



Kent Academic Repository

Carr, Helen and Cowan, Dave (2015) *The Social Tenant, the Law and the UK's Politics of Austerity*. Oñati Socio-legal Series, 5 (1). pp. 73-89.

Downloaded from

<https://kar.kent.ac.uk/47531/> The University of Kent's Academic Repository KAR

The version of record is available from

<http://ssrn.com/abstract=2565733>

This document version

Publisher pdf

DOI for this version

Licence for this version

UNSPECIFIED

Additional information

Versions of research works

Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in *Title of Journal*, Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

Enquiries

If you have questions about this document contact ResearchSupport@kent.ac.uk. Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our [Take Down policy](https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies) (available from <https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies>).

The Social Tenant, the Law and the UK's Politics of Austerity

HELEN CARR*
DAVE COWAN*

Carr, H., Cowan, D., 2015. The Social Tenant, the Law and the UK's Politics of Austerity. *Oñati Socio-legal Series* [online], 5 (1), 73-89. Available from: <http://ssrn.com/abstract=2565733>



Abstract

This paper considers current cuts to social housing provision in the UK made in the name of austerity. It focuses particularly on the 'bedroom tax' —the cut to housing benefit for working-age social housing tenants whose property is deemed to provide more bedrooms than they need. It begins by explaining the long-standing political project of social housing in the UK. This background is important to explain the emergence of a discursively ghettoized population within social housing. We then turn to the 'bedroom tax' itself. We consider the two quite separate rationales underpinning its introduction. One rationale —fairness— is the focus of the politicians; the other —under-occupation— provides the focus for policy analysts. Both offer different versions of truth about the social in social housing and both are unconvincing. For us, this is significant because the politics of austerity require the support of public opinion. We then consider some strategies of resistance to the 'bedroom tax' which harness the disruptive potential of fairness before concluding that the bedroom tax requires relatively little unpacking to reveal it as an ideological device which operates to increase inequality whilst deploying a rhetoric of fairness.

Key words

Social housing; social tenancy; residualisation; 'bedroom tax'; anti-social behaviour; austerity; fairness; equality; social media

Article resulting from the paper presented at the workshop *Indignation, Socio-economic Inequality and the Role of Law* held in the International Institute for the Sociology of Law, Oñati, Spain, 30-31 May 2013, and coordinated by Jane Matthews Glenn (McGill University), Anneke Smit (University of Windsor) and Véronique Fortin (University of California, Irvine).

* Helen Carr is Professor of Law at Kent Law School. Her research interests lie primarily in the fields of Housing, Social Welfare and Public Law. She is interested in the regulation of the poor especially the homeless, the asylum seeker, the anti-social and those in need of care. Helen is particularly concerned with the gendered and racialised dimensions of regulation. She is currently completing a book on the governance of housing from the 1830s. She is also working with the Welsh Government on the reform of housing law. Kent Law School. Eliot College. University of Kent. Canterbury CT2 7NS. United Kingdom. h.p.carr@kent.ac.uk

* Dave Cowan studied law at Southampton, graduating in 1989. He worked as a Research Assistant at the Law Commission (1990-1991), before becoming a Lecturer at Southampton University (1991-1993), Sussex University (1993-1995), and then Bristol University (1995-). He teaches Property Law and his own optional units, Housing Law and Policy and Complaints and their Redress. University of Bristol Law School. Wills Memorial Building. Queen's Road, Clifton, Bristol BS8 1RJ. United Kingdom d.s.cowan@bristol.ac.uk



Resumen

Este artículo analiza los recortes en las prestaciones de viviendas sociales que se realizan actualmente en el Reino Unido en nombre de la austeridad. Se centra particularmente en el 'impuesto dormitorio' -el recorte en el subsidio de vivienda para inquilinos en edad de trabajar, cuya vivienda se considera que tiene más dormitorios de los que necesitan. Comienza explicando el proyecto político de viviendas sociales, de larga tradición en el Reino Unido. Estos antecedentes son importantes para explicar el surgimiento de guetos en las viviendas sociales. A continuación se centra en el "impuesto dormitorio" en sí mismo. Se analizan los dos diferentes motivos que sustentan su promulgación. Una es la razón esgrimida por los políticos -legitimidad-, la otra -baja ocupación-, la esgrimen los analistas políticos. Ambos ofrecen diferentes versiones de la verdad acerca de lo social en materia de vivienda social y ambos son poco convincentes. En nuestra opinión, esto es relevante porque las políticas de austeridad requieren del apoyo de la opinión pública. Después consideramos algunas estrategias de resistencia al "impuesto dormitorio" que aprovechan el potencial disruptivo de equidad, antes de concluir que es relativamente sencillo revelarlo como un instrumento ideológico que opera para aumentar la desigualdad, a la vez que utiliza una retórica de equidad.

Palabras clave

Viviendas sociales; arrendamiento social; residualización; Impuesto dormitorio; comportamiento antisocial; austeridad; equidad; igualdad; medios de comunicación

Table of contents

1. Introduction.....	76
2. The rise of social housing.....	76
3. Social tenants' rights.....	77
4. The erosion of social tenants' rights.....	79
5. The coalition and social tenants	80
6. The law and politics of the 'bedroom tax'.....	82
6.1. The first rationale.....	83
6.2. The under-occupation rationale.....	84
7. The bedroom tax and the disruptive potential of fairness.....	84
8. Conclusion.....	87
References	87

1. Introduction

An important task of critical socio-legal scholarship is to identify and, if possible, disrupt the role of law in political projects which are designed to blame the governed for the failures of government. One such project is the erosion of the rights of social tenants, a project that has considerably intensified since the election of the Conservative/Liberal Democrat government in May 2010. In this paper we sketch out some of the legal and policy background of social housing, and then explain the changes that the coalition government is currently implementing. We focus on what is described by its opponents as the 'bedroom tax' or, by its proponents, the 'spare room subsidy': the cut to housing benefit for working-age social housing tenants whose property is deemed to provide more bedrooms than they need. We are particularly interested in our version of the puzzle identified by Taylor-Gooby. He asks why, in a period of rapidly accelerating inequality, are most people, 'markedly less likely to want government to redistribute income or tackle poverty and are less sympathetic towards those without jobs' (Taylor-Gooby 2013, p. 31). We consider that, of all the welfare cuts that have been implemented in the name of austerity, the bedroom tax has the most potential to disrupt the potency of contemporary common sense which reckons that no-one who is reliant on the state should receive a benefit that their equivalent operating within the market would not be able to afford. We start by elaborating upon the quite different common sense that animated the expansion of social housing following the Second World War. This history is important; it provides a context for those ideas of 'justice, social justice, equity, rightness and fairness [which] continue to circulate as significant organizing principles in social and political life despite the dominance of neo-liberal politics' (Clarke and Newman 2012, p. 314).

2. The rise of social housing

Contemporary social housing in the United Kingdom can be traced back to philanthropic responses to the overcrowding and squalor consequent upon the urbanization and industrialization of Britain in the late eighteenth and early nineteenth century. Cholera outbreaks in the 1830s, 40s and 50s and the publication of Chadwick's *Report on the Sanitary Condition of the Labouring Population of Great Britain* in 1842 demonstrated that industrialization had 'a powerfully negative direct impact on population health, concentrated particularly among the families of the relatively disempowered, displaced migrants who provided a large part of the workforces in the fast-growing industrial towns and cities' (Szreter 2004, p. 80). The effects of squalor threatened more than the health of the poor: it jeopardized economic growth, and put the middle classes at risk.

Victorian philanthropy, prompted by an evangelical belief in activism, pioneered model housing amongst its many social projects. What was demonstrated was that it was possible to house the poor at low rents in non-squalid conditions. However, it could not provide housing on the sort of scale that would have any meaningful impact upon the problem of urban squalor. The Royal Commission on the Housing of the Working Classes, which reported in 1885, whilst it produced little in terms of clear directions for solutions to the housing problems, recognised this. For Cowan and McDermont, the report provides, 'a key moment in which the collective became implicated to some degree or other in the individual housing of the poor' (Cowan and McDermont 2006, p. 34). From this time on, albeit with some reluctance from all parties involved, the state took an increasing role in the provision of housing. Philanthropy had long term consequences, however, for the housing of the poor. Its gendered authoritarianism, the conditionality of its provision, its desire to save souls, to enforce moral standards, and avoid any excess of provision remain present within social housing, affecting its ability to contribute to the creation of 'autonomous sustainable life' (Gordon 2008, p. xix).

It was the Second World War that prompted the provision of social housing on the sort of scale which could meaningfully contribute to the resolution of the problem of urban housing. A desperate desire to avoid the failure of the social promise which followed the First World War, the extensive damage caused by aerial bombing, the revelations of squalor following the evacuation of urban children and the social solidarity fostered by wartime conditions meant that planning for a post-war social settlement became an essential part of putting the nation on a war footing (Malpass 2005). Housing provided by local government and funded by the national state — council housing— was to dominate provision.¹ Council housing provided in the immediate post-war period was progressive and democratic, the quality good enough to make families feel they were making a genuine choice to rent from the state. Hills quotes from Bevan² to demonstrate the post-war aspiration,

It is entirely undesirable that in modern housing estates only one type of citizen should live. If we are to enable citizens to lead a full life, if they are to be aware of the problems of their neighbours, then they should be drawn from different sections of the community. We should aim to introduce what has always been the lovely feature of the English and Welsh village, where the doctor, the grocer, the butcher and the farm labourer all lived in the same street... the living tapestry of a mixed community (Hills 2007 p. 86).

Unfortunately for the future of social housing, the demand for quantity, plus the expense of quality, soon led to reduced standards. In the fifties and sixties high rise and cheap construction methods became the norm as slum clearance became the political priority. As Hanley points out, the decision,

[t]o bolt homes together, rather than to build them brick by brick.... [meant that] by the 1970s, the further entrenchment of the class system through housing was complete. You could no longer look at a council house without knowing it was one (Hanley 2008, p. 19).

Construction methods did more than reinforce the class differentials that Bevan had sought to erode; they provided visual evidence that the squalor which council housing was designed to eliminate persisted. Hanley suggests,

Tower blocks, in the public mind, present all that is worst about the welfare state: the failure to provide the kind of housing that most people regard as a prerequisite for a happy family life; lack of choice; dependence and isolation; bureaucracy prioritized over standards; individuals placed at the mercy of a faceless local authority that seems to maintain or leave to rot its housing on a whim. And concrete. Ugly concrete (Hanley 2008, p. 19).

3. Social tenants' rights

Council tenants had no security of tenure until the Housing Act 1980; before then they could be evicted from their homes at the whim of the local authority landlord. Councils drafted one-sided rental contracts that focused on the responsibilities of tenants; the landlord's concern was the problem of re-housing the slum dweller who, in Cowan and McDermont's words, could not be assumed to possess 'the ethico-moral capacity... to syncretise their habits with those of the earlier generation of council housing occupiers' (Cowan and McDermont 2006, p. 37).

The Tenant's Charter, introduced in the 1980 Act, represented a victory for council tenants' activism. In giving council tenants a 'tenancy for life' it not only granted security of tenure – orders for possession from the courts could be obtained only if

¹ Council housing is the common name given to local authority provided (public) housing in the United Kingdom and Ireland. The words 'council', 'local authority', and 'local government' are used interchangeably.

² Anuerin Bevan was the Minister of Health in the post-war Labour government 1945 - 1951 led by Prime Minister Clement Atlee. At that time housing was regarded as part of public health provision and therefore fell within the responsibilities of the Minister of Health.

the grounds were proved and the court considered it reasonable to evict³ – it also provided rights such as the right to take in lodgers, the right to carry out improvements to the property and succession rights, that effectively enhanced the autonomy and security of council tenants.

It is perhaps paradoxical that the legal high-water mark of social tenants' rights was provided by the Housing Act 1980. Not only had the post-war welfare consensus long dissolved, something made apparent by the election of Margaret Thatcher in 1979, the Housing Act 1980 also introduced the Right to Buy, which statutorily enforced council tenants' rights to purchase, at a discount, the freehold or leasehold of their home.⁴ The Right to Buy, which led to the sale of the best quality council housing to the most prosperous of tenants, residualised and marginalized the sector (Forrest and Murie 1991). As Hills points out in his authoritative review of social housing, by 2007,

[s]eventy per cent of social tenants have incomes within the poorest two-fifths of the overall income distribution, and the proportion of social tenant householders in paid employment fell from 47 to 32 per cent between 1981 and 2007 (Hill 2007, p. 54).

For Hanley privatization was a Trojan horse:

It made the paring back of the welfare state seem attractive and reasonable, a proposition which, in turn, made those who remained reliant on the state seem weak (Hanley 2008, p. 136).

The strengthening of tenants' rights served an allied purpose. Rights were gained at the expense of local government, and the Right to Buy led to an unprecedented transfer of resources from the state to the citizen. The ideological significance of the Right to Buy is summarized by Hodkinson and Robbins,

It ... increased the ideological attachment of people to home ownership, the private family unit, and the free market at the expense of the welfare state and class-based solidarity, and ultimately removed large numbers of people from direct political struggles with landlords, while simultaneously weakening one of the traditional power bases of 'municipal socialism' (Hodkinson and Robbins 2013, p. 62).

The residualisation of council housing was accompanied by a revitalization of the private rented sector. Private renting had been in decline since the beginning of the welfare state. The Housing Act 1988 abolished rent controls and introduced the assured tenancy which contained mandatory grounds for possession based upon serious arrears of rents.⁵ Landlords who utilized the assured shorthold tenancy, a variant of the assured tenancy, benefited from an additional automatic ground for possession following two months' notice. Housing Benefit was introduced contemporaneously. This means-tested benefit, designed to cover all or part of contractual rent, was available to claimants both in and out of work. One consequence of the marketisation of rents was that government expenditure on Housing Benefit tripled from £3.8 billion in 1986-1987 to £12.2 billion in 1997-1998 despite a substantial fall in claims. The deregulation of the private rented sector had two significant long term consequences for the rights of social tenants. It demonstrated that security of tenure was not a necessary feature for the housing of the poor, and made the cost of subsidizing rents a political issue. However, it was the marginalization and residualisation of council housing which led to the first serious incursion into social tenants' security of tenure.

³ Under the secure tenancy regime, the name given to the statutory protections provided for local authority tenants, there were no mandatory grounds for eviction.

⁴ The provision was far more than recognition of a right to buy. Local authorities were penalized by central government if they failed to progress sales expeditiously. See for a full explanation Blandy and Hunter (2013).

⁵ Previously judges had discretion in determining whether to grant a private sector landlord an order for possession in the event of rent arrears.

4. The erosion of social tenants' rights

In the mid 1990s politicians began to articulate concerns about the impact of anti-social behavior (ASB) on local communities.⁶ As Cowan points out, the focus was originally on council tenants and problem estates, although relatively rapidly this was extended to housing association tenants.⁷ This focus had an impact on housing management, as Cowan notes,

The discovery of, and interventions to deal with, ASB have led to a seismic shift in the way housing tenure, specifically social housing, is managed and its residents controlled. These processes were already in place but have been magnified and intensified, and the evidence is that most of the interventions are used by social landlords and against their residents at the residents' request (Cowan 2011, p. 353).

A wide range of factors had contributed to the emergence of the concern with anti-social behaviour on social housing estates, not least of which were policy commitments to the 'broken windows' theory which advocated the elimination of low level misbehavior in order to avoid escalation (Wilson and Kelling 1982) and television programmes sensationalizing 'neighbours from hell'. Social tenants themselves articulated fears of crime, as the Hills Report explains.

In the areas originally built as flatted council estates: more than a fifth of social tenants report the presence of drug users or dealers as a serious problem; nearly a fifth the general level of crime, fear of being burgled, vandalism and litter; and 18 per cent that they feel unsafe alone even at home or outside in daylight (Hills 2007, p. 99).

Importantly, however, Cowan reminds us of the importance of the disciplinary context of social housing.

The history of social housing can be written as a history of the control and correction of morals, its provision being regarded (certainly by the Victorian philanthropists) as a means of reforming the souls of the poor (Cowan 2011, p. 357).

The range of tools developed to manage the behaviour of social tenants include more carefully drafted tenancy agreements which set out specific expectations of acceptable behaviour, anti-social behaviour injunctions (court orders containing prohibitions designed to restrain anti-social activities, for instance by excluding the perpetrator from particular locations including his or her home) and more broadly drafted grounds for possession available to social landlords when nuisance and annoyance was alleged. New forms of tenure have also been developed; the introductory tenancy, the demoted tenancy and the family intervention tenancy. Whilst the details vary, what is significant about these new tenancy types is that they are insecure. Continued possession is conditional upon the good behaviour of the tenant, and possession orders are mandatory.

In another apparently paradoxical legal move, the government which introduced authoritarian measures to control the behaviour of the social tenant also introduced the Human Rights Act 1998 which provides 'victims' of unlawful or disproportionate state action with the possibility of redress. In a series of cases the European Court of Human Rights has insisted that Article 8 of the European Convention (which requires proportionality in decisions relating to private and family life and the

⁶ Anti-social behaviour is not necessarily criminal. It is statutorily defined as 'behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the person' (Crime and Disorder Act 1998 s.1(1)). The Metropolitan Police website provides examples of anti-social behaviour which range from rowdy and inconsiderate behaviour to prostitution and begging (see Metropolitan Police Service).

⁷ Housing Associations are not for profit bodies that provide rental housing at below market rent levels. Housing Associations generally let on assured tenancies under the Housing Act 1988. The term 'social housing' is used to describe council housing and housing association housing distinguishing these forms of housing from housing provided by private landlords at a market rent.

home) cannot be excluded from legal decisions about eviction of tenants. Yet, this tantalizing development has been subject to restrictive interpretation by the UK courts, mindful of the liberal conception of property rights (Cowan and Hunter 2012, Cowan *et al.* 2012).

It would be unfair to suggest that the New Labour governments of 1997 to 2010 were opposed to social housing. Indeed, their actions to control anti-social behavior can be interpreted as an effort to rehabilitate social housing. The views of social tenants who had felt abandoned during previous Tory administrations were taken into account, and anti-social behaviour initiatives gave social housing management a new energy and purpose. The massive investment in improving the standards of social housing via New Labour's Decent Homes Initiative and the curtailing of the Right to Buy were also indicative of a new commitment to social renting. Nonetheless, the diminution of the rights of the 'anti-social' social tenant, because of the slippery nature of the label 'anti-social' (see Carr and Cowan 2006), opened up regressive possibilities. If the security of the anti-social tenant is a privilege which can be removed, does any social tenant deserve security? The conclusions of the Hills Report made it more difficult to argue that this privilege was worth preserving. Hills found that social housing was failing to deliver on its basic promises of decent housing and social mobility. On the contrary, 'social tenants are more likely to be dissatisfied with their accommodation and their landlords than occupiers of other tenures, social housing drives rather than resolves area polarization, and rates of worklessness, in social housing are strikingly high' (Hills 2007, p. 149).

This question became particularly pertinent after the financial crisis of 2007/8. In the immediate aftermath of the crash, anti-market and pro-welfare discourses appeared useful to government (see Clarke 2010). However the election of the Conservative/Liberal coalition government committed to a politics of austerity meant that the focus changed to the excesses of welfare. For Hodgkinson and Robbins, this looked like a return to the class politics of Thatcher,

What appears as classic 'market failure', however, is side-stepped by a blame game that resuscitates the familiar 'bogeymen' of class war conservative politics as chief culprits, namely the planning system, state welfare, social housing and an immoral 'underclass' of benefit claimants, tenants, squatters and the homeless. (Hodgkinson and Robbins 2013, p. 65)

Certainly within the UK, there has been a remarkable ideological reworking since the election of the coalition government, moving,

from an economic problem (how to 'rescue' the banks and restore market stability) to a political problem (how to allocate blame and responsibility for the crisis): a reworking that has focused on the unwieldy and expensive welfare state and public sector, rather than high risk strategies of banks, as the root cause of the crisis' (Clarke and Newman 2012, p. 300).

Such an extensive 'shape changing' (Clarke and Newman 2012, p. 300) is inevitably unstable. Nonetheless, for the most part the reductions implemented since 2010 to social housing tenants' rights have been remarkably uncontentious.

5. The coalition and social tenants

We now turn to the approach to social housing taken by the coalition government since coming into power in 2010. However, our background also provides the foreground. It is one in which the security of social tenants has been contested, their socio-economic make-up shifted, and, at a pretty fundamental level, the purpose of social housing itself has become unclear. Social tenants have been *discursively* ghettoized – by which we mean the ways in which they are discussed and problematized separates them from the rest of the population. It is also clear, in retrospect, that the security which this paper is about was under threat. This was, in part, due to the insidious effect of an ever-increasing focus on ASB (which

contributed to the discursive ghettoization) and the structures of provision which focused on the business – not profit per se but a surplus, so that the organization could expand – and made social housing organisations more business-like, selling their services to consumers. These twin effects created a radically different environment in which social housing was provided and consumed – a failure to pay rent was met with increasingly structured and centralized actions, governed by computer programmes (as opposed to the older method of personal contact); a failure to pay rent was regarded by the organization as a “lack of commitment to the rent account”; and a culture of responsibility was sought to be instilled both in the occupiers and the housing officers. That cut both ways – many housing providers began to employ welfare benefits advisors to maximize the income of their residents/consumers. But, in summary, what we had was an uneasy consensus about social housing in which security was very much in issue.

The coalition agreement contained no direct mention of reforms to social housing. However, within months of the election, David Cameron, the Prime Minister, announced plans to ‘end the lifetime council tenancies’ (Wintour 2010). In the foreword to the subsequent consultation paper, Grant Shapps, then Housing Minister, explained the reasoning.

Margaret Thatcher introduced statutory lifetime tenure for social housing in 1981. Times have changed, and it is no longer right that the Government should require every social tenancy to be for life, regardless of the particular circumstances. The system must be more flexible – so that this scarce public resource can be focused on those who need it most, for as long as they need it (DCLG 2010).

The Localism Act 2011 put these proposals into statutory form, enabling local authorities to offer renewable fixed term tenancies from 1st April 2012. Current tenants have not lost their secure status, nor are local authorities obliged to offer fixed term tenancies. Nonetheless, as Carr points out,

Something significant has changed; legal rights, which were unanimously supported less than forty years ago, will no longer be automatic features of local authority tenancies. Furthermore, the change has met with relatively little opposition – this is in part because there is a shared concern that social housing estates result in social failure, and a belief that the state is not the best provider of housing (Carr 2013a, p. 120).

It is notable that these reforms are set in the context labelled ‘localism’. By devolving responsibility to local government for implementing the changes, central government avoids direct responsibility for the impact of the cuts whilst at the same time undermining the universalism of the welfare state. The introduction of ‘flexible’ tenancies however (like the reduction in succession rights for council tenants which was also introduced by the *Localism Act*) is slow burning, unlikely to make any impact on the political priority of deficit reduction.

More immediate results are likely to be achieved by cuts to Housing Benefit. Although these cuts most immediately affect the private rented sector, by altering the obligations of the state towards the housing of the vulnerable in the private rented sector, they also alter the context of the provision of social housing by way of reflection. This is particularly so since November 2012 when the borders between social and market renting became further blurred following a change in the law so that homeless people towards whom the state accepts statutory responsibilities can now be rehoused, against their wishes, in the private rented sector.

Housing Benefit started as a complex benefit, in part due to the variegated nature of the UK housing market. As time passed its complexity grew (see Cowan 2011, p. 228 *et seq*). The original generosity of provision, designed to facilitate deregulation, was dramatically curtailed during the early 1990s, so that persons under 25 years old were only entitled to a ‘single room rent’, payments could be restricted when rents were unreasonably high in comparison with equivalent properties in the locality, and would only be made at the level needed to provide accommodation of

a size appropriate to the needs of the claimant. Nonetheless, it remained expensive and the coalition, like its New Labour predecessor, worried about the problems which, it was alleged, Housing Benefit caused: its propensity for fraud, the welfare dependency it encouraged and the disincentives it offered for seeking employment. It therefore implemented cuts to Housing Benefit.⁸ The reductions included,

- Setting rates at the 30th percentile in each area, a reduction from the 50th percentile previously used.
- Introducing maximum weekly rates for benefits (Housing Benefit Regulations 2006, SI 2006/213, Regulation 13D)

These changes paved the way for reductions to Housing Benefit for social tenants. If their peers in the private rented sector were no longer funded for accommodation costs greater than their prescribed needs, the argument went, why should social tenants receive benefits to cover the costs of renting bedrooms they did not need? In the June 2010 Emergency Budget the Chancellor, George Osborne, announced plans to restrict Housing Benefit for under-occupying, working age social sector tenants. From 1st April 2013 local housing allowance size criteria, which were previously limited to the private rented sector, are applied to the social rented sector. Those found to be under-occupying have a percentage deduction applied to their eligible rent.⁹ Where the under-occupation is by one bedroom, the deduction is 14 per cent and where the under-occupation is by two or more bedrooms, the deduction is 25 per cent. No other cuts to Housing Benefit are currently applied to the social sector.

6. The law and politics of the ‘bedroom tax’

The implementation of the cut to housing benefit payments to social tenants with more bedrooms than the space standards prescribe was explained as a measure which would contain housing benefit expenditure and help reduce the budget deficit, encourage greater mobility within the social rented sector, strengthen work incentives among people of working age living in social rented housing and make better use of available social housing stock.

Here we come to the crux of the paper – the scene of the crime, if you like. We consider the rationale for this bedroom tax. We see two quite separate rationales. There is one on which the political leaders have focused —fairness—and one on which housing policy analysts might plausibly focus —under-occupation. Both offer different versions of truth about the “social” in social housing.

On the one hand, the fairness rationale offers a version of the social which seeks to equalize the private and the publicly funded: the key issue here becomes, why are there differences and how can they be justified? On the other hand, the under-occupation narrative offers a rather old-fashioned Fabian concern which focuses on the bureaucratic apportionment of state-subsidised assets. The key question here is, how can we allocate these assets appropriately among households in need?

It is to be noted that security is an absence in both rationales: it is neither here nor there. What is foregrounded is a liberal rationality about choice. Security, however, is problematic. People might choose to remain in their unit of accommodation, despite changes in their family circumstances which make it too big for them (that, of course, is the point about life changes). Security means we cannot stop them doing so. They would probably not be able to afford to do so in the private sector (the first rationale) and it is an inefficient use of resources (the second rationale).

⁸ For an account of previous attempts to reform Housing Benefit see Kemp (2000).

⁹ The space standards are as follows: one bedroom for each of a couple, a person who is not a child (aged 16 and over), two children of the same sex, two children who are under 10, any other child (other than a foster child or child whose main home is elsewhere).

6.1. *The first rationale*

Fairness was presented as a key rationale for the cut. Iain Duncan-Smith, the Minister for Work and Pensions, explained, in an interview on BBC Radio on the day of implementation, that the bedroom tax was about 'getting things back into order'.... (ensuring that we) 'don't spend money on things that are unfair'. The unfairness he was targeting, he claimed, resulted from the fact that people on Housing Benefit in the private rented sector did not receive monies for spare bedrooms and - as there was no distinction between the claimant in the private and the social rented sector - that had to be unfair. He also referred to the quarter of a million people living in overcrowded properties... suggesting that their voices needed to be heard. The implication is that their poor housing conditions are in some way a responsibility of those who are under-occupying social housing. This provides a compelling example of the current politics of austerity, which as Clarke and Newman describe, 'combines an economic logic with a particular moral appeal (to shared sacrifice and suffering, to fairness and freedom, to a sense of collective obligation)' (Clarke and Newman 2012, p. 309).

The desire to make the rules about reducing Housing Benefit simple and easily comprehensible, however, immediately led to irrefutable claims of unfairness, effectively destabilizing the logics of austerity. There was an early concession following a successful judicial review which found that the provisions were unlawfully discriminatory.¹⁰ Claimants whose children are unable to share a bedroom because of severe disabilities are to be exempted. Then, only two weeks before the implementation of the cuts, following extensive political pressure, two further groups of claimants were exempted. The Ministerial statement dated Tuesday 12th March 2013 explained:

People who are approved foster carers will be allowed an additional room, whether or not a child has been placed with them or they are between placements, so long as they have fostered a child, or become an approved foster carer in the last 12 months.

Adult children who are in the Armed Forces but who continue to live with parents will be treated as continuing to live at home, even when deployed on operations. This means that the size criteria rules will not be applied to the room normally occupied by the member of the Armed Forces if they intend to return home. (DWP 2013).

Foster carers and armed forces personnel clearly fall within the category of deserving poor in the minds of the public, or at least in the editorials of the tabloid press on whose support government relied. They are already fulfilling their collective responsibilities and the 'virtuous necessity' of welfare cuts does not apply to them.

As it has developed, what this rationale tells us is more about its banality. Fairness is, of course, a vehicular idea - it is entirely meaningless, but it is that meaninglessness which enables it to embrace critique, to draw in critique and treat it as its own. Creating exemptions for the morally worthy is so obviously fair, particularly when they apply across both social and private sectors. Those are not the targets of this shift and, importantly, it does not disrupt the underpinning rationality about the extent and identity of the social.¹¹

¹⁰ *Burnip, Trengove and Gorry v Secretary of State for Work and Pensions* [2012] EWCA Civ 629.

¹¹ It should be remembered that private renting was regarded in the key Victorian and inter-war periods as a social service, and the profit-making private landlord as the provider of this decentralised service. In this narrative, the development of council housing and state subsidised social housing more broadly was designed as a temporary stop-gap, an exigency of the post-war period. The private would take over once the temporary had ended.

