, but rather the "view that the social product is composed of collective and private shares, and that its division should be the product of democratic deliberation", guided by principles of sufficiency, justice and equality. Ogunye, "Can the Right of Necessity Be Both Personal and Political?", retrieved online 2020-03-18.

forth —the clammy, sluggish, fusty breath, which no wind had yet scattered.[119]

Most writers of political philosophy have conceptualized place attachment and displacement by focusing on human attachments to large-scale places, such as cultural homelands or countries.[120] While a few recent studies have zoomed in on the space of the house – we'll take a later look at Cara Nine's insightful take on home displacement and philosophy of the mind (2018) –, the best-known literature on the phenomenon of attachment to housing remains Gaston Bachelard's 1958 *The Poetics of Space*, which has often been compared to Heidegger's analysis of architecture, humanity and care in "Building, Thinking, Dwelling" (1954). Both texts seek to wrest the "essence" of dwelling from concealment, Bachelard focusing specifically on intimate, domestic spaces.[121] In the following section, I refer to these writings in order to highlight another fundamental function of the house – that of protecting intimacy, of constructing identity, of materialising belonging. To recuperate Bachelard's turn of phrase, this is not a "question of describing houses, or enumerating their picturesque features and analyzing for which reasons they are comfortable"[122], but a question of understanding their primary virtues. I wish to make it evident that such functions are indeed primary; that they reveal an attachment intrinsic to human experience, and are necessary to the development of one's capabilities.

As with "Building, Thinking, Dwelling", the abstraction and literary flourishes at play in *The Poetics of Space* might frustrate a reader in search of plain explanations. What is really meant by terms like "the immemorial", "anthropocosmic ties" or "transcendental geometry"? What is it about houses that "render the repose of the being possible"? What do nooks and doorknobs, closets and attics, old kitchens and cellars have to do with emotional well-being? Bachelard, a self-acknowledged philosopher of adjectives, concedes that housing first consists in an architectural object of surfaces and right angles, but marvels straightaway at how such rectilinearity so welcomes human complexity and idiosyncrasy.

Bachelard holds that the most primordial instance of human dwelling is to be found in the house, which is here understood in terms of a space or place

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[119] Rainer Maria Rilke, 1930. In *The Notebooks of Malte Laurids Brigge*, Knopf Doubleday Publishing Group, pages 43-44.

[120] Existing literature on belonging and space at the scale of the national territory include Joseph Carens (1987), *Aliens and citizens: the case for open borders*; David Miller (2007), *National Responsibility and Global Justice*; or Anna Stilz (2013), *Occupancy Rights and the Wrong of Removal*.

[121] Note that here dwelling is not understood as "a building", but as an activity. This shift in conceptualization neatly fits that of capability theorists.

[122] Gaston Bachelard, 1958. In *The Poetics of Space*, Penguin, page 4.

comprised of the inhabiting practices of the imaginative and creative subject. He details forceful and elemental experiences of being at home, and describes the well-being it encloses as essential, sure, immediate – in the house individuals are enable to grasp (no less than) the "ontological truth of felicitous space", a space of which "the soul comes and inaugurates the form, dwells in it, takes pleasure in it".[123] His attempt is one at qualifying dwelling as a crucial metaphysical phenomenon, one that fully expresses human powers and potentials. *The Poetics of Space* presents characterizations of domestic architecture as mirroring the human existential condition, where the house's virtues of resistance and protection from a hostile "outdoors" are "transposed into human virtues"; where memory and imagination "work for their mutual deepening".[124] The home is the human being's original world, or place of safe dwelling, which "maintains him through the storms of the heavens and those of life", in terms of an ontological power that centralizes, gathers, and integrates "the thoughts, memories, and dreams for mankind", and it "allows him to dream in peace".[125]

Beneath Bachelard's poetic language lies a simple idea about the space of housing: when we are at home, an infrastructure that renders the repose of the being possible, we are brought into the presence of our own Being. Being home is thus a distinctive mode of being in space, and domestic material imagination – this collection of rooms and objects substantiating the home – is celebrated as holding an important role in shaping human identity.[126] We discussed earlier how humans are situated beings. No matter where they are located, they are continuously developing themselves; they continuously form and make use of their capabilities. The difference I want to highlight here is between a *public sense* of becoming and a *private one*. It appears that it is mostly at home where one can "let go of her guards", slow down, where she can let her thoughts drift away, recall past events and emotions, be in harmony with herself; "experience herself", so to speak. In that sense, inhabiting, or in-dwelling, is theorized as crucial to self-conception, or self-identity, which is in turn understood as central to human well-being.[127]

At this point, I would like to really insist on the connection between Bachelard's notion of well-being, which emphasizes the relation between welfare and the structuring of one's self, and the justificatory ground of human rights that was put forward in Chapter 1. Again, Bachelard

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[123] Ibid, pages 4-5.

[124] Ibid.

[125] Ibid, pages 6-8.

[126] David Dernie, 2003. *New Stone Architecture*, Laurence King Publishing, page 12.

[127] Jean Hayter, 1981. *Territoriality as a universal need*, JAN Leading Global Nursing Research, 6:2, page 79.

understands the space of the home as one that *enables*, as the space which capacitates crucial human functionings and is vital to one's security and sense of self – this should sound very familiar to proponents of the capability approach (and readers of this thesis). While it parallels many of Martha Nussbaum's ten capabilities, his analysis finds a particular echo with people's capability to have control over their environment.[128] As I said before, Nussbaum does not bring out housing in her discussion of this capability (she mostly links it to politics, in the sense that people should be able to participate effectively in political choices that govern their lives), but she speaks of it as relating to the material sense of control over one's environment that people can have, through their rights to property, to possessions – this material sense of control is identified by Bachelard as the space of the home. Few would dispute that houses are central to primordial individual experiences: our house embeds us within a specific, intimate, material environment, where what we can be capable of may be realized or not.

Remember again how the capability approach builds upon the insight that human beings are constantly involved in the process of "becoming" themselves and realizing themselves; they attain happiness and comfort through the realization of their capabilities – through these "essential" functions required for (a good) human life. Humans are thought of as beings whose fulfillment is *nothing other* than self-realization and construction of a personal identity through each person's capabilities to do and to be.[129] I want to restate, following Bachelard, that reaching such fulfillment depends in part on the possibility of "being at home" – of being safely, soundly housed. In *The Poetics*, this condition is referred to as protected intimacy; it is one of the background conditions that make a person capable of having a life that can go well: when adequate, it offers the safety and security to attain many of the other components of Nussbaum's list, by, among other, ensuring an individual's full control over her environment.[130] One's house usually constitutes the only space where one is at liberty to pause the "performance

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[128] "Being able to participate in political activities, making free choice and joining with others to promote political views [not directly related to the space of the house]. Being able to own property and goods on the same basis that others do so [directly related to the space of the house]. Being able to seek and accept work, and to be treated reasonably at work [not directly related to the space of the house]. Being free from unwarranted search and seizure [not directly related to the space of the house]." To be sure, houses have many subjective elements that relate to the components of Nussbaum's list – security, privacy, spaces to play, to have affiliations, to nurture health and have bodily integrity, etcetera. Nussbaum, "Creating Capabilities: The Human Development Approach", page 34.

[129] Benedetta Giovanola, 2005. In "Personhood and Human Richness: Good and Well-Being in the Capability Approach and Beyond", Review of Social Economy, 63:2, page 251.

[130] As the aforementioned Peter King reminds us, "the essence of housing is that it allows us to meet our own ends as private individuals free from the interference of others". King also claims that it is housing which "provides the private space from which to make choices and negotiate with consequences". Peter King, 2003. In *A Social Philosophy of Housing*, Ashgate, page 19.

of the self" (public self, activity) and thus relate to oneself in a direct manner (private self, rest); inhabiting generally means being in a particular, valuable state of consciousness. I have spoken in similar terms in the first part of the chapter, where private and public spaces allowed for or prevented bodily functionings – the argument is similar here, but considered in light of mental and cognitive functionings. In ideal cases, being housed can lead to attuned self-criticism and the inquisition of the conscience, possibly fostering moral attitudes and the development of virtue. To describe repose, daydreaming or reverie as part of the process of self-conception is not a novel philosophical intuition.[131] Yet the account I propose diverges from classical analyses as it shifts focus from its nature as existential activity to the *spatial and special conditions* that bring it about. Since individuals' well-being hinges on finding rest and peace at home; on being adequately housed, these conditions are of moral concern.

To speak more concretely, let's consider the implications of Bachelard's account for an individual's experience of homelessness, defined (as with Waldron) as being without permanent housing. What happens to the man or woman who lacks a permanent house? We already saw that lacking a permanent house already means to expose one's body to numerous threats and deprivations, which incapacitate homeless individuals in ways that prevent them to lead a decent or minimally-good life, even less a flourishing one.[132] The value of a Bachelardian reflection on housing and the mind lies in showing us that even in cases where their bodies are "sheltered", people remain incapacitated in ways that prevent them from leading a decent or minimally-good life (and even less a flourishing one). This is because a house also functions as the space for safe dwelling – it participates in good mental health as much as in good physical one. Without these dimensions of safety, privacy, intimacy, and so on, the house can't be a place where one develops and make good use of her capabilities. If the house doesn't provide us with safety, privacy, intimacy, and so on, it remains inadequate.

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[131] While they aren't key topics of (Western) philosophy, daydreaming and boredom have been conceptualized directly or indirectly by Pascal, Schopenhauer, Nietzsche or Russell. See also Martin Heidegger (1938), *Fundamental Concepts of Metaphysics*; and more generally, Lars Svendsen (1999), *A Philosophy of Boredom*. Note that some thinkers consider boredom a harmful state to be in; in the context of the thesis, I mostly limit the conversation to more positive accounts of reverie like Bachelard's.

[132] A lack of bodily integrity is evident among homeless individuals, though it must be noted that this lack was also experienced in shelters and shared temporary housing, where one is faced with assault and sexual abuse. In Carol McNaughton's *Transitions through Homelessness: Lives on the Edge*, in which she conducts interviews with people who have experienced homelessness, most women and an appreciable number men reported being victims of sexual assault both inside and outside the shelter. On the other hand, they expressed a strong difficult to experience sexual intimacy: they couldn't have partners stay with them in temporary accommodation, and couldn't spend nights away from their accommodation without risking eviction. To be sure, when homeless individuals are provided with temporary accommodation or a social rented tenancy, some of their basic needs *were being met*, but they remained incapacitated in all significant ways. Carol McNaughton (2008), *Transitions through Homelessness: Lives on the Edge*, Springer, page 34.

Cognition and emotions occupy a big place too in Nussbaum's approach to capabilities. Her fourth, fifth and sixth listed core functionings – respectively sense, imagination and thought, and practical reason – illustrates her claim that individuals should have the capacity for pleasure and for pain, a capacity which is manifested subjectively through cognitive capabilities. She is referring to thinking, imagining and perceiving in a reflexive manner; she also argues that everyone should have the "capacity for rationality, to maximize the pleasure rendered from emotions, or to avoid pain".[133] When Bachelard theorizes on the space of the house, he speaks of it as the place of predilection for "thinking, imagining and perceiving in a reflexive manner" – for developing an identity, a sense of self, for relaxing, dreaming, for being silent and at peace.

Life histories and in-depth interviews with homeless individuals show the tragedy of a life without an adequate home. Once again, I am not speaking of "living in the streets", but I am referring to a general condition defined as being without *permanent* housing; when homeless individuals are given a space in a hostel, they very often experience a loss, a dire reduction of their capacity for other essential functions. They lose control over their environment and with it the choice of their affiliations, two human functionings which so much participate in one's sense of freedom.[134] While issues which plague these individuals stem from more than the lack of a house, there is a clear sense that they associated their distress and mal-être with a sense of situation – with a grossly inadequate spatial environment. When in the streets or in temporary shelters, many of them speak of a feeling that they didn't (have capability to) have a life worth living, as if their individual resilience had derived from solid walls which were no longer.

> I lay behind a building with an old carpet. You go like that, do you want to kill yourself, or do you want to die? There is no easy way out, how do you do it without the pain?
>
> You have to take drugs when you are homeless, to feel alive, and feel nothing about what that is like.
>
> You get stuck in hostels, you can go right down as far as you can go and die or you try to get back up again.
>
> [In homeless accommodation] you want to … hide away. Keep your head down. [135]

Bachelard's *Poetics* reminds us that housing embeds people in a time and space: it offers them a measure of their own humanity. To be homeless is

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[133] Nussbaum, "Capabilities as fundamental entitlements: Sen and global justice", page 34.

[134] This explains why so many of them prefer the roofless streets to a dry and clean shelter, the latter bringing with it a series of rules, controls, a total lack of privacy, and so on.

[135] McNaughton, Transitions through Homelessness: Lives on the Edge, page 17.

already to be uprooted, disbanded – "de-ontologized"? – and this goes far beyond considerations of basic material needs. If individuals are to flourish on higher levels, if they are to lead a decent and dignified human life, they have to be able to access that one specific, capacitating space that is the house.

Now, *are* houses such a specific, capacitating space? I said above that home architecture allows an agent to "let go of her guards", slow down, let her thoughts drift away, recall past events and emotions, be in harmony with herself; and experience herself. To be sure, these meaningful actions aren't always enabled in (by) the space of the house; on the contrary, they are sometimes made impossible by the sorts of tasks that one ought to perform once home. Picture an overwhelmed mother who runs from one domestic task to another, washing, tidying, educating, cooking, breastfeeding, vacuuming. Such a woman might find the time to self-reflect, slow-down and so on in places like the office, the library, the grocery store or the public bus. My argument is that, despite the house being the site of labor for so many, it can be best and most easily conceptualized, defended and accessed as the space that ought to enable moments of peace, reverie, withdrawal and rest. In all cases, this distinction reveals the privileged experience of domesticity known to (turn-of-the-century, white, middle-class) men theorizing on housing, like Gaston Bachelard.

I would nonetheless like to reflect on the uncomfortable proximities that exist between the space of the house as "sanctuary" and the life-threatening experiences which too often do take place within its walls – "beyond closed doors". "My home is my castle" is a proverb that rings extremely bitter for victims of gender-based violence and domestic abuse, which are perpetrated predominantly within homes.[136] While I don't think it invalidates Bachelard's considerations, I think that the phenomenon is grave and thus deserving of some short, additional conceptual clarifications. Let's draw on a simple analogy between individuals' basic human right to housing, and individuals' basic human right to learn – their right to education, or schooling. Consider more specifically the physical site of schools (and universities), which are thought to contribute to the key formation of students' identity and valued capabilities; where they "learn to be as well as learn to know".[137] In the context of an argument informed by a capability approach to the right to learn, classrooms and corridors are places which directly participate in the formation of individuals' capabilities to function. Think of these as places inductive of agency, human diversity and public participation. Yet the physical site of a school often happens to be the place

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[136] Sonal Shenai, Samantha Jury-Dada, Danielle Mcleod, Miranda Webb, 2017. In *Safe at Home: The case for a response to domestic abuse by housing providers*, page 5.

[137] Melanie Walker, 2005. In "Amartya Sen's Capability Approach and Education", Educational Action Research, 3:1, page 109.

where bullying among youth occurs. The school building is one of the direct sites of actuality, or deployment, of in-person youth bullying: it is where it principally manifests, is acted onto someone, and is endured.[138] For many children and teenagers, physical and psychological harassment thus becomes intrinsically linked with the physical site "school". Now, what does that mean for the conceptualization of one's basic right to learn, and the specific environment in which such a right is to be respected, protected, and fulfilled? What do these contrasting features (space of flourishing versus space of abuse) tell us of the school environment, of its adequacy and necessity? Is the school a space that enables or constrains one's educational prospects?

The view I hold here is that the physical school environment is a necessary feature of an adequate learning experience, while simply recognizing that such adequacy is also conditional on the environment being bully-free. As a place of encounter and exchange, of habitus, of sociability, as a stable place full of points of reference which ensure one's comfort and self-confidence, it enables adequate learning in a critical way. Corridors, classrooms, and the various material spaces of schools are indispensable to the capability-informing agency, human diversity and public participation which we associate with the human right to an education. Again, under this view, school bullying arises as an impediment on adequacy, threatening the student's enjoyment of their right to learn; preventing the normal development of their capabilities, and so on. Bullying doesn't render the site "school" unproductive or intrinsically detrimental to the right to an education, but simply represents one obstacle to its adequate, situated realization. I would like to propose a similar reasoning with regards to the housing question, to clarify what is at stake when one opposes the specificity of houses for the attainment of safety, privacy and the likes. My claim is that there exists a specificity to the type of environment which directly enables individuals to develop and access essential capabilities. When fitted "adequately", a house is this specific, physical site. To state the obvious, there is no causal relationship between a house and the abuse which takes place within its walls. Adequate housing should be a space free from the abuses of domestic violence, in the same manner that an adequate school should be a space free from the abuses of bullying. That houses are the principal sites of domestic abuse doesn't affect the claim that they necessarily participate in the formation and gain of key capabilities: it

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[138] To be sure, the emergence of online bullying phenomenon among children and teenagers seems to indicate a certain displacement between "sites" of psychological harassment. In the context of the thesis, I chose to look solely at the physical infrastructure "school" in order to contrast it better with the house as material site of both physical and psychological domestic abuse, and with the relation of this material site to a capability-informed account of housing adequacy. Note that a similar phenomenon of migration of abuse onto digital sites has been observed in cases of domestic abuse, with computer or phone related invasions of privacy (spyware surveillance, monitoring of one's emails and text messages, or other such stalking). See https://epic.org/privacy/dv/ for more.

simply highlights the tragedy of so many individuals whose right to an adequate house is violated and made impossible to enjoy, given their partner's cruel and criminal behavior.[139] It is true that, in such tragic cases, an abused person is likely to find shelter, self-contemplation, and all other beneficial dispositions I associate with the physical site "house", *outside* of the space of the house. Like a school, a house can be a negative as well as positive space to play out human functions – it is a space that can constrain as well as enable human flourishing, and is by no means a *guarantee* of privacy, safety, and so on.[140] Yet, if adequate, it can become one. We must separate instances of gross home inadequacy from the desirable realization of capabilities through the specific space of the home – a realization that, indeed, ought to be respected, protected, and achieved on its grounds, within its walls.

What kind of housing architecture best enables the functioning of the mind? What is the adequacy of housing that Bachelard pictures with his *The Poetics of Space'*s house? Thick walls against the storm, a solidly fastened door, generous storage: elements that "give mankind proof or illusions of stability"[141] and security, and that were alluded to earlier in the research. Storm (or the outer) makes sense of shelter (or the inner), and if the shelter is sound, the shelter makes the surrounding storm good.[142] This seems to me a beautiful idea: sound, adequate housing makes it possible for us to appreciate – or at least better tolerate – the violence and adversities of the exterior world, this often exploitative, unforgiving world. In other words, there is a natural, significant connection between sound, adequate housing and our good experience of the world.[143] As sanctuary, it gives us the ability to consider and experience them with increased courage and good spirits. The features of the adequate house are true promises of shelter; of protection, peace, stillness, silence; of privacy; of sovereignty, command – some features that, again, Nussbaum conceivably had in mind when singling out the capability of control over one's environment. The plausible claim is that "if we are to have any control over our lives, we have to have control over the most fundamental elements in background conditions of our

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[139] Though it should be stressed that this argument doesn't only speak of partner-to-partner violence – we could similarly be speaking of young people who identify as LGBT and are often victims of bullying, harassment, harm, oppression and exclusion from family members in the space of the home.

[140] Carol Mcnaughton Nicholls, 2010. In "Housing, Homelessness and Capabilities", Housing, Theory and Society, 27:1, page 36.

[141] Bachelard, page 17.

[142] The house in the storm inspires the human by teaching it the responsibility of Being-in-the-world as a maker and creator of the world "in spite of the world". See John Stilgoe, 1994. In "Foreword to *The Poetics of Space* - 1994 edition", Beacon Press, page viii; and James Magrini, 2017. In *Dwelling and creative imagination in Gaston Bachelard's phenomenology*, SUNY Press, pages 761-767.

[143] Kirsten Jacobsen, 2011. In "Embodied domestics, embodied politics: women, home, and agoraphobia", Human Studies, 34:1, page 4.

existence"[144], and, as I argue, among these is this ability to be safe in and in command of our home. Still, as construction elements, walls and doors are not intrinsically domestic. They arise as related to the notion of home when they function towards delineating one's own space – towards indicating and enforcing its limits, and ensuring the intimacy of its inhabitants. Property borders and ownership have been discussed in the beginning of this chapter. The simple idea I want to make clear at this point is that physical architectural features merely solidify the home as "a place [one] may go both in and out of" at will.[145] They are manifestly necessary in order to reach housing adequacy, but insufficient to its full realization.

It should be stressed that this conceptual vocabulary of walls, borders, limits and the likes can certainly be oriented towards *harmful* conservatizing aims. We have to be careful of any philosophy of space which advances separation, seclusion, exclusiveness, defense, permanence, preservation – dwelling as an essential preservation activity has been juxtaposed with, among other, ugly nationalistic ruminations (again, refer to Heidegger's writings on heimat and homecoming, which have been recuperated to shameful aims). Such an account of a possible (symbolic) function of the house is rooted in individualism and traditionalism – it represents a sedimenting trap, one that is opposed to modernity, cosmopolitanism, mobility.[146] In his beautiful *Song of the Open Road,* Walt Whitman exhorts people to escape the danger of "staying home", to "come forth" and experience all else that there is – the supposition being that the nested comfort of one's house is numbing, and makes her forget about the rest of the world.

