Moral Rhetoric and the Criminalisation of Squatting

Vulnerable Demons?

Edited by
Lorna Fox O'Mahony, David O'Mahony
and Robin Hickey

ROUTLEDGE

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Moral Rhetoric and the Criminalisation of Squatting

This collection of critical essays considers the criminalisation of squatting from a range of different theoretical, policy and practice perspectives. While the practice of squatting has long been criminalised in some jurisdictions, the last few years have witnessed the emergence of a newly constituted political concern with unlawful occupation of land. With initiatives to address the 'threat' of squatting sweeping across Europe, the offence of squatting in a residential building was created in England in 2012. This development, which has attracted a large measure of media attention, has been widely regarded as a controversial policy departure, with many commentators, Parliamentarians and professional organisations arguing that its support is premised on misunderstandings of the current law and a precarious evidence-base concerning the nature and prevalence of 'squatting'.

Moral Rhetoric and the Criminalisation of Squatting: Vulnerable Demons? explores the significance of measures to criminalise squatting for squatters, owners and communities. The book also interrogates wider themes that draw on political philosophy, social policy, criminal justice and the nature of ownership, to consider how the assimilation of squatting to a contemporary punitive turn is shaping the political, social, legal and moral landscapes of property, housing and crime.

Lorna Fox O'Mahony and **David O'Mahony** are based at the University of Essex.

Robin Hickey is based at Queen's Univerity, Belfast.

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Lorna Fox O'Mahony
David O'Mahony
Robin Hickey
St Patrick's Day 2014

Contributors

Neil Cobb is Senior Lecturer in the School of Law, University of Manchester. Neil has published widely in the fields of housing and property law, including work on the criminalisation of squatting and adverse possession. Neil is co-author of *Great Debates in Property Law* (Palgrave Macmillan, 2012). Before becoming an academic Neil was a research assistant at the Law Commission of England and Wales where he worked on the 'Renting Homes' project.

Deanna Dadusc is a researcher in Cultural and Global Criminology at the University of Kent (School of Sociology, Social Policy and Social Research) and at Utrecht University (Willem Pompe Institute for Criminal Law). Her research interests are criminology and theories of power and resistance. Her research focuses on the criminalisation of social movements in The Netherlands.

ETC Dee is a researcher working on social movements and squatting. He lives in Brighton, where he participates in an anarchist social centre and is a member of the Squatters' Network.

Lucy Finchett-Maddock is Lecturer in Law at the School of Law, Politics and Sociology, University of Sussex. She works on property rights, adverse possession, urban squatting, law and resistance and the thermodynamic property entropy. She is the author of *Protest, Property and the Commons: Performances of Law and Resistance* (Routledge, forthcoming).

Lorna Fox O'Mahony is Professor of Law at Essex Law School. Lorna's research applies policy-oriented, socio-legal and theoretical analyses to a range of property issues. She has published widely in leading journals and is the author or editor of several books, including *Conceptualising Home: Theories, Laws and Policies* (Hart, 2006); *The Idea of Home in Law: Displacement and Dispossession* (Ashgate, 2010); *Home Equity and Ageing Owners: Between Risk and Regulation* (Hart, 2012) and *Great Debates in Property Law* (Palgrave Macmillan, 2012).

Robin Hickey is Senior Lecturer in Law at Queen's University Belfast. He is the author of *Property and the Law of Finders* (Hart, 2010), which was a

finalist in the Inner Temple Book Prize 2011 (New Author's category). He has written widely on the history and development of basic concepts of property in leading journals (*Modern Law Review*, *Legal Studies*, *International and Comparative Law Quarterly*). He is a founder member of an Arts and Humanities Research Council-funded international research network on the meaning of modern slavery, and writes on the relationship between property and slavery.

Bonnie Holligan is a lecturer in law at the University of Sussex. Her PhD thesis is on 'The Protection of Ownership in Scots Law' and considers the idea of ownership as being bound up with the right to follow the property into the hands of third parties. Her research examines the nature and availability of the vindicatory remedy in Scots law.

Theodora Middleton is a community organiser and campaigner living in London. She has been closely involved with the SQUASH campaign against the criminalisation of squatting, while completing a Masters degree in Legal and Political Theory at University College London. Her research interests are fuelled by her practical experiences of public facing campaigns around environmental and housing issues.