6.2. *The under-occupation rationale*

Tellingly, the ministerial statement announcing the exemptions ended with a re-presentation of the rationale for the cuts.

Under the previous Government, housing benefit almost doubled in 10 years to £20billion, with households living in homes that are too big for them, whilst there are 2 million households in England on waiting lists, and 250,000 families living in over-crowded accommodation. (DWP 2013)

This little nugget offers a rather different rationale about the proper allocation of social housing. The narrative goes in this way. Social housing is a valuable resource. It is limited. There are a large number of households on waiting lists (we can argue the toss about the actual numbers, but that is for another day). These households are in need. Under-occupation is the equivalent of unnecessarily occupying a hospital bedspace: it takes up a valuable unit when that household does not need it. A slightly more sophisticated version of this narrative is that the under-occupying household can be transferred to alternative smaller accommodation, leaving a bigger unit for the (usually) larger households on the waiting list.

This problematisation – for that is precisely what it was – was initially sought to be resolved in a traditionally neo-liberal manner: incentives. Under-occupying households were given exceptional levels of priority on waiting lists; they were given the choice over where they wanted to live (one of the key policies of the New Labour government had been to create a system of housing allocation which was based on choice); in many of the more hard-pressed areas with large households on their lists, financial incentives were offered to such households.

It was, we think, surprising to policy-makers that these incentives were largely unsuccessful in prising under-occupiers away from their properties (the not unreasonable speculation was that households did not want to leave their homes which they had occupied for some considerable period in many cases). This created a new problematisation, one inherent in liberalism, about the failure of such techniques. Security cannot be reduced for such occupiers, but there was an alternative neo-liberal technique available. Rather than reward movers, one can penalize stayers, which will provide a rather different incentive to move – one which works through contractual responsibilities and which suggests that, if you cannot afford the rent, you have to move. It is a triumph of economic liberalism in this sense for it works through the economic assumption of what a rational person would do if they are unable to afford their rent.

This offers a rather more plausible rationale until one recognizes its basic empirical flaw. The structures of housing provision in the social sector over the years have favoured the provision of family properties; that was the primary focus of social housing (which one can still see in the criteria for accessing it – families are automatically in priority need and prioritized on the waiting list; single person households must meet the stringent requirements of vulnerability). So, there is no place to which this rational *homo economicus* can move.

That is why this rationale has been under-played by politicians and why they have tended to focus more on fairness between sectors.

7. **The bedroom tax and the disruptive potential of fairness**

Taylor-Gooby points to the apparent public acceptance of the politics of austerity.

The current government's welfare state policies fit closely with the dominant strands in public opinion. They make a sharp division between deserving and undeserving groups and focus on strengthening work incentives for claimants (Taylor-Gooby 2013, p. 37).

This suggests that the public accepts austerity's reconfiguration of welfare which recasts

[s]ocial protection as a generous gift from 'us' to 'them' and transforms fairness from being about the rights of those in need to access material goods or employment, to a justification for strengthening that old principle of less eligibility (Wiggan 2012, p. 390).

Yet the focus on fairness may make public opinion more vulnerable to counter discourses than Taylor-Gooby and Wiggins suggest, as fairness in contemporary times is peculiarly complex and emotional (and there is little that can be more emotional and complex than home). Clarke points out that the public is 'outraged, anxious and insecure and ... such collective emotions are directed at heterogeneous targets: bankers, governments, migrant workers, and "the system" '(Clarke 2010, p. 391). Indeed Clarke and Newman note 'the proliferation of competing political discourses of "fairness" attempting to both revive and renegotiate the promises of equity and solidarity' (Clarke and Newman 2012, p. 316).

Public opinion is particularly important to the politics of austerity in the UK. The public has had to be persuaded of a crisis by a coalition government with little legitimacy and very vulnerable to accusations of elitism. Negotiating with this public has required considerable efforts, as what is being required is substantial. What Clarke observes is that,

[s]tates of anxiety, insecurity, outrage, scepticism and more have been mobilized, managed, negotiated, contained and directed with few signs of success. These publics and future publics have been invited to pay the costs of corporate welfare (saving the system) while being told that the public services on which their welfare might depend needs to be retrenched again to balance the public books (Clarke 2010, p. 315).

In such circumstances public consent should not be taken for granted. Indeed, Clarke and Newman characterize the current consent to austerity measures as

conditional and grudging, rather than enthusiastic. It may be compliant (and even calculating). But it is certainly characterized by forms of 'disaffectedness': unsatisfied, uncommitted, disgruntled and, perhaps, disengaged. ... In many of its forms, it explores the 'broken promises' of both older moral economies and the new order of mass consumption. At other points, it draws on residual sensibilities and discourses of belonging, entitlement and 'order'. And elsewhere, it comes to voice through emergent formations – the sensibility that another world is possible, desirable and imaginable (Clarke and Newman 2012, p. 391).

In these circumstances the bedroom tax has a particular importance. Not only have there been substantial concessions, its imposition opens up possibilities for significant resistance in multiple arenas. Legally, there is scope not only for further judicial reviews because of its discriminatory nature, but also the possibility of multiple appeals. The legislation does not define a bedroom and there is no definition of a minimum bedroom size set out in regulations. The Department of Work and Pensions guidance states that it is the landlord's responsibility to describe accurately the property in line with the actual rent charged. In other words, definitional creativity is strongly discouraged by the guidance, most particularly because it impacts on the rent capable of being charged by the landlord.

Such challenges can be embraced by fairness – that is in the nature of its shallowness as a rationale – but there is something more interesting now going on; there is something of a sub-culture developing, of challenge, of resistance; indeed, one might say that a social was being created or translated or performed through the micro-circuitry and flattening effects of the bits and bytes. Let us develop this point further. If power (in the Foucauldian sense) consists in getting somebody to act, power is independent of size and human agency; things have power. This is the essence of actor-network theory – the social is co-constituted through human and non-human actor networks, which are ongoing, always in transition as they engage

in 'an intense activity of enrolling, convincing and enlisting' (Latour 2007). The internet, facebook, twitter are passive mediators, but can become powerful intermediaries when translated into action. As Latour argues, 'Being a fully competent actor now comes in discreet *pellets* or, to borrow from cyberspaces, *patches* and *applets*, whose precise origin can be "googled" before they are downloaded and saved one by one' (Latour 2007, p. 207).

And the disruptive capacity of this thing is becoming noticed. Numerous campaigners have used the internet to seek to undermine the bedroom tax policy. For them, it is its unfairness (a similarly vehicular idea) that requires disruption. In official circles, this campaign of adjudicative disruption is becoming known. It is vibrant, unstable, empirically awkward both because it relies on anecdote and in research terms (for its capacity and personnel are unknowable unless they can be found).

One particular housing activist stands out. Joe Halewood writes a blog and is a prolific tweeter.¹² Joe (for we feel we know him as followers and readers of his blog) is not a social tenant; he is a housing consultant who works with social landlords. The blog is a beguiling mixture of rant and fact against the bedroom tax. But, recently it has also become a medium through which an emerging legal consciousness is being developed. @speyefoe has a strategy. His strategy is to swamp housing benefit offices with review requests and appeals against bedroom tax assessments; he highlights dreadful practices of social landlords and local housing benefit offices; he praises "good" practices (such as some landlord decisions to re-classify properties as having less bedrooms, although this negatively affects their income stream). He (along with others) have developed model housing benefit review letters which those affected can modify and send out. The strategy is to defeat the money-saving logic of the bedroom tax through reviews and appeals:

If every tenant affected by the bedroom tax decision appealed then the system is brought to its knees. The government expects just 3% to appeal and estimates an appeal costs the local council £200. It won[']t and it will cost the council £1500 for everyone that appeals and about £18m to Liverpool City Council if all 12,000 appeal (Halewood 2013).

Joe has developed a model review letter and assists individuals with appeals. Govan Law Centre has done likewise, through its twitter and social media outlets. We cannot tell how widely these are used, but the representative body for the social housing sector has been sufficiently unnerved by it to attack such an approach:

Housing bodies have warned mass appeals against the bedroom tax are unlikely to work and could lead to strong cases not being heard as quickly.

The Chartered Institute of Housing and National Housing Federation have this week both cautioned against widespread appeals against the penalty.

This follows growing evidence of a grass-roots campaign to disrupt the controversial policy by mass appeal (Brown 2013a).

Sam Lister, policy and practice officer at the Chartered Institute of Housing, said: 'The problem I have with this approach is that it gives the impression that this will work and gives people false hope' (Brown 2013a). Mr Lister added that multiple appeals made using standardised letters may be grouped together and dismissed en masse. Further, 'This [approach] could slow down those cases where there is a reasonable prospect of success,' he said (Brown 2013a).

It is not for us to speculate about the legalities or otherwise of decisions under the policy. What is significant for our purposes is the techniques which have been used to make those affected try to make the policy itself unworkable. It is a clever strategy, in many ways an admirable one, although its effects are far from clear

¹² He has written 10,700 tweets, with 2,025 followers - last accessed 17th June 2014

(for it is social landlords which ultimately will bear the cost and, in a business-like environment, its effects are uncertain).

Bureaucratically, it may well alienate the social housing providers who are required to administer the tax. One chief executive of a housing association wrote in *The Guardian* that the bedroom tax must be seen as a trivial, draconian, unwieldy measure (Manion 2013). The Chartered Institute of Housing regards it as an iniquitous tax, and is working "behind the scenes", with media, and other mechanisms, to disrupt it (Smart 2013). Moreover, housing associations can substantially disrupt the operation of the bedroom tax. For instance, *Inside Housing* reports that Knowsley Housing Trust is reclassifying 566 properties as smaller homes, 'The 14,000-home association is re-designating some of its two and three-bedroom homes as one and two-bedrooms respectively, which will cost it £250,000 in rental income per year' (Brown 2013b).

Perhaps the greatest potential, though, lies in the disruptiveness of fairness. There is a basic illogicality to the bedroom tax that is easily understood. The fact that many who are under-occupying are doing so through no fault of their own, but because the state insisted on prioritizing the construction of three-bedroomed family homes, is accepted. Equally, it is accepted that many of those affected cannot be re-housed within the social sector and will be obliged to look for private rented housing, which will actually cost the public purse more. Some of the most effective activism currently deploys personal stories to demonstrate that the politics of austerity requires more of those who have already made substantial sacrifices (see, for example, Rob G's blog at notpaying.tumblr.com). The bedroom tax will no doubt provide a multiplicity of such stories. And if the economic case is not made, if the cut does not actually produce savings, nor reduce overcrowding, (and both of these results are more than likely) then its ideological anti-welfarist origins are made clear and it will unravel completely as grudging consent evaporates. Importantly, this may well have consequences beyond the scope of the bedroom tax, revealing the lack of legitimacy of the politics of austerity itself.

8. Conclusion

This paper argues that public opinion, which apparently supports the politics of austerity, cannot be taken for granted by the coalition government. The bedroom tax may well have a significant destabilizing potential. Not only does the history of social housing provide some residual notions of social justice, but the bedroom tax requires relatively little unpacking to reveal it as an ideological device which operates to increase inequality whilst deploying a rhetoric of fairness. This form of regressive equality has already been effectively attacked. We have no doubt that the government will be required to make further concessions as the tax is challenged on a variety of fronts. If that is the case, then just like the collapse of the poll tax spelled the end of Thatcher, the coalition government may well lose not only credibility, but power.

References

- Blandy, S. and Hunter, C., 2013. The Right to Buy: Examination of an exercise in allocating, shifting and re-branding risks. *Critical Social Policy*, 33 (1), 17-36.
- Brown, C., 2013a. Housing bodies slate bedroom tax appeals. *Inside Housing* [online], 11 April. Available from: <http://www.insidehousing.co.uk/housing-bodies-slate-bedroom-tax-appeals/6526468.article> [Accessed 15 February 2015].
- Brown, C., 2013b. Tenants avoid bedroom tax after Knowsley reclassifies homes. *Inside Housing* [online], 15 February. Available from: <http://www.insidehousing.co.uk/tenancies/tenants-avoid-bedroom-tax-after-knowsley-reclassifies-homes/6525752.article> [Accessed 15 February 2015].