> Whoever you are, come forth! or man or woman come forth!
> You must not stay sleeping and dallying there in the house, though you built it, or though it has been built for you.
> Out of the dark confinement! out from behind the screen! [147]

Dallying, confinement, a screened consciousness – here housing doesn't enable capabilities but thwarts them. Yet I don't think we should oppose being (home) and being in the world in such ways: this is somehow tantamount to saying that it is impossible to have both a sense of self and a sense of community. To be sure, if the importance of the Bachelardian home

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[144] Margaret Moore, 2015. In *A Political Theory of Territory*, Oxford University Press, page 38.

[145] W.H. Auden,1964. In *Thanksgiving for a Habitat*, in *About the House*, Random House Book, page 111.

[146] This ties back to an old debate surrounding the "housing question" – one that was famously reported in Friedrich Engels' pamphlet of the same name. See Frederic Engels, 1872. In *The Housing Question*, pages 6-13.

[147] Walt Whitman, 1856. In "Song of the Open Road"*,* retrieved online 2020-10-22, https://www.poetryfoundation.org/poems/48859/song-of-the-open-road.

hinges on the idea that "human identity presupposes the identity of place"[148], we have to make it crystal clear that here identity isn't understood in an identitarian, conservative sense, one which doesn't tolerate diversity and difference; it is identity in the sense of soul-searching, self-respect and self-love, of calibrated well-being and thoughtfulness towards one's specific interests and valued functionings. Talking of the importance of the house doesn't preclude the importance of being outside the house – the importance of making good use of one's punctual occupation of "outdoor" spaces where she can meet and relate to others (and so exercise her tolerance to otherness, through this experience of "public intimacy"). We ought to acknowledge the importance of civic spaces – being together at larger scales than households – but this doesn't lessen the significance of the home, this realm of the private where you can withdraw (private intimacy), away from the "public eye" – the public eye of social pressure and policing, of vigorous exchanges and adversity. This isn't about egotism or atomization or individualization, though it can be if not balanced with vigorous civic life, with public places of gathering outside the home. The private is political and personal; learning from homely personal experiences of identity and learning from larger social and political structures are interrelated and are to be equivalently valued.[149]This is what Bachelard is hinting at when he discusses the connection between sound, adequate, sanctuary-like housing and one's good experience of the world. Adequate housing can enhance our capability to value life, people and events outside of the house.

The other aspect of Bachelard's interpretation of the good house consists in reminiscence and place attachment, notions that were suggested at the beginning of this section. This aspect relates less to built surfaces or enclosures; more to time. It relates to the bonds that are developed to a place where we spend a lot of time within in. Philosophers of mind have proposed the hypothesis that essential mental functions aren't confined inside the head, but are externalized onto our immediate environment.[150] Under this view, memories, values and desires are "stored" in specific spaces and objects; "features of the environment that embody this information [memories, values, desires] become an active component of our cognitive system".[151] Personal functionality is maintained through the long-term

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[148] Christian Norberg-Schultz, 1979. In *Genius Loci: towards a phenomenology of architecture*, Rizzoli, page 22.

[149] Note that the very terms "public" and "private" are difficult to define not only because they are contested but also because they are "used to describe a series of related but inconsistent distinctions". William Connolly, 1993. In *The Terms of Political Discourse*, Princeton University Press, page 27.

[150] Existing literature on the extended mind thesis and philosophy of the self include Andy Clark and David Chalmers' *The Extended Mind* (1998), Andy Clark's *Supersizing the mind* (2008) or Mark Rowlands "The mind embedded", in *The new science of the mind: From extended mind to embodied phenomenology* (2010).

[151] Cara Nine, 2018. In "The Wrong of Displacement: The Home as Extended Mind", The Journal of Political Philosophy, 26:2, page 244.

"construction" or "inhabitation" of small-scale spaces by an individual, who has a secured control over these spaces. They must be easily accessible and private, trustworthy and reliable. Given our prior examination of Bachelard's *The Poetics of Space*, we can easily picture the house as such a space. Through accumulation, certainty and fixity, one's home reflects and supports her cognitive life; its spatial and material organization is imbued with her peculiar histories and values.[152] Domestic rooms, objects and symbols activate memory-related mental functions, emotions. Think of a drawer that harbors treasures, a universe of passions in the kitchen corner, the wood floor creaking under your father's heavy body, the hoard of photos on the walls. Think of being moved by signs of extended domestic life, "soot-blackened fireplaces, exposed joist ends slightly rotten from damp, indentations left by light switches, old plug sockets and door latches".[153]

We can similarly draw on paediatrician and psychoanalyst Donald Winnicott's theory of "transitional objects" to explain the power and importance of being adequately housed. According to Winnicott, comforting domestic objects are crucial to a good psychological development; they provide us with steadiness and form, and we continuously invest them with meaning and power. Attachment to an object – picture a blanket or stuffed animal – helps "smooth" a child's transition from dependence on her parents to gradually more independent play. This attachment to enchanted objects, however, is not a temporary phase of childhood development. Our affective investment in domestic things represents a key way to "smooth the transition between practices of independence and participation in social life".[154] They help "bring together the outer and the inner worlds", and so it greatly matters that they remain physically close to us, accessible, visible.[155]

In that sense, a house also doubles as an archive of the self, filled with past relics and memorabilia, reflecting its inhabitants in the way it is laid out,

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[152] Most will intuitively understand this notion that home interiors (styles, displays) represent someone's set of one's beliefs and values. Consider the excitement manifested for Vermont senator Bernie Sander's clothes chair, a tangible extension of the individual who cumulated and displayed them. When visiting Sander's living room, guests might wonder why he exhibits certain photos, objects – a chair full of junk: because these domestic items directly express something about Sander's history and values, they are manifestations that prompt question and reflection from outside observers. When we see these domestic objects, we might recognize ourselves in them, too. So it does matter when people rave over a politician's piece of furniture piled up with clothes. Let it be clear that this chair constituted a relevant testimony of the beliefs and values of his owner. See Morgan Sung, 2020. In "Witness Bernie Sanders' very relatable clothes chair", retrieved online 2020-03-06 https://mashable.com/article/bernie-sanders-clothes-chair/ for pictures.

[153] Joe Moran, 2004. In *Housing, memory and everyday life in contemporary Britain*, Cultural Studies, 18:4, page 607.

[154] Kohn, page 41.

[155] Ibid.

furnished, organized, and decorated.[156] I want to insist on the fact that the preservation and transmission of these meaningful objects and spaces, and thus of our memories, values, desires, is made possible through dwelling in our own home *for long enough*. Only then can the unique role of the home in these processes of preservation and transmission be realized. "Man, like a tree in the cleft of a rock, gradually shapes his roots to his surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life"[157]: the adequate home is one that offers the possibility for individuals to externalize crucial mental functions onto their domestic environment – to store, accumulate or arrange the rooms and items in a secure way – and this takes time. Place attachment is a lengthy process: the more time is spent dwelling, the more cognitive crutches help us with our daily routines, stabilizing and strengthening our capacities.[158] Bachelardian feelings of safety and sanctity do relate to the solidity of walls and doors, but likewise depend on prolonged "household security". In *The Wrong of Displacement: The Home as Extended Mind*, Nine provides a four-fold definition of household security worth quoting at length:

> (1) First, that a person or family has continuous and reliable access to a home-place over an extended period of time without fear of interference, and with recourse to the law in case of theft or disruption. The qualifications regarding fear and recourse to the law assure inhabitants that they can have continued access to the home.

> (2) Second, to construct home niches that serve as external cognitive supports, people need to have control over the use and management of their home and its contents. Control is required for inhabitants both to construct cognitive supports and to trust that home structures continue to reflect what inhabitants had authentically constructed.

> (3) Third, the family needs not only actually to have continued access and control, but also to believe that these conditions exist. This belief is necessary for the family to invest in building cognitive structures within their home that they believe will serve them in the future.

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[156] In a brief but enlightening testimony, author Deborah Orr recounts the act of emptying her parents' home after their passing, detailing revived, embedded and prized memories. "Their lives, like their cupboards, were ordered and disciplined. Some of the things in those cupboards had sat in the dark, lurking, for all of their married lives. The incomplete harlequin tea-set, which had been my grandmother's. How many times had my mother told me she wanted me to have it when she was gone? It's in my cupboard now, and I don't know if I'll ever use it either. It had been guarded so well that it's achieved a status that's something akin to a holy relic." Deborah Orr, 2014. In "Clearing out my parents' house for the final time", retrieved online, https://www.theguardian.com/commentisfree/2014/jan/31/clearing-out-parents-house-brought-serenity

[157] Oliver Wendell Holmes, 1907. In *Letter to Jeremy Bentham,* cited in Kohn, page 122.

[158] Nine, page 250.

(4) Fourth, security of place in the home should include freedom from domination by outsiders regarding how the contents of the home are managed. Domination can sabotage a home through legal measures, like forbidding the display of religious symbols or books, or controlling the features of built dwellings to suit only the dominant culture.[159]

While she doesn't provide her readers with specific or ideal time frames which would insure proper occupancy rights, she makes it clear that an adequate home occupation unfolds over an "extended period of time" and is protected by law, without menace of eviction, expropriation or other forms of involuntary displacement.[160] Her understanding of space control (2, 4) and belief of control (3) cannot be separated from a particular temporality (1). This aspect is of interest to my investigation of adequacy. Should all types of house tenure be associated with a minimum period of guaranteed occupation? If so, how long should this period be? An initial problem comes in determining a precise amount. Place attachment will develop at different rates following users and cultures, making hard to pin down an all-encompassing number. It is still worth noting that, in some cases of adverse possession (squatting), property titles can be transferred after the squatter has invested considerable time – the number ranges between *two to ten years* – and effort in improving a place that she does not own.[161] In all cases, the secured occupancy of the adequate house differs if the contract is one of rent or ownership – though, in mortgage-bound cultures, both present respective risks of displacement. This conceivably results in the present research being more abstract than some people would like. For now, I will simply highlight that while tenure-protection policies might vary, the normative argument follows from the severe consequences associated with the impossibility to externalized one's self onto domestic spaces and objects (interrupted start; lack of time), or with the force removal from one's home (start anew; time reset). In these two cases, individuals can't establish or access physicals cues, embodied plans, and organization, and this lack puts significant stress on their physical and mental wellbeing – thus undermining their daily routines, their health, their interpersonal relations, their work performance, and so forth. Housing concentrates cognitive features: when one is evicted or

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[159] Ibid, pages 253-255.

[160] Obviously, even though moves can be burdensome, many moves are overall beneficial experiences – when the displacement is desired, the goods of moving (or any other significant housing disruptions) can plausibly outweigh the harms that follow; to be forcibly uprooted, or to lack the means to control one's immediate environment, is to be subject to domination. A theory of the right to occupancy explains why individuals who are living in an area, and have come to live there justly, are morally entitled to continue to live there. For discussion of this, see Kohn, pages 60-61; and Anna Stilz (2013), *Occupancy Rights and the Wrong of Removal*, Philosophy and Public Affairs, 41:4, pages 338-340.

[161] Katyal, Peñalver, page 56.

loses her property after defaulting on payments, all of these disruptions cumulate in ways that augment their aggregative effects.[162]

I opened this segment with the words of Rilke, and now close it likewise: "House, patch of meadow, oh evening light / Suddenly you acquire an almost human face / You are very near us, embracing and embraced."[163] As one might now well imagine, the house that Rilke charmingly describes is not reducible to a mono-functional device; to a mere roof over one's head. The house is also this human-like, embracing character, or figure – it is an essential ally. In the first part of Chapter 2, it was established that housing provides the space for the undertaking of basic, necessary bodily actions. In this section, I have told a story of the mind, of daydreaming and memory, of sanctity and intimacy, of rootedness and identity. This story makes a forceful case for the importance of the function of the home as what fortifies the human self, and gives it the opportunity to develop and flourish: it should be integral to a comprehensive account of home adequacy and of the human right to housing.

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[162] Nine labels these major disruptions in the cognitive supports built into individuals' home environment as pro tanto harms, but insists that they are also importantly cumulative. Nine, pages 251-252.

[163] Rilke, page 18.

Chapter 3 Duty-bearers: states, municipalities, individuals, architects

Now, who owes the duties related to the human right to housing?

Understanding housing as a human right entails a set of responsibilities and obligations from a varied set of actors. In this chapter, I take a closer look at the "supply-side" of the right to adequate housing of human; at its relevant duty-bearers. To speak of housing features as supportive of human functionings involves an exercise in ascertaining essential relations between individuals, goods, spaces and experiences, and, crucially, the various relevant institutions or (groups of) individuals who are responsible for delivering them – in other words, who are "bearing the duty" of delivering them. Admittedly, my purpose is not to provide a complete account of the duties correlative to the human right to housing, but rather to provide a general sketch in which I expand on a couple of areas that tend to be neglected in human rights discourse and practice. After brief introductory remarks, I examine and expand on the responsibilities of duty-bearers of the human right to housing. In addition to states and individuals, I propose to discuss the special role and responsibility of municipal authorities and architects. There is indeed a strong tendency in human rights literature to focus on the duties of states as well as individuals in general, but little is said of the duties that befall on municipal governments, as well as on professionals and professional associations. I thus hope to provide new, substantial ideas on the matter.

Rights have assignable addressees, people or agencies who bear "normative burdens" like duties or liabilities, which, if feasible, vary in strength, specificity, stringency and demandingness.[164] The remaining part of my research interrogates the "supply-side" of the housing question: who – besides architects – bears duties of the realization and why they do so. UN-Habitat provides a very comprehensive list of whom they identify to be "primary" and secondary duty-bearers of this right:

> State entities and their officials are the primary duty-bearers with obligations to respect, protect and fulfil human rights corresponding to the claims of the rights-holders. This includes national and local public service providers (electricity, water and sanitation and garbage collection), mayors, governors, officials of the City Council, city administrators and local and subnational government, officials, courts, ministry officials, national government officials, legislators, presidents and prime ministers. While states and their different entities are the primary duty-bearers to respect, promote and protect human rights, non-state actors may also be duty-bearers.

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[164] James Nickel, 1987. In *Making Sense of Human Rights. Philosophical Reflections on the Universal Declaration of Human Rights*, University of California Press, page 41.

Non-state actors duty-bearers include landlords, businesses and private service provider companies, development banks and architect firms, community leaders, religious affiliations, NGOs, Community-Based Organizations (CBOs), donors, UN agencies, parents, community leaders, religious leaders and tribal elders. The acts of a company, private or publically owned, can be attributed to the state when the business enterprise is acting under the state's direction, control or instructions, or is empowered to exercise elements of governmental authority. Failure by states to ensure that business enterprises performing such services operate in a manner consistent with the state's human rights obligations may entail both reputational and legal consequences for the state itself.[165]

The first portion of the quote fits the standard take on the nature of human rights: it is the duty of the state, regardless of its political, economic and cultural systems, to promote and protect all fundamental rights and freedoms. Of course, everyone has a duty to protect and promote the human rights of everyone else (reciprocal duties), but the responsibility for securing these rights practically falls upon states – they are thought to be "best placed" and "most able" to effectively perform the task, and even more so when it comes to socio-economic rights.[166] It is interesting to note that this claim that states are the principal bearers of human rights duties has been repetitively disputed in international law; I shall return to this.[167] Again, the non-state actors – the other "organs" of society – listed in the second part of the quote present a special interest for the current discussion on housing, as they remain under-researched. I speak specifically of architects in the last section of this chapter. For now, let us consider the aforesaid duty-bearers: states, municipal administrations and individuals.

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[165] Interestingly, note that the duties are placed on the architecture *firms* rather than on individual architects. UN-Habitat, Office of the United Nations High Commissioner for Human Rights, 2009. In *The Right to Adequate Housing*, retrieved online 2020-03-11, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf.

[166] One could try to argue that each of us owes a basic and general duty to respect the rights of every other individual, but it should be said that "privatizing" human rights in this fashion would also mean to dismiss two important factors. First, individuals have a tendency to prioritise the moral demands of those closest to them (family members, community members). Second, their ability to exercise their duties is mostly determined by their own personal financial circumstances. To put it plainly, this means that global inequalities in the distribution of wealth greatly undermine the ability of those in the poorer countries to reciprocate assistance provided them by those living in wealthier countries. This is why we must turn to the level of national and international institutions: the claim is that adequately protecting and promoting human rights requires 1) nation-states ensuring the adequate provision of services and institutions for their own citizens and 2) the cooperation of nation-states within international institutions acting in a way which seeks to secure the "requisite global conditions" for the protection and promotion of everyone's human rights. See, among other, Thomas Pogge, 1995. In "How Should Human Rights be Conceived?", Jahrbuch für Recht und Ethik | Annual Review of Law and Ethics, 3, pages 103-120.

[167] Samantha Besson, 2015. In The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)evolution, Cambridge University Press, page 247.

(1) States

According to most United Nations human rights treaty bodies, including the International Covenant on Economic, Social and Cultural Rights, state obligations are threefold: governments ought to respect, protect, and fulfill the right to adequate housing. Each duty points in a different direction. "To respect" acts as a limitation on governmental abuse. "To protect" corresponds to an obligation of states to regulate private actors. "To fulfill" corresponds to the implementation of direct measures to ensure realization.[168] Accordingly, the right to adequate housing imposes immediate obligations on the state, which must make "every possible effort, within the available resources", to realize the right to adequate housing and to "take steps in that direction without delay". [169] This is the positive duty which is placed at the foreground of discussions of the human right to housing. However, while obligations to fulfill the right are crucial to the realization of housing adequacy, we ought not to lose sight of the obligations to protect and respect. States' duties regarding the right to housing are not simply about providing housing to those in need, but, importantly, they are also about exerting control over other institutions and practices (prominently including markets) that affect people's access to housing. This kind of duty challenges the commonplace distinction between positive and negative duties in rights discourses, and so challenges the commonplace distinction made between duty-bearers.

Independent of resource constraints, and of disagreements about which public goods to prioritize and how to share them, some obligations are understood to be immediately in effect: the obligation to guarantee the right to adequate housing in an equal and non-discriminatory manner, to develop specific legislation and plans of action, to prevent forced evictions or to guarantee a certain degree of security of tenure to all.[170] Under the now ubiquitous Sustainable Development Goals, states are required to ensure adequate housing for their citizens by 2030.[171] There are two normative arguments for an institutional account of human rights duty-bearers: (1) the argument from equality and (2) the argument from democracy. Human rights are held mutually – they both rights of all and rights against all. We are all equal duty-bearers of the rights we hold, and owing duties together requires us to create institutions to be able to bear those duties together.[172] The

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[168] Ibid.

[169] UN-Habitat, Office of the United Nations High Commissioner for Human Rights, 2009. In "The Right to Adequate Housing", retrieved online 2020-03-11, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf.

[170] Ibid.

[171] Fahra, "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", page 7.

[172] Besson, page 252.

relationship between political equality and human rights is mutual. Democracy is the political process through which decisions about our equal rights and duties and the specification and allocation of those duties should be taken: in our contemporary political order, this can only be achieved through state-based processes.

I have stated in Chapter 1 that a majority of countries are dealing with a severe housing crisis. Persistent shortage of affordable housing, high rates of housing deprivation, over-indebted homeowners, massive evictions and an increase in homelessness are all symptoms that reveal the failure of past and current governmental actions towards insuring housing affordability and accessibility. Both Global North and South uphold comparable state-enforced property systems in which the norm is private property and market allocation; the ways in which these systems severely constrain autonomy and choice are therefore not recognized as coercion or injustice. The dominant argument worldwide holds that housing should be allocated on the free market, a claim that rests on the normative judgment that this is both "efficient" and "fair". For the last forty years, influent politicians and policy makers have indeed complied with this notion that the free market is the answer to everything. Yet sustained unjust housing allocation patterns have infirmed this supposed performance and shown that such market ideology is at best unreliable, at worst absurd. Neoliberal answers of states to the current housing crisis have left their citizens unable to act "efficiently" and "fairly".[173] Common policies envisioned by governments to secure their citizens' home adequacy include privatization, securitization of mortgages and the "financial inclusion" of poorer people, which is to be realized through the relaxation of borrowing standards or subsidization of "subprime" lending – to this day, these actions have proven to result in consequences diametrically opposed to the objectives pursued.[174] Think of Margaret Thatcher's conservative Great-Britain, where the state oversaw a drastic reduction of state power in the housing section, in the "hope" that creating more competition within the industry would benefit all citizens. An instance of governmental mismanagement if there ever was one, Thatcher's infamous "right to buy" policy, where over two millions council homes were cheaply sold off, was nothing but a highly skillful exercise in feigned egalitarianism which led to speculators making millions out of exploiting

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[173] In her pertinent analysis of the relationship between laissez-faire ideology and housing provisions, Margaret Kohn insists on the fact that economists and state authorities problematically think of the allocation of housing as reflecting individual preferences, and the willingness to trade one good (say size of dwelling, quality, or commute time) for another (money): she makes it clear that this way of "characterizing the distribution of housing as a choice only makes sense within income brackets, not across them". To be sure, there must be some optimal way of allocating scarce goods that are desired by lots of people, but we would be wrong to treat the market as a non-coercive alternative to authoritative allocations (think of a state subsidizing public housing in a sought-after downtown area, making its rental units cheaper than the value set by the capitalist market). Kohn, pages 5-6.

[174] Kohn, page 66.

public assets, and so to what is now known as one of the worst Western housing crisis in recent history.[175] And even when dodging bureaucratic incompetence, negligence or corruption, states have been unsuccessful at upholding their housing-related duties, and keep on doing so by failing to modify their faulty policy agendas; despite the major fiasco of their past housing plans, state officials hardly ever question such plans, nor do they come up with sustainable or radical alternatives.[176] Finally, when governments *do* experiment with new plans and policies (Austria, France and Sweden are interesting examples), these experiments don't address home adequacy in acceptable and sufficient ways.

A discussion of welfare-as-charity critiques falls outside the scope of this research. In short, I said that some thinkers believe that individuals' ability to pay should impact the nature of provisions, and that governments have the duty to intervene only minimally.[177] People flock to cities, the story goes, naturally driving up rents in a competitive market – again, this is a process of natural selection that this is brandished as both "efficient" and "fair" and ought not to be hindered. According to this condemnable, reductive conception, needy individuals are thought to have failed to achieve personal responsibility (they are here understood to be the principal bearers of home-adequacy duties) and their demands toward the government are equated with demands for paternalistic assistance. There are countless moral shortcomings that come with this laissez-faire thinking – inequality of opportunities, lopsided burden of responsibility, capital-centeredness over human-centeredness, and so on. An imbalance between supply and demand cannot be the sole driver of housing crisis: this sort of account overlooks the role of speculators and other producers, who play a major role in creating this demand and the rising prices that go with it. It also overlooks the failure of states in making good use of the various tools they dispose of to lessen housing-related hardships. Let it be clear that while markets produce a

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[175] Interestingly, when Thatcher spoke of people's right to buy, she referred to their right to buy the "house" they were living in, even though millions of council tenants targeted by the policy actually lived in an apartment. Her use of the word "house" gave the policy a somewhat aspirational tone: reassuringly suburban (traditional) rather than proletarian and urban (subversive). No upsetting the existing social hierarchy in sight. Another evocative slogan from the government campaign read as such, with my italics: "you can decide whether to *turn your home into your house*". See Andy Beckett, 2015. In "The right to buy: the housing crisis that Thatcher built", retrieved online 2020-09-29, https://www.theguardian.com/society/2015/aug/26/right-to-buy-margaret-thatcher-david-cameron-housing-crisis, and Eric Reguly, 2013. In "Thatcher's legacy: A shortage of affordable housing", retrieved online 2020-09-29, https://www.theglobeandmail.com/news/world/thatchers-legacy-a-shortage-of-affordable-housing/article11015971/.

[176] Kohn, page 66.

[177] Urban geographer Tom Slater has spoken of the Hayekian claim that the housing crisis can be explained by an imbalance between supply and demand as "one of the most damaging myths of our age". Elizabeth Capelle (2017), "The housing crisis is not inevitable", retrieved online 2020-09-29, https://www.jacobinmag.com/2017/02/new-york-housing-gentrification-affordability-de-blasio.

certain kind of built environment and regulate access to it, they still *depend upon* the government and the "public": even in the face of their increasing unbridledness, they remain "regulated by law, refereed by judges, sustained by norms, and subsidized by taxpayers".[178] Housing exclusion is achieved through a shifting array of norms, rules, tactics, and practices. Exclusionary zoning, by-laws, transit deserts, slum clearances – these are all direct state mechanisms, and represent direct violations of the state's duty to respect, protect, and fulfill the right to adequate housing. Regrettably, these mechanisms indicate that (in most countries) governmental accountability to basic rights obligations keeps on been substituted with accountability to markets, property holders and investors. This links back to the overlooked dimension of states' duties which I hinted at above, where governmental control over other institutions and practices plays a key part in the realization of adequate housing for all.

So, today's hyper-financialized, unchecked housing markets pit speculation against human rights. State-facilitated deregulations have led to nightmarish case scenarios where residential real estate is purchased by investors who neither occupy nor rent it, fueling housing shortages in cities where home ownership was already out of reach for most households, making affordable tenancies increasingly rare. The phenomenon of "ghost flats" or "zombie apartments" has spread to the hot postal codes of the world. Particularly visible in cities such as London (unoccupied residential areas of the city center have been dubbed "lights-out London") Miami, Hong Kong, Vancouver, Dubai, San Francisco, Singapore, or Sydney, to name just a few, it epitomizes the laxity of governments to prevent shell companies and foreign buyers from gobbling up housing units as investment properties and piggy banks.[179] Housing markets are indeed characterized by transnational investments and acquisitions. Given this transnational feature, it seems reasonable that we ask whether sovereign states, or "state-based ethical perspectives", are best positioned to achieve housing goals, which fall under directed human rights duties and duties of global justice in general.[180] In effect, our political system is (in part) characterized by governments acting either in opposition or cooperation with other governments, but this order is also characterized by international efforts to address global issues like health, poverty, terrorism, climate change – or housing. These international efforts can consist in "contacts, coalitions, and interactions across state

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[178] Kohn, page 66.

[179] Karla Adam, William Booth, 2017. In "London mayor targets 'ghost mansions' and 'zombie flats'", retrieved online 2020-10-02, https://www.washingtonpost.com/world/europe/london-struggles-with-ghost-mansions-and-zombie-flats-the-empty-units-in-city-bereft-of-affordable-housing/2017/09/18/253d67fa-97c4-11e7-af6a-6555caaeb8dc_story.html.

[180] A new WHO – World Housing Organization? Raphael Lencucha, 2013. In *Cosmopolitanism and foreign policy for health: ethics for and beyond the state*, BMC International Health Human Rights, 13:29, page 14.

boundaries that are not controlled by the central foreign policy organs of governments".[181] They are facilitated by existing, democratically-organized transnational institutions of jurisdiction, like the European Union. What would a truly just supranational institutional order look like? Could it better tackle the housing questions worldwide? I think it important to open up the debate on that issue. When discussing states' duty towards the realization of home adequacy, one shouldn't underestimate the important normative resources that transnational bodies represent in the legal practice of basic rights and their fulfilment: in the context of a mutual validation and legitimation of domestic and international duties, these transnational bodies hold the potential to influence state policies and mobilize far-reaching tools and expenditures for the creation of truly global housing initiatives. Finally, while most of us still assume that national governments are ultimately responsible to their citizens before they are responsible to any other group of persons – sanctioning what Charles Beitz has called a "morality of states" – it must be reminded that states in a position to assist also bear extraterritorial obligations, and contribute actively to the solution of global challenges mentioned above.[182] These external duties relate to areas such as trade and development; countries which face severe crisis will direct requests for assistance from their wealthier, more powerful homologues. When conceptualizing obligations which follow from the right to housing, there is an additional sense that states ought to actively tackle domestic inadequacy, because lessened housing needs within the country will contribute to justify foreign help expenditures. By the same token, when a government guarantees its citizens secure access to the content of their subsistence rights, the (possibly violent) exercising of the right of necessity cited in Chapter 2 would be limited to rare emergency cases.

This previous discussion of the right of necessity highlighted the clash between permissible actions which follow from the human right to housing and permissible actions which follow from the human right to property; I wish to close this section on the housing-related obligations of states by briefly returning to the issues of permissibility, proscription and law enforcement. In particular, I wish to insist on states' power to implement, enact and enforce laws, which corresponds to a duty to implement, enact and enforce *just* laws. A very important implication of housing as a human right is that certain practices surrounding eviction should be ruled out, as they correspond to blatant, ungrounded right violations. By enacting and enforcing unfair, market-driven policies, states do fail in their obligations to ensure that the right to adequate housing is enjoyed without discrimination. This sort of claim leads to thought-provoking questions regarding the ascription of (state) duties. In Chapter 1, I have spoken of parallels and

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[181] Robin Cohen, 2011. In *Transnational social movements: an assessment*, Transnational Communities Programme, School of Geography, University of Oxford, page 2.

[182] Charles Beitz, 2005. In *Cosmopolitanism and global justice*, OUP Oxford, page 13.

differences between conceptualizations of the right to adequate housing and the right to adequate healthcare; when discussing the latter, questions regarding the responsibility of individuals sometimes arise. Think of the chain-smoker who needs additional healthcare provisions in light of her consumption – one she supposedly knew was harmful and could put a burden of the state-run health system. While I disagree that one's right to health care should be altered by smoking behavior, it is interesting to consider this sort of ethical dilemma through the lens of state and individual housing-related duties. Are there similar cases where one could argue that an individual has behaved irresponsibly – that they have somehow failed their duty to make responsible use of housing resources? Can we speak of housing-related duties not to indulge in hazardous behaviors? It often happens that homeless individuals make use of alcohol and drugs in temporary accommodation units or in social housing, and are evicted when "found guilty" of such consumption. In such cases, aren't state authorities rightly making use of their power to evict? To frame the question in a capability language, who is to decide or control the actions that are permissible (alcohol and drug consumption) in the pursuit of essential functions (being housed)? I think that negligent behaviors in the space of one's home when it is provided for by the state need not to be a thorny matter. I have shown that adequate housing should ensure the privacy of its inhabitants: that their preferences for private ways to enjoy life also imply destroying their bodily health shouldn't make it so that they are deprived of a house. Quite the opposite, them being subjected to the controlling eye of health and governmental authorities indicates that their right has not been fulfilled. If your occupation of a house is conditional on you not smoking crack within its walls, then you aren't adequately housed.

(2) Municipal administrations

> If the 19th century was that of Empire and the 20th that of the nation-state, the 21st is the century of the city. Cities are our greatest hope for democracy. While traditional political institutions lose space and power in a system which has surpassed the boundaries of the nation-state, new local sovereignties emerge as authentic protagonists of the present through their capacity to respond to the key challenges of our age.[183]

We can extend our critique of the ways in which political institutions exacerbate inequality and promote exchange value over use value to *local* political institutions. Most city administrations follow the logic of finance capital and extraction, and they too often see their roles as facilitating

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[183] Iago Martínez, "La Marea Atlantica", as reported in Eoghan Gilmartin, 2018. "The Mayors and the Movements", retrieved online 2020-03-22, https://www.jacobinmag.com/2018/10/fearless-cities-review-ada-colau.

whatever housing developers want to do – this deplorable phenomenon has been labeled as "developers development".[184] Urban contemporary structures epitomize the culmination of market economies, of capitalist accumulation and industrialization, which (under the cover of being "best placed" to solve local housing dispute) mayors have systematically, energetically sought and enabled. They have done so against their clear duty to develop the physical infrastructures and the public facilities, services, and regulations necessary for people to live in safety and go about their daily business in a dignified matter. I have acknowledged above that the dominant political ontology is statist – this means that the ways in which we theorize upon housing duty-bearers are parasitic upon this statist understanding.[185] To be sure, national governments can devolve powers and decentralize the effort to realize basic rights, but they remain in the spotlight when it comes to their realization; they are fully accountable. If one has a theory of state-related duties, why bother with a theory of municipality-related duties? As a result, we tend to minimize the role, power and responsibility of municipal officials in upholding the right to housing. Although numerous municipal functions and powers relate to housing (building regulations, potable water, sanitation, electricity and waste disposal, for example, clearly relate to housing), we generally do not place the primary obligation to take the requisite measures for the fulfilment of the right to housing on local governments. This ought to be questioned. Should local governments bear the same unqualified burden with regard to the right realization as the state – and is it desirable to make such a qualification? Could it be the case that municipal spheres of government are the most "structurally fit" to take on housing-related administrative, legislative and budgetary measures?

Municipal officials derive their power from the decentralized state. They share the state's duty to respect, protect and promote the right to an adequate house, and receive national grants and payments towards this tripartite duty. However, most of municipal administration's aggregate budget consists mainly of money raised by the municipalities themselves: this, importantly, signals a form of independence from the larger national policy agenda (and its related application). I think that this independence should be accounted for when outlining the obligations that local administrations hold towards the realization of housing adequacy in their respective cities. To be sure, there are substantial difficulties associated with adopting legislative, administrative, budgetary or judicial measures that aren't backed up from above by national institutions – it is a tough balance of power indeed. Take the example of the leftist BenComú Barcelona administrators, whose ambitious urban policies aimed at reversing the privatization of public services, advancing an alternative to speculative real estate development, and breaking with Spain's austerity regime. These municipal officials had

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[184] Kohn, page 7.

[185] Warren Magnusson, 2011. In *Politics of Urbanism*: *Seeing Like a City*, Routledge, page 2.

counted on a certain offensive capacity which would allow them to contest the political and legal limits placed on local government by the state. Instead, under massive pressure from economic elites and an extremely hostile national government – as well as technocratic resistance from adversary city officials – the radical BenComú administrators have been left with little margin for action.[186] Still, these difficulties don't eliminate the special duties of municipal officials or councils, when the city they oversee is partially sovereign. Despite the top-down structure they are part of, cities' relative financial independence enables them to build an important political bloc which is capable of challenging inappropriate national housing plans. Municipal administrators must at least attempt to build such a bloc. An alternative form of political accountability emerges of this sort of reasoning – one which holds promises of improved, tailored home infrastructures.

Note that local governments also have promising capacities to make land available: in many cases, municipalities have greater access (through ownership) than provinces or state departments to land. This greater access implies a distinctive position which qualifies them as key players in the realization of the right to adequate housing.[187] In the same line of thought, some municipalities – in, among other places, Quebec, France, Germany, or the Netherlands – can make use of their right of preemption. A tool of so-called "community protection", the municipal right of preemption can be legally exercised by local authorities in the face of risks of shortage and increased displacement of residents from certain areas of a community. What does it entail? A right of preemption simply means that local authorities have the right to acquire real estate put up for sale by private individuals or companies, in preference to any other buyer.[188] While making use of such right is uncommon and logistically tedious (back to legal and technocratic forms of resistance), it points again to the special duties of municipalities to make use of all available tools in order to insure that residents of their city access adequate housing. A comparable argument can be made with regard to modernization permits: an appreciable number of buildings in sought-after urban areas may only be refurbished with the approval of municipal authorities. The granting of the required authorization papers can be bound to an obligation to refrain from increasing the rent by

[186] Eoghan Gilmartin, 2018. In "The Mayors and the Movements", retrieved online 2020-03-22, https://www.jacobinmag.com/2018/10/fearless-cities-review-ada-colau.

[187] Jaap De Visser, 2002. In "A perspective on local government's role in realising the right to housing and the answer of the Grootboom judgment", Journal of UWC Faculty of Law, page 210.

[188] "Le droit de préemption permet à la Ville de Montréal d'acheter en priorité sur tout autre acheteur certains immeubles ou terrains afin d'y réaliser des projets au bénéfice de la communauté". Official city portal - Ville de Montréal, 2019. In "Pre-emptive right", retrieved online 2020-09-22, https://montreal.ca/en/topics/pre-emptive-right; Jeanne Corriveau, 2020. In "Montréal acquiert la Plaza Hutchison pour des logements sociaux", Le Devoir, https://www.ledevoir.com/politique/montreal/585629/montreal-acquiert-la-plaza-hutchison-pour-des-logements-sociaux.

more than a reasonable amount after the renovation works, thereby ensuring that the affordable tenant structures are preserved.[189] Preemptive purchases, modernization license, inclusionary zoning, value capture, community benefit agreements; these are all manifestation of possible practices of urbanity led by responsible municipalities which can improve the housing situation of a majority of dwellers.[190]

As a brief closing remark I want to highlight the fact that there exists a culture of citizen consultations which are overseen by local authorities – such participative consultations are already in place in major Western metropolises, but are mostly limited to the development of public spaces (negative architectural space; "open" streets, squares, parks) – not housing project (positive architectural space; "closed" buildings). Municipalities should ensure that upcoming construction and renovations of houses are part of an inclusive public conversation, in order to better calibrate citizens' needs and interests, and insure that their human right to adequate housing is respected, protected and fulfilled.

(3) Individuals

If society ensures housing adequacy, individuals have a corresponding obligation to take personal responsibility – to use their respective agency towards the pursuit of good homes, by preserving it in a proper state (housekeeping duties). Daily domestic life is also constituted of these micro-duties that most of us fulfill without giving it much thought: we respect one another's privacy, clear out the snow from common front stairs, dispose of our wastes appropriately, and generally go about our business without interfering with or damaging other people's property. For these micropractices of maintenance and self-government to happen smoothly, local governments must structure the built environment in a way that makes it accessible and affordable to take care of basic house amenities and surfaces, or to contract the professional services to do so.

Beyond such general statements, a sound argument of housing adequacy should make mention of individual obligations: it isn't just about what one is owed, or what is normally expected of her, but also what she can give. What kind of duties do we all bear in regard to the right to housing? Is there a general duty on our part to contribute to wider relief efforts against housing

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[189] Local authorities may also set additional requirements for the restoration, modification or change of use and couple them to the required public permits. Pia Kemmerer, Boris Strauch, 2019. In "Municipal Pre-emption Rights under the German Building Code", retrieved online 2020-10-01, https://www.bclplaw.com/en-GB/insights/communal-pre-emption-rights-under-the-german-building-code.html.

[190] Shishir Mathur, 2013. In *Innovation in Public Transport Finance: Property Value Capture*, Routledge, page 13.

inadequacy? The magnitude of infrastructure costs demanded for the construction of architectural objects (land, materials for structure, cladding and finishes, excavation and foundation, plumbing, roofing, flooring, and their related services, permits, professional evaluations and contracts) seem to entail that individuals – except if singularly wealthy – aren't best positioned to tackle home architecture expenditure. Ordinary tax payments (a civic and legal duty) under a just, functioning state are thought to cover this type of obligation. Yet people should not be allowed to suppose that they are insulated from moral criticism regarding accountability simply because they can point to the particular demandingness of helping others to realize their right to housing.[191] We often fail to even conceptualize housing obligations which we might hold towards other individuals, regretfully acting in our self-interest rather than the common good. "What would my action achieve? How would it change things, if at all?"[192] As we saw earlier in this thesis, one *can* argue that all individuals have duties to contribute to remedy housing inadequacy: scholars like Waldron or Mancilla make the argument that we have significant individual negative duties (not interfering with someone occupying our property) and individual positive duties (sharing surpluses, offering shelter and access to basic amenities – toilets, bed, shower, storage) to fulfill in the face of severe housing needs. On the other hand, I have also explained that our homes are spaces of intimacy and safety, which makes it easy to picture the demandingness of such duties, where deprived strangers would find themselves in our domestic spaces.[193] Even so, it isn't clear that these demanding implications trump the duties we hold toward individuals who are in dire need of a home. Reflect upon the snow-storm-cabin scenario, and the way we'd welcome the vulnerable hiker into their homes. We might want to revise and extend our sense of responsibility to other scenarios too – including that of people forced into homelessness or grossly inadequate units because of a fundamentally unjust distribution of housing resources.[194]

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[191] Waldron, "Dignity, Rights and Responsibilities", page 1113.

[192] Magnusson, page 13.

[193] On that note, "the right to exclude" which follows from safe home tenure need not be understood as an almighty right to private property. The physical exclusion implied by walls and lockable doors is a robust way to secure individual freedom, control, privacy, but it's not the only way. Another way to secure this mode of being would be through a common property regime, where – in an idealized account – an individual right to occupy and use shared spaces are regulated through "consensus or negotiation to help ensure that the projects and purposes of some group members are fairly balanced with the projects and purposes of others". To be sure, the individual will is limited here, but these limitations are ones individuals have agreed to (not restrictions forced upon them). Kohn, page 30.

[194] While hospitality hints at attitudes of benevolence and charity, and not of fulfillment of duties, it is interesting to note that Emmanuel Levinas has put forward a philosophy that does stress hospitality (l'hospitalité) towards the Other (autrui) in which he suggests that our ethical responsibility for the stranger, widow, and orphan – or the homeless – tend to supersede individuals' attachment to place and privacy. If that is indeed the case, opening our homes, hearts and wallets to those who lack a home should not be as unattainable as some would like to argue.

In any case, interrogating the duties of individuals with regard to the human right to an adequate house leads to far-reaching considerations on collective action, complicity and group duties; housing-related issues like gentrification, sustainability or intergenerational justice are complex and provocative, and are at the core of ongoing debates on what is required of individuals in terms of behaviors and practices.[195] We can imagine that there'd be disagreement among philosophers as to what are the duties of gentrifiers (bourgeois bohemians, for example) who are willing and able to pay high prices for proximity to downtown, and thus indirectly force poorer long-term residents of a centrally located neighborhood to move to areas where property values are lower. I am sure that these bourgeois bohemians would find it exceptionally hard to give up on their home purchase – to give up on their individual consumer choices, to give up on "pursuing their individual conception" of the good house[196] –yet their sustaining of discriminatory urban occupations and markets suggest that they might have a duty to do so. Still, this is a strong claim, especially given that individuals refraining from buying property in a transforming neighborhood will likely make *no difference at all* to the larger process of gentrification. When poor and working class neighborhoods in the inner city are refurbished by an influx of private capital and middle class home buyers and renters, the phenomenon is gradual, intricate; it consists in a piecemeal transformation of the urban space. [197] This gradual, intricate, piecemeal nature makes it very difficult to pinpoint individual actions and duties with certitude.

In all cases, we can say that by contributing to gentrification, our two gentrifying bohemian bourgeois arguably share in complicity for human rights shortfalls. What this entails in terms of what is thereby required of them is a further question: I don't have the space to explore this question in the context of this thesis, and have chosen instead to focus on the role-based obligations of architects.

(4) Architects

The story usually goes as follow: human rights place a duty on the state and on housing providers to comply with minimum standards; architectural ethics place a duty on individual architects to comply with parallel standards. Human rights and architectural ethics are parallel mechanisms indeed; they are two distinct disciplines, each with its own history and methodology – the former working at the sociopolitical level and the latter at

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[195] On the topic of collective action and individual responsibility, see Christopher Kutz's *Complicity* (2000) and Stephanie Collins's *Group Duties* (2019); also see Holly Lawford-Smith's *Not In Their Name: Are Citizens Culpable For Their States' Actions?*(2019).

[196] John Rawls, 1971. In *A Theory of Justice*, Harvard University Press, page 118.

[197] Neil Smith, 1996. In *The New Urban Frontier: Gentrification and the Revanchist City*, Routledge, page 30.

the level of the architect-client-dweller relationship. They are complementary, and the use of the two together maximizes the capabilities of housed individuals. In that sense, I believe that, by considering the responsibilities of architects in light of a human rights framework instead of a more general architecture ethics, one can better the architectural practice, and make it more relevant to – more in tune with – the current housing culture and the pressing challenges I have associated with it so far. Architecture's potential for the creation of a socially beneficial and functional built environment is in great need of such a philosophical stirring.

So let us attempt to fill gaps and interrogate the role of architecture and architects in the realization of the human right to housing: what it is and what it could be. What sort of duties do architects have when they engage in designing and building houses? What are the (new) normative implications which arise for their professional practice in light of an argument for housing adequacy?

The first rule of the architect: get the job![198] Other considerations and responsibilities will follow, but in a field especially characterized by rivalry and performance, the primary focus of architectural professionals remains to earn a living – to get contracts and make their practice viable. Today, most of them are "desperate" to build.[199] This might explain in part why theoretical debates about housing provisions and adequacy remain extremely weak among architects. To their group I add architectural educators and mentors, who too often rejoice in "breaking" their pupils (students, interns) for the "real world", tossing moral duties aside to focus on competitiveness, profitability and glamor. This is of course problematic. Design practices like architecture do generate special moral duties. As I have hopefully shown in this research, ethical issues related to housing range over matters of personal and social spaces and the articulations thereof, including criteria for designing around the notions of dignity, accessibility, respect, subsistence, justice, and so on. In this context, designing housing adequacy can be thought of as "reflection-in-action".[200] The housing question sparks many other enquiries where we need to rethink architectural ethics, new technologies, professional practice, activism and education.

Discussions of ethics in schools of architecture has tended to focus upon the professional relations among architect, client and "society" – in fact, on those relations that are typically codified by professional governing bodies, less attention given to the way ethical norms and models are generated and

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[198] Stanford White, in Michael Benedikt, 2007. In "The First Rule of the Architect", page 1, retrieved online 2020-03-23, http://www.mbenedikt.com/the-first-rule-of-the-archi.pdf.

[199] Benedikt, page 1.

[200] Donald Schön, 1985. In *The Design Studio*, RIBA Publications for RIBA Building Industry Trust, page 12.

transformed between academy and profession (what has been sometimes referred to as "shadow ethics"). What about orienting designs towards morally-informed considerations? Which considerations should be put forward? Take the example of the architecture studio course, which is perceived to be the most important part of the architect's training. Students are given a "functional" program. They are to imagine, draw and model a building which holds a specific function; a library, a museum, a student housing complex, a clinic, a boat hangar, a cultural center – a house. An exhaustive space schedule quantifies what is expected in term of space and equipment provisions; choosing a suitable "site" to place one's building is part of the task: demographics and users profiles are part of the students' site research, but the site is first perceived as a physical infrastructure, not an ensemble of agents with a variety of essential needs. In this process, professors of architecture (or project leaders in the architectural office) have a responsibility to emphasize user adequacy – as well as notions of universal access, inclusivity, dignity, visibility and other "ethical" considerations, including environmental ones – to the attention of the students (or the supervised employees in the architectural office). This can happen at the very beginning of the design process, but often happens later on, as a reaction to a design proposal well on its way; as an after-thought, so to speak. We should strive towards reversing this order and insist on conceptualizing moral features of the architecture (of the house, library, hostel, museum; of the building) at the moment of inception of the project.

Architecture is equally a tool of emancipation and a proactive agent of exploitation. At its best, the professional practice of architecture is a "unique arena" for "cultivating creativity and innovation", and for devising "novel solutions" to "social, technological and pragmatic" problems.[201] At its worst, its architects are "prostitutes" – "we do our stuff when we are paid; we try to do it well for whoever will pay"[202] – or enablers who confer legitimacy upon the program their building houses and the clients they serve, indifferent to the ethical nature of the said program and clients. In Chapter 1 I drew parallels between rights to health and housing; comparing obligations between physicians and architects is equally informative. We expect that the physician's direct responsibility is to the well-being of her patients, that she is to do everything in her power to preserve their (lives and) well-being. On the other hand, we expect that the architect's direct responsibility is to the satisfaction of her client's needs, that she is to do everything in her power to complete the contracted task in an apt manner. Let's consider the analogy more closely. In both healthcare and architecture, there are usually three main parties involved: the service provider (the physician or the architect), the client (the agent paying for the service), and the recipients of the service

[201] Ibid.

[202] Philip Johnson, 1972. In "Graham Foundation Lecture", reported in *Philip Johnson and His Mischief: Appropriation in Art and Architecture*, Images Publishing, page 91.

(patients or occupants). In some cases the client is also the recipient of the service – in the case of private health care, or when individuals hire architects to design the spaces for their own occupation; a house's user and client can indeed be the same person, as is almost always the case in private, pricey commissions, but this user-client overlap is of little interest here, because the budgets associated with such housing projects imply by default adequacy – but these two roles can and do come apart.[203] In the case of healthcare, it seems intuitive to think that the physician's primary responsibility is to the patient, and not to whoever pays the bills. So why would it not be the same in the case of architecture? Naturally, architects also have a responsibility towards their "patients"; the occupants of the building that these architects are designing. In the case that concerns us, a house's inhabitants are its users: the professionals who are designing houses should aim at preserving users' (lives and) well-being. Yet they aren't expected to do everything in their power to do so – these energies are to be saved towards the clients who have contracted them to design these houses.[204] In current cost-conscious climates, architects are asked by clients to prioritize economic considerations into their professional decisions and designs; a maximization of users' needs tend to come secondary to demands of budget efficiency. Different resource-allocations patterns can be prioritized, justified, but architecture professionals ought to commit to a vigorous integration of users-serving features when designing homes. The feasibility of integrating features that benefit a house's occupants – instead of benefitting the client who has paid for this house to be designed and erected – remains a significant challenge.

Architects working on large (mass) housing projects sometimes recount their growing moral disorientation as they realize how the building standards they are expected to meet are insufficient for an adequate occupation. It will come as no surprise that low budgets equate to low architectural standards: small windows, windowless rooms, cheap and chemical materials which too soon break and fail, impractical layouts, low ceilings, unsuitable light levels, lack of storage and maintenance possibilities, poor ventilation, bad acoustics, fringe or noisy locations.[205] With the exception of luxury and

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[203] An interesting aspect of the dynamics of physician with their patient is their person-to-person interactions. Perhaps there is something at play in terms of commitment and responsibility when a professional gets to have direct interactions with the "user" of their services, patients or dwellers. If architects were to sit down with future inhabitants of their house instead of (or in addition to) clients and promoters, their professional priorities might realign for the better.

[204] Most architecture codes of ethics will indicate duties along the lines of: "architects will have regard for the best interests of both their clients and the public" – but current features of the professional practice make the balance tip towards clients, in case of conflicting interests (for example, cost considerations versus space quality considerations).

[205] It must be stated clearly: many of these are considerable health hazards, and unacceptable ones. Exposures and health risks in the home environment are critically important because of the large amount of time people spend there. In high-income countries, around 70% of people's time is spent inside their home. An individual working five weekdays during 8 hours

leisure houses, too often are architects expected to work within frameworks that exclude the design of adequate housing. Then again, what should one do? Request a reduction of the number of units; fight for the augmentation of invested costs? Reject the commission altogether; denounce these unacceptable limitations and conditions publicly? In the context of the competitive, desperation-inducing field I have described above, such actions are certainly demanding; as professionals, architects put themselves at risk for upholding the moral standards which follow from the adequacy of housing as conceptualized here. Until these moral standards become strictly-enforced legal standards, architects who commit themselves to refuse to participate in "constructing inadequacy" are going to struggle to find the contacts, clients and capitals which they need in order to continue to work – the contacts, clients and capitals which, put plainly, they need in order to keep on being architects. I have little to offer to sort out such dilemma – I can clarify the settings and parameters which inform it, and argue for a deep commitment to the principles detailed in Chapters 1 and 2, but remain unsure of the extent to which architects should uphold these duties. Recall our previous discussion of the human right to work, and the importance of work (and employment) for the development and fulfilment of one's capabilities. To ask of architects that they renounce a professional career is a strong demand indeed. In all cases, current housing-related moral standards are so problematically low and overlooked that much can be achieved without necessarily resulting in architects finding themselves unable to practice at all.

In past decades, the practice of architecture has been subject to several, unprecedented transformations with regard to ethics – and these transformations do not bode well for the future of housing adequacy. Moving away from the commons, from socially-informed considerations of welfare, democracy (an urban thing) and equal opportunity – and importantly, from a professional interest for the construction of "good houses" for all[206] – most architects have landed in a disreputable position

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and spending all of the remaining time in her house will end up being at home 77% of the time. In some places, including where unemployment levels are higher, and where more people are employed in home-based industries, this percentage is even higher. Architects who are drawing unsuitable windows, who are including chemical products in their specifications, and so, make themselves directly complicit in dwellers' exposure to and contraction of health issues. World Health Organization, 2018. "WHO Housing and health guidelines (HHGL)", retrieved online 2020-02-15, https://www.ncbi.nlm.nih.gov/books/NBK535298/.

[206] Building the commons, welfare, social democracy, equal opportunity: these used to be an integral part of the architecture culture of the latest half of the 19th century, and the first half of the 20th one. Combining private and common property, architects saw it as their responsibility to develop new housing models which guaranteed one's autonomy and dignity, and which formalized solidarity. Some of today's most interesting architects have recuperated similar "building models" and have provided great examples of what housing adequacy could look like. See the paradigmatic R50 cohousing project in Berlin, by ifau, Jesko Fezer and Heide Von Beckerath Architects: https://www.archdaily.com/593154/r50-nil-cohousing-ifau-und-jesko-fezer-heide-and-von-beckerath.

where they claim to be "nothing but artists" encouraged by bountiful patrons. Human rights are none of their business. Let's shortly indulge in this sort of supposition. What if there was a truth to it? Am I imputing to architects a responsibility they don't have? At the end of the day, as star architect Massimiliano Fuksas recently argued, the problem might only be political: it is the politicians who have to combat housing inequality and inadequacy that afflicts global cities – it's up to these politicians to confront the general emergency in which we live. It's up to these politicians to ensure that no human right is violated in the making and unmaking of urban spaces, neighborhoods, houses. Architects are not political actors; they "busy themselves with other things, formal beauty, décor;" in short, with precious things.[207] This is the kind of dull alibi that professionals in the field of architecture have brandished when called out on their failure to uphold their (morally-informed) duties. Their answer equates their professional work to the production of "icing on the cake" – they are marketers of products and brand names, of fashion houses and of tourism, regardless of whom finances and contracts project. An oppressive regime plans to build the most ambitious museum, the highest tower? Count them in. These architects are propagandists. They are the service artists of today's powers, useful for establishing styles and trends, for Disneyfying neighborhoods and transform cities into spectacular billboards. Their post-ethical realpolitik comes despicably close to the legitimating narratives of inevitability that have accompanied market or globalization rhetoric in the face of related injustices and rights violations. It should be dismissed accordingly.

So, architects create works which solidify dominant values, ideologies and desires – when engaging in such an irrevocable endeavor, they ought to think and create in responsible, morally-informed ways. The creation of built infrastructure like housing reveals the manners in which architects participate in differentiating, labelling, and categorizing institutions, people, codes, norms; the manners in which we as a society include and exclude – with its building codes, zoning regulations, and participatory traditions, housing architecture structures power and segregation processes. Constructing houses have sustained processes of othering historically, and continue to do so in present times. While still uncomfortably low, an increasing number of architects and architectural theorists now engage in design and research on power, justice, rights, class, and the ways these notions relate to housing.[208] Through revised aesthetics and morally-informed approaches, these architects and theorists are taking on the task of

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[207] Massimiliano Fuksas in Franco La Cecla, 2012. In *Against Architecture*, PM Press, page 15.

[208] David Theodore, 2020. In "Othering", retrieved online on 2020-02-29, http://www.jaeonline.org/pages/othering#/page2/

expanding the stories we tell of ourselves about houses.[209] By doing so, they are reinjecting a long-lost value to the house typology; once a desirable type of commission for architects, socially-oriented housing projects have somehow come to be thought of as "ordinary architecture" – as banal, mundane, as lacking monumentality, excitement. Designing and building housing brings little pride to practitioners, who'd rather lust for projects with high symbolic value; Olympic stadiums, museums, high-rise towers, etcetera. This culture can and should be upturned. Story-telling, images and building making: these are tools which architects must seize and use towards the dismantling of harmful conceptualizations of housing, thus reinjecting energy, generosity, thoughtfulness and care in the way they create houses for all of us to use – though, importantly, it must be said that this isn't an issue of benevolence. Benevolence has no place in human rights discourse; rights do not depend on the kindness and empathy of other actors. They depend on them fulfilling their due obligations.

Urban theorist Bo Bengtsson has commented on the consequences of reducing home architecture to functional and economic performances, when

> housing is seen as "a machine for living in"; when central concepts like housing needs, housing management, homelessness and overcrowdedness - and even nuisance to neighbors - are defined in universal terms and measured as aggregates, even though they are concerned with personal effects and we would not expect uniformity. By giving housing an economic definition, [contemporary architects] make housing *an end in itself* instead of a process whereby individual households may fulfil their own ends. In that process of existential significance, not only actions are important but the perceptions of these actions. Dwelling is something one does and different households do different things for different reasons with different dwellings. This pluralism has important implications for the discussion of rights and needs. If housing has a meaning only in its use, there could be no natural right to housing based on a common human essence. Likewise, housing needs cannot be universal, nor can housing be seen as a merit good.[210]

With its emphasis on "existentially significant" "processes whereby individuals may fulfil their own ends", such theorizing ties us right back to considerations which were explored when discussing the capability approach and its justification for right-protected human functionings. Bengtsson's simple point is that architects, with their conceptualization of home architecture (the specific ways in which they speak of it, design it, build it),

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[209] See the works of, among other, Who Builds Your Architecture? (WBYA?),WAI thinktank, Forensic Architecture, BAST, FIG Projects, Francesca Torzo Architetto, Peter Barber Architects, The Funambulist.

[210] My italics. Bo Bengtsson, 1998. In "Reviewed Work(s): The Limits of Housing Policy", Netherlands Journal of Housing of the Built Environment, Vol. 13, page 190.

play a direct part in supporting a right to adequate housing – this natural right to housing based on a common human essence. Professional architects can speak, design, build in ways that reflect its vital importance for human bodies and minds, or reduce it to a machinist space, inspired from totalistic programs of provision: here architecture embraces a paradox, as it holds the potential to overcome the disjunction between "that which serves an end" and "that which is an end in itself", between an "article of use" and a "work of existential significance", or "work of art".[211] We must expect of architects to strive towards creating houses that do overcome this disjunction. This is a challenging duty, but, given the importance of the right to adequate housing for the realization of human capabilities, it must be heartily pursued and, with luck and perseverance, maybe achieved.

Finally, architects are practicing in a world that is changing fast. The world's population is to increase by between 1.5 and 2.5 billion by 2050; in the coming two decades we can expect that more than seven hundred million households will be added to those already existing.[212] In the face of rapidly advancing urbanization, particularly noticeable in Asia and Africa, and the relocation of households from the countryside to the city, which creates an additional need for housing, about a billion more dwellings need to be completed by 2030 to meet demand".[213] These are sobering numbers. The demand for space and resources which this entail is immense, and will lead to probable environmental degradations, in a time when degrowth and remediation are imperative. There seems to be little point in insuring housing adequacy if the associated (built) measures put the Earth under further critical stress.[214] To be sure, one's consumption of space, energy and material in the form of a house will vary across geography and culture – while it is challenging to speak of adequacy in the light of current and coming environmental changes, it is an aspect of housing that architects should consider. I said that design practices generate special moral issues which are often overlooked; designing with materials sourced from a finite planet does generate a responsibility to constantly assess the sorts of consumption and use of resources which follow from a given housing project, and this is, indeed, mainly the task of practitioners of architecture.[215]

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[211] Colin Wilson, 2014. In *Architectural Reflections: Studies in the Philosophy and Practice of Architecture*, Butterworth-Heinemann, page 57.

[212] Tobias Just, 2010. "Eine Milliarde neue Wohnungen", retrieved online 2020-03-06, https://www.faz.net/aktuell/wirtschaft/wohnen/haus/wohnungsbau-eine-milliarde-neue-wohnungen-1911262.html

[213] Ibid.

[214] Environmental philosopher and ethicist Warwick Fox has commented on the emergence of architectural ethics in the face of increasing environmental problems. He thinks of such concerns with the built environment as a neglected aspect of environmental ethics. Warwick Fox, 2000. In *Ethics and the Built Environment*, Routledge, pages 11-12.

[215] Though this comment on responsible environmental design applies to both governmental and municipal authorities (as policy-makers and enforcers), as well as individuals. The former might have a duty to push green plans and laws, while the latter might have a "duty" to revise

As "expert makers" of houses, architects can participate in a culture that shifts towards a calibrated and green use of resources. They have the knowledge and authority to assess the space and substance of houses in terms of precise environmental impacts, and draw and build them with careful and considerate environmental attitudes – hereby signaling a willingness to design responsibly.

As I argued earlier, justifying the human right to housing involves a detailed analysis of the duties borne by specific sets of addressees, people or agencies which follow from such a right. This is what I have attempted to do in this chapter. I have evaluated and debated the roles and abilities of different actors in the protection, respect and fulfillment of the right to adequate housing. Architects, national governments, municipal governments and individuals do hold special obligations and responsibilities towards dwellers; these obligations and responsibilities are often downplayed or erased by a commonplace focus on states as sole purveyors of welfare rights. I thus take this discussion of housing-related duties to constitute a particularly crucial endeavor in the quest for a sound account of housing adequacy.

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their occupation of space and accept to be housed in smaller areas. To be sure, individuals should all be granted a minimum amount of domestic space, but, given limited environmental resources, a sufficiency-oriented distribution of building materials, energy and space might entail that those of us (Europeans, North Americans) who are used to dwell in spacious houses consider something smaller. If we think of it as a balance sheet, the future construction of new and adequate houses around the Globe should indeed be accompanied by an overall decrease in individual domestic space consumption. Given the attachment of advantaged people to their big, comfortable homes, this hardly seems an attainable prospect, but I think it ought to be pursued nonetheless. In all cases, this sort of shift in consumption can be eased by vigorous policies (states, municipalities) and creative, environmental-friendly designs (architects).

Concluding remarks

What constitutes adequate housing? Why does housing matter? I have presented my research as an attempted comprehensive answer to these two questions. While many scholars address the issue with wit and pertinence (I have discussed their works in the three chapters above), housing adequacy remains an underexplored issue in the discipline of philosophy. By situating it within right-based, capability-oriented considerations, I have made the case that this issue is intrinsically tied to human freedom and welfare, and so that it is – indeed – grounded in intrinsically philosophical notions.

Capability theorists like Amartya Sen and Martha Nussbaum unveiled the irrelevance of defining adequacy in terms of prescribed material features and goods: an adequate house might have opaque walls, or not; it might have many rooms, or not; it might have an open hearth, or not; it might have considerable storage capacities, or not. It might be built of recycled materials, or not; it might be located in an urban setting, or not. It might be owned, or not. I could go on – the idea which I want to make evident is that a comprehensive answer to the question "what constitutes adequate housing?" never can constitute in a universal, detailed list of equipment and qualities. The second question – "why does housing matter?" – is, in effect, very much part of an answer to the first. The adequate house is the house that fulfills its infinitely significant role: to enable people to develop and enjoy a life that is worthy of their humanness, a life that has available in it "truly human functionings".[216] The capabilities which are supported and strengthened by adequate housing infrastructure are capabilities to which all individuals are entitled. They are opportunities for activity, work, love, survival, memory – not simple quantities of resources, not simple shapes, areas, textures or colors. I have spoken of essential capabilities and of the justificatory work they do for a human right to housing (Chapter 1); I have detailed the importance of the adequate house in terms of body and mind functionings (Chapter 2); I have argued for a set of obligations and responsibilities which key actors must assume so as to bring all people to enjoy the freedom and wellbeing that such an house can ensure (Chapter 3). To be sure, much is left to be discussed and debated, confirmed, and infirmed – theorizing on housing is a developing and stimulating branch of philosophy, and I very much hope that the research I have presented here can participate in orienting efforts and sustaining interests towards the adequate house, this special, vitally capacitating place. Houses are, beyond doubt, places of existential importance; they are very much part of what it means to become and be human – this is a reality that, all being well, I did manage to bring home.

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[216] Martha Nussbaum, 2006. In *Frontiers of Justice: Disability, Nationality, Species Memberhsip*, Havard University Press, page 73.

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