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Housing Law and Policy

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Preface

The bookshelves of academic housing lawyers, at least in the United Kingdom, have been weighed down in the 1990s, not so much by legislation, as by encyclopaedias, textbooks, books of law cases (commonly combined with other legal commentary), and other materials usually aimed at legal practitioners. In order to make themselves distinctive, texts aimed at the student market commonly proclaim themselves as being interdisciplinary or, at the least, taking into account literature from non-legal sources.

The usual word adopted by such authors to describe their texts is 'contextual', but the inclusion of this word, often, hardly detracts from the weight of doctrinal law stuffed into these texts. What the reader is usually offered is a well-written exposition of legal principles basically relating to the law of landlord and tenant (which includes the right to buy) and homelessness. Housing law is usually portrayed as a politically neutral arbiter of relationships between landlords and tenants, as well as of homelessness duties. The wealth of socio-legal and similar housing policy research is ignored, despite its importance to undergraduate study. The legal principles are complex – this must be admitted – but complexity on its own does not, or should not, make a degree course textbook. It certainly does not justify the existence of more books than can be counted on two hands. Theory, and its relevance to housing law, is ignored; and housing law is portrayed as a subject without any structure. For example, homelessness (again, as with all other similar books) is confined to chapters at the end of the book without explanation as to why it is considered at all, let alone at that point.

The approach adopted in this book is different. I have treated housing 'law' as problematic, structured and political. Rather than resort to legal doctrine and the usual legal textbook style, this book is more interested in what I describe as the *contexts of law* and their policy frame. In so doing, rather than draw upon cases, statutes, etc., I have preferred to draw upon housing studies and socio-legal literature which amplify and illustrate the fundamental dilemmas in housing. My style is uncompromisingly political (old Labour), but I take the view that housing *is* political and consequently should be portrayed as such.

The book is divided into three related, themed parts, which can be viewed as building-blocks. The overriding arguments relate to the use of tenure, and the shift towards what is termed 'responsibility'. The first part discusses the regulatory crisis affecting each housing tenure. Particular attention is paid to the methods through which tenures are financed and boundaries between tenures breached. To what extent is central regulation responsible for this crisis? Second, access to housing is discussed, providing a critique of the concepts of 'housing need' and 'affordability'.

Is the use of these concepts defensible, or do we simply pay lip-service to them? How is housing tenure affected by access issues? Third, individual housing rights are discussed in the context of a shift towards individual responsibility, drawing particularly upon criminological and criminal justice theory. What are the rationales for this shift away from due process rights to a more penal regime? What does this shift tell us about our use of tenure?

As with any study of this nature, I have drawn upon and abused my friendships and acquaintances. Indeed, people who didn't know me at all offered advice and assistance, and in some cases read chapters for me. The generosity of academic colleagues constantly amazes me, particularly as we are all faced with considerable resource pressures from within institutions and outside them. Indeed, as Bristol offered me a sabbatical for the academic year 1997–8 (after only having been here for two years) to write this book, my colleagues were saddled with doing my teaching.

The Socio-Legal Studies Association Conference has provided an important forum for discussion of housing issues. It has become gratifyingly easy to organize the housing stream, mainly because of the wealth of socio-legal housing research currently being conducted. I have gained much from listening to the insights of those who have contributed to sessions and debate within the housing stream. Many of those insights have been included in this book, referenced accordingly.

Some people should be mentioned individually. In no particular order, the following have all read and commented upon (at length usually) at least one chapter: Andrew Sanders, Rod Edmunds, Caroline Hunter, Rose Gilroy, Christina Pantazis, Paddy Hilyard, Matthew Waddington, Gwynn Davis, Nick Dearden, Lisa Whitehouse, Martin Partington, Lois Bibbings, Andrew Cowan. Caroline Hunter, Sarah Blandy, Martin Loughlin, Alex Marsh, Andrew Sanders and Carolyn Hoyle provided me with their as yet unpublished work; also, many have let me use their conference contributions. Lois Bibbings made attempts to stop me seeing binary divides everywhere and Christina Pantazis was a fantastic co-worker at the same time I was writing this book. Martin Partington listened to the ramblings of a confused person in early 1997 and helped mould them into something more coherent.

Three people have considerably influenced the shape of this book as it developed. Andrew Sanders and Paddy Hillyard may find that most of the better ideas in this book owe a considerable amount to our discussions. Andrew's office, being next door to mine, made him an easy target. I have particularly drawn upon my lunchtime discussions with Paddy about postmodern social policy, panopticism and synopticism in Chapter 10. My great friend and former colleague, Rod Edmunds, has read and commented on virtually every chapter whilst sustaining his many other commitments.

The usual caveats apply.

I began writing in December 1997 and finished in February 1999. The series editor, Marise Cremona, the anonymous external reviewer, and the

publishers have been most accommodating during this period to a book which is rather different from most others in the series.

During the writing period, Jake Cowan has come into the world. This book is dedicated to my loves, Jake and Helen.

June 1999

DAVID COWAN

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Abbreviations

AST	Assured Shorthold Tenancy
BCA	Basic Credit Approval
BES	Business Expansion Scheme
BSA	Building Societies Association
CHR	Common Housing Register
CCT	Compulsory Competitive Tendering
CML	Council of Mortgage Lenders
DETR	Department of Environment, Transport and the Regions (from 1996)
DoE	Department of Environment (until 1996)
DoH	Department of Health
DSS	Department of Social Security
EHO	Environmental Health Officer
GIA	General Improvement Area
HAA	Housing Action Area
HAG	Housing Association Grant
HAMA	Housing Association as Managing Agent
HAT	Housing Action Trust
HIP	Housing Investment Programme
HIT	Housing Investment Trust
HMO	House in Multiple Occupation
HPU	Homeless Persons Unit
HRA	Housing Revenue Account
LSVT	Large Scale Voluntary Transfer
MIRAS	Mortgage Interest Relief at Source
NSP	Notice of Seeking Possession
PEP	Priority Estates Project
PRS	Private Rented Sector
RDG	Revenue Deficit Grant
RSL	Registered Social Landlord
RTIA	Receipts Taken Into Account
SCA	Supplementary Credit Approval
SHG	Social Housing Grant
TCI	Total Cost Indicators
TMO	Tenant Management Organization

For Helen and Jake, with love