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Homelessness and the Law: Constitution, Criminal Law and Human Rights

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The impact of the law and the legal system on people experiencing homelessness is an important area of study. Of course, housing law is only one area of law that can change the lives of persons living in such extreme poverty. Social security law, laws regulating the use of public spaces, immigration laws, and court practices and procedures all influence the lived experience of homelessness.

This book is a collection of essays written by students studying homelessness-related issues at the University of Groningen in the Netherlands. Many are exchange students from countries both within the European Union and outside it, so the authors are able to offer insights into the laws, policies and practices of many different countries.

Perhaps the most important lesson that may be learned from this book is that the legal difficulties faced by people experiencing homelessness are strikingly similar across many nations. By recognising this, we create opportunities to learn from one another, and to draw upon one another's successes and failings, as we 'reform' our laws.

Raised in this book is the fact that laws related to housing and homelessness present certain paradoxes. First, the law has a role both in assisting people experiencing homelessness and in regulating their behaviour. Thus, it has both protective and repressive effects. Secondly, there may be disconnects between overarching rights and duties established under federal or national laws, and the operationalization of those laws by local authorities. Thirdly, laws and practices that are aimed at assisting people experiencing homelessness tend to focus on providing housing, which fails to appreciate cultural differences between different groups of homeless people.

As someone who resides in Australia, where there is no national Bill or Charter of Rights, and where very few rights are constitutionally enshrined, I find the commonality of our complaints about laws related to homelessness intriguing. Human rights advocates in Australia insist that the plight of vulnerable people could be alleviated

through the creation of legal rights. It cannot be denied that rights are certainly better had than not. Yet, from what is said in this book, it seems that constitutional rights to housing do not always solve the practical problems that homelessness creates for governments and communities.

A right to housing does not create a sufficient housing supply. Regardless of any legal rights to housing, social housing waiting lists remain high even in wealthy nations, and individuals and families can still be forced to sleep in improvised dwellings or squats.

A right to housing does not erase stigma. Individuals and businesses continue to support the removal of people from the streets who are visible reminders of 'misery'. Creating a right to housing, it seems, does not always serve to humanise the individuals affected. Laws that criminalise loitering, sleeping out and begging continue to be introduced and reintroduced, even though they tend to exacerbate, rather than address, the problem. A number of chapters of this book discuss 'exclusion orders', which allow local authorities to remove homeless individuals from public spaces. The equivalent in Australia is police 'move-on' powers. Two of the chapters in this book discuss anti-begging legislation in the Netherlands and Switzerland, noting the distinction that is made between active and passive begging. This reminds us of the legislators' desire to balance the interests of people that beg with the discomfort of other members of the community. To this end, in some countries, the application of 'exclusionary' laws against homeless people is coupled with offers of support and assistance. But, regardless, the message of rejection is clear. My research has suggested that this underlying message has a profound effect on an 'excluded' individual's sense of self-worth, and may increase their alienation from the community.

A right to housing does not recognise cultural differences. A number of chapters in this book relate to the Roma, some of whom live in appalling conditions in camps. These chapters describe how, in some countries, laws have been passed to enable these camps to be destroyed, and the result is that many Roma are forced to sleep rough. One of the authors indicates that this response ignores the fact that the Roma may not wish to settle. They may simply require temporary assistance until they move on. Another author notes that in Canada, Aboriginal people are over-represented in the homeless population. This is true in Australia, also. This is the direct result of colonisation and dispossession of Aboriginal lands, but it is also a product of cultural misunderstanding. Some Australian Aboriginal people choose to live transient lifestyles. 'Home' may be a locality or a set of spaces, rather than a structure. Some may not wish to be 'housed' – instead, they may require access

to lands and access to services. Others who are housed may still consider themselves to be homeless as a result of forced separation from their lands. In short, cultural homelessness is more complex than our systems recognise.

A right to housing does not always reflect the goodwill of the community towards those who are vulnerable. Indeed, it may serve to inflame. Just as some individuals in Australia express concerns that asylum seekers will 'take our welfare and jobs'; fears related to 'social benefit tourism' are rife in Europe. A number of chapters in this book discuss the increasing importance of 'local connection' as an eligibility criterion for housing assistance. They raise the corresponding concern that an increasing proportion of individuals and families who require housing assistance are displaced persons. These people are often stateless and unable to return to their country of origin, and they are then excluded from services and support by the laws of their new country. The same is true in Australia, where asylum seekers are subjected to mandatory detention, resettlement in developing countries and exclusion from the welfare and work systems. Many chapters of this book raise the plight of Bulgarian and Romanian nationals – in Australia, most 'boat people' who arrive on our shores come from Iraq, Iran, Afghanistan and Sri Lanka. In a world where displacement has, evidently, become a chronic problem, the short-sighted exclusionary approach of governments in our wealthier countries is rightly condemned by the authors of this book. Whilst the fear may be that generous social programmes will open the floodgates, the editors note in their opening chapter that forcing these people to live on the fringes of society will not reduce their numbers.

A right to housing is not always practically effective because often it cannot be availed of by those who need it most. Two chapters of this book outline the difficulties that people experiencing homelessness face in obtaining access to justice. It seems that the reasons for this are common across many countries. Vulnerable people are likely to be disconnected from services offering legal support, and they tend to be unaware of their legal rights. Indeed, knowledge of the laws outlining their entitlements may be difficult to gain – they may be complex and they may be applied differently in different local areas. When funding for legal aid is cut, opportunities for outreach are reduced, such that those who would otherwise benefit from the rights provided for under the law cannot avail of them.

For me, therefore, the value of this book is that it indicates that legal rights to housing do not in themselves solve all problems. This book sheds light on the variety of impacts that the law can have on people experiencing homelessness in countries including the Netherlands, Belgium, Germany, Switzerland, England, Wales, Canada and Australia – in systems with and without a right to housing. One is struck by the commonalities between countries, despite their different legal

regimes. Whilst the book would have benefitted from a thorough edit before publication, it is a useful collection of student essays that can serve to educate an uninformed reader.

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