David O'Mahony is Professor of Law at the University of Essex. His research focuses on the meaning of 'justice' in the context of criminal justice systems, with particular sensitivity to the rights of young people, and the use of restorative justice and alternative ways of responding to crime, based on analyses of the needs of victims, communities and offenders. David has published widely in the areas of criminal justice, youth justice, restorative justice and transitional justice.

Kesia Reeve is Senior Research Fellow in Housing at the Centre for Regional Economic and Social Research at Sheffield Hallam University. Kesia's research interest is in housing disadvantage and inequalities, with much of her research focused on the housing experiences of vulnerable groups, and homeless people in particular.

Emma JL Waring is a lecturer at the Law School, University of York. Emma was previously Newton Trust Lecturer at the Faculty of Law, University of Cambridge and Fellow and Director of Studies in Law at St John's College, Cambridge. She researches in land law and property law with a particular research interest in the constitutional protection of property rights and the compulsory acquisition of land in England and America.

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Setting an agenda

Lorna Fox O'Mahony, David O'Mahony and Robin Hickey

The introduction of the offence of 'squatting in a residential building' in section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA) marked an important turning-point in the UK state's relationship with practices of unlawful occupation. By directly criminalising the unlawful occupation of residential buildings (including vacant buildings), section 144 – widely regarded as 'criminalising squatting'[1] – has changed the legal character of squatting. Once viewed as a conflict over private property between the owner and the squatter, to be resolved using the civil law toolkit of remedies for 'simple' trespass and the recovery of possession through enforcement of private property rights, squatting has been redefined as a crime against the state, requiring public punishment, retribution and censure.

From one perspective, while section 144 marks a distinctive development in directly criminalising the activity of squatting in residential property, the link between unlawful occupation and criminal penalties is not a new one in England and Wales. The activity of unlawful occupation has long been surrounded by criminal sanctions, actionable both by private individuals and by the state (through local authorities). Prior to the enactment of LASPOA, the starting point for landowners seeking to recover property from squatters was the civil remedy of seeking an interim possession order. The effectiveness of this procedure, introduced in 1995, was bolstered by a 'fast-track' option, allowing a hearing within three days of the application.[2] Crucially, however, before LASPOA the criminal jurisdiction was not invoked unless a squatter breached an interim possession order by refusing to leave premises within 24 hours of the service of the order, returned to the property to which the order applied within 12 months or knowingly or recklessly gave false information in order to obtain or resist such an order. In such cases, sections 75 and 76 of the Criminal Justice and Public Order Act 1994 provided a criminal sanction

1 Ministry of Justice, 'Homeowners protected, squatters criminalised' (Press Release, 31 August 2012), online at: http://www.justice.gov.uk/news/press-releases/moj/homeowners-protected,-squatters-criminalised.

2 Civil Procedure Rule 55 and Sch 1, Ords 24 and 113.

with maximum penalties of six months' imprisonment and/or a fine of up to £5,000. These measures supplemented sections 6 and 7 of the Criminal Law Act 1977, which exempted 'displaced residential occupiers' or 'protected intending occupiers' from the offence of using violence or threats of violence to gain access to premises (section 6),[3] and created an offence when a trespasser fails to leave any premises on being required to by a displaced residential or intending residential occupier (section 7), with the same maximum penalties of six months' imprisonment and/or a fine of up to £5,000.

A crucial distinction between the former approach, based on the availability of civil procedures 'backed-up' by criminal sanctions, and the direct criminalisation of squatting in residential buildings in section 144, is the characterisation of the dispute. Following LASPOA, and as a direct consequence, squatting is no longer treated in English law as a 'private' conflict between the landowner and the squatter (previously reflected in the role of the interim possession order as the starting point for legal redress). Rather, it has been reconceived as a criminal offence, with major practical and rhetorical implications. Practical implications include the fact that, prior to the enactment of section 144, criminal sanctions were limited to specific sets of circumstances: for example, when two or more persons are trespassing on land with the common purpose of residing there for any period.[4] This can be understood in a public policy, or 'law and order', frame, as signalling that the implications of multiple squatters planning to reside on land for a period of time implied a wider community interest in the squatters' unlawful occupation. The state's response to this community interest was reflected in the conferral of powers on the local authority to order the removal of such persons and their vehicles so long as police officers reasonably believe that reasