

Jessie Hohmann (2013)

The Right to Housing - Law, Concepts, Possibilities.

Oxford: Hart, pp.286, £50.00.

The human right to housing represents the law's most direct and overt protection of housing and home. Thus, begins this excellent contemporary examination of housing rights. Jessie Hohmann provides an insightful and sophisticated analysis of the meaning, content, scope and nature of housing rights. She distinguishes between a right to housing (part of the broader human rights common to all), and housing rights (legal rights or entitlements codified into or arising from national domestic law). While rooted in a legal analysis, she draws on a range of disciplines including anthropology, political theory, philosophy, and geography, to create a major contribution to knowledge in this area.

The book is structured in three parts: Firstly, it outlines the right to housing within international and national laws; secondly, it examines the key concepts of housing – space, time and privacy; thirdly, it critically questions the potential of rights to housing to alleviate human misery, marginalization and deprivation. Hohmann questions why, at a time when the right to housing appears in major national and regional human rights covenants, its status as a human right is often greeted with scepticism. Conversely, those who espouse the right to housing appear to be overstating its potential, often failing to recognize its limitations.

Hohmann examines the right to housing as part of the socio-economic rights enshrined within UN instruments. Here, the concepts of security of tenure; availability of services; materials facilities and infrastructure; affordability, accessibility; suitable location; and cultural adequacy are examined. The right to housing within regional human rights instruments, such as the European Social Charter; EU Charter of Fundamental Rights; European Convention on Human Rights; American Convention on Human Rights; and the Arab Charter on Human Rights is carefully explored. Hohmann then examines in detail how the broad right to housing has been interpreted within constitutional law cases in South Africa and India. However, she suggests that in South Africa the transformative aims of the Constitution have

failed to result in actual social change, while in India judicial rhetoric has provided a profound conceptual foundation for the right to housing, but this has proved to be an unstable one to ground a claim for a right to housing.

Hohmann then examines why the right to housing has had such limited impact and remains, on the whole, thin and elusive. She suggests that the problem lies in giving the power to interpret the right to courts. The legal right to housing as interpreted by courts, can, in effect, exclude the suffering of entire groups of people from recognition. She points out that “[A]ny legal interpretation of a human right that fails to adequately embed the right within the social context of real deprivation, marginalization and inadequacy of living conditions that characterize the violation of the right must fall short of the radical and emancipatory potential of human rights” (p.121).

Clearly, the narrow focus of a legal liberal notion of rights conflicts with the broader contextual, political and emancipatory approach. Hohmann argues that courts have failed to properly interpret the right to housing and indeed, other human rights, in three ways. Firstly, there is a failure to properly define the right and the consequent obligations. Secondly, the legal interpretation is overly procedural, so that the substantive element of the right is overlooked. Thirdly, the legal interpretation is inadequately connected to an awareness of the actual social conditions of the violation. Indeed, Hohmann also identifies weaknesses within the UN architecture of rights definition, alongside national constitutional courts and the European Court of Human Rights. However, she points out that bodies like the Council of Europe – European Committee on Social Rights have grasped the contextual nature of housing, and developed much clearer and holistic definitions and benchmarks for rights to housing implementation. This is clearly evident from the decision in *FEANTSA v France* (Case 39/2006, 4 February 2008), where the Committee crafted a definition of the right to housing, set reasonable timeframes for a State to comply, addressed measurable progress indicators, and required evidence of dedication of sufficient State funds.

Hohmann suggests that a lofty principle of dignity, autonomy and equality for all persons through housing does not necessarily translate into an enforceable right (p.126). The tendency for courts to focus on proceduralism, requiring States to “act” rather than deliver is also a major issue. Rights discourses often operate at a high level of abstraction from the conditions of material deprivation. Indeed, Hohmann provides a valuable contextual examination of how the issues of community, privacy, hidden homelessness, identity, and personhood are critical to right to housing interpretations. Similarly, she examines how law manages issues of space, especially in the hidden relationship between the physical contours of living envi-

ronments and the legal rules that structure these spaces. Housing can be a space of social control or a space of social transformation. This contextual examination points to the importance of the right to housing as the base for housing policy.

The final chapter on “possibilities” offers a critical perspective on the right to housing itself. The construction of the right, which emerges from her analysis, is one, which is overly procedural, even programmatic. Coupled with the failure of courts, monitoring bodies and treaty regimes to define the right and give it normative content, “this procedural programmatic bent means that it is difficult to say what the right to housing is” (p. 231). In fact, Hohmann suggests, the legal discussions over the right to housing often appear to proceed blind to the fact that the dispossessed might be those for whom this right was intended. In any case, when the right to housing has been interpreted and applied by courts it has not had a radical effect, and we must ask whether relying on the right to housing to solve problems of homelessness and marginalization is a fruitless exercise.

Hohmann does not reject entirely the legal basis of this right, pointing out that law also plays an important part in the radical potential of human rights through the role it plays in the construction of legal subjectivity. The fundamental principles, which underlie the right to housing, are the most fundamental concerns of human rights. Hohmann contends that despite curial vagueness, overprocedurality and a failure to acknowledge the social context, courts have made determinations on the right to housing without bringing national economies “to their knees.”

Hohmann casts a wider focus to the realization of the right to housing. This draws in questions of the boundaries of the State in relation to rights and regulation. Traditional approaches to autonomy and freedom being achieved in opposition to the State must be reconsidered. The idea that the State creates the conditions where human beings can truly flourish and enjoy freedom and rights must be advanced. The tension between rights reliance and political action is also important. But there is a fear that in developing the ownership of rights by disadvantaged groups they will become bound in to the “tricky art of liberal ideology.” Hohmann concludes this valuable analysis by acknowledging the many varied approaches to rights and critiques of rights. Yet, in reality, she suggests, people do use their human rights to make their own vision of a just and emancipatory world.

One of the key insights of Hohmann is how housing rights must be rooted in the social context of the rights holder and must be geared towards their emancipation and full participation in society. This clearly distinguishes the narrow legalistic and policy approaches. It is different too from the approaches of some housing and homelessness agencies, as a proper understanding of the emancipatory nature of this right would guard against poor social housing and emergency accommodation.



As Hohmann suggests, it is all too easy for the struggle against homelessness and shelter to be translated into a series of mandates for construction companies, developers, and others.

For anyone with any sustained interest in the right to housing this book is invaluable. Well-written, concise, well researched and structured, it is essential reading for lawyers, academics, advocates, and policy makers.

Padraic Kenna

School of Law, National University of Ireland, Galway, Republic of Ireland