- Burnip, Trengove and Gorry v Secretary of State for Work and Pensions* [2012] EWCA Civ 629.
- Carr, H. and Cowan, D., 2006. Labelling: Constructing Definitions of Anti-Social Behaviour. In: J. Flint, ed. *Housing. Urban Governance and Anti-Social Behaviour: Principles, Policy and Practice*. Bristol: Policy Press, 57-78.
- Carr, H., 2013a. Housing the Vulnerable Subject: The English context. In: M Fineman and A. Grear, eds. *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*. Farnham: Ashgate, 107-124.
- Carr, H., 2013b. Utopias, dystopias and the changing lawscapes of social housing: a case study of the Spa Green Estate London UK. *The Australian Feminist Law Journal*, 38 (3), 109-127.
- Clarke, J. and Newman, J., 2012. The alchemy of austerity. *Critical Social Policy*, 32 (3), 299-319.
- Clarke, J., 2010. After Neo-Liberalism?. *Cultural Studies*, 24 (3), 375-394.
- Clarke, J., and Newman, J., 2010. Summoning spectres: Crises and their construction. *Journal of Education Policy*, 25 (6), 709-715.
- Cowan, D. and Hunter, C., 2012. 'Yeah but, no but' – Pinnock and Powell in the Supreme Court. *Modern Law Review*, 75 (1), 78-91.
- Cowan, D. and McDermont, M., 2006. *Regulating Social Housing: Governing Decline*. Abingdon: Routledge Glasshouse.
- Cowan, D., 2011. *Housing Law and Policy*. Cambridge University Press.
- Cowan, D., Hunter, C., and Pawson, H., 2012. Jurisdiction and scale: Rent arrears, social housing and human rights. *Journal of Law and Society*, 39 (2), 269-295.
- Crime and Disorder Act Section 1 subsection 1 Available from <http://www.legislation.gov.uk/ukpga/1998/37/section/1> [Accessed 23rd February 2015]
- DCLG - Department of Communities and Local Government, 2010. *Local decisions: A fairer future for social housing Consultation* [online]. London: Department for Communities and Local Government. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8512/1775577.pdf [Accessed 16 February 2015].
- DWP - Department of Work and Pensions, 2013. *Housing Benefit Reform. Written Ministerial Statement, March 12th* [online]. Available from: <http://www.parliament.uk/documents/commons-vote-office/March-2013/12-3-13/6.WorkandPensions-HousingBenefitreform.pdf> [Accessed 13 May 2014].
- Forrest, R., and Murie, A., 1991. *Selling the welfare state: The privatisation of public housing*. London: Routledge.
- Gordon, A., 2008. *Ghostly Matters: Haunting and the Sociological Imagination*. Minneapolis: University of Minnesota Press.
- Halewood, J., 2013. How to challenge and appeal against the bedroom tax decision. *SPeye Joe (Welfarewrites)* [online], 15 February. Available from: <http://speye.wordpress.com/2013/03/30/standard-letter-for-the-bedroom-tax-the-how-and-why/> [Accessed 16 February 2014].
- Hanley, L., 2008. *Estates: An intimate history*. London: Granta.
- Hills, J., 2007. *Ends And Means: The Future Roles Of Social Housing In England*. London School of Economics.

- Hodkinson, S., and Robbins, G., 2013. The return of class war conservatism? Housing under the UK Coalition Government. *Critical Social Policy*, 33 (1), 57-77.
- Housing Benefit Regulations 2006. *SI 2006/213* [online]. Available from: <http://lawvolumes.dwp.gov.uk/docs/a8-2501.pdf> [Accessed 16 February 2015].
- Kemp, P., 2000. Housing Benefit and Welfare Retrenchment in Britain. *Journal of Social Policy*, 29 (2), 263-279.
- Latour, B., 2007. *Reassembling the Social: An introduction to Actor Network Theory*. Oxford University Press.
- Malpass, P., 2005. *Housing and the welfare state: The development of housing policy in Britain*. Basingstoke: Palgrave Macmillan.
- Manion, T., 2013. Welfare reform is needed but the bedroom tax will end badly. *The Guardian* [online], 9 April. Available from <http://www.theguardian.com/housing-network/2013/apr/09/welfare-reform-bedroom-tax-benefits> [Accessed 23rd February 2015]
- Metropolitan Police Service. *What is anti-social behaviour?* [online]. London: Metropolitan Police Service. Available from: <http://content.met.police.uk/Article/What-is-antisocial-behaviour/1400022084553/1400022084553> [Accessed 13 May 2014].
- Smart, G., 2013. For the record. *Inside Housing* [online], 17 April. Available from: <http://www.insidehousing.co.uk/for-the-record/6526550.article> [Accessed 15 February 2015].
- Szreter, S., 2004. Industrialization and health. *British Medical Bulletin*, 69 (1), 75-86.
- Taylor-Gooby, P., 2013. Why Do People Stigmatise the Poor at a Time of Rapidly Increasing Inequality, and What Can Be Done About It?. *The Political Quarterly*, 84 (1), 31-42.
- Wiggan, J., 2012. Telling stories of 21st century welfare: The UK Coalition Government and the neo-liberal discourse of worklessness and dependency. *Critical Social Policy*, 32 (3), 383-405.
- Wilson, J.Q. and Kelling, G.L., 1982. Broken windows: The police and neighborhood safety. *Atlantic Monthly* [online], March, 29-37. Available from: <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> [Accessed 15 February 2015].
- Wintour, P., 2010. David Cameron announces plan to end lifetime council tenancies. *The Guardian* [online], 3 August. Available from: <http://www.theguardian.com/society/2010/aug/03/lifetime-council-tenancies-contracts-cameron> [Accessed 15 February 2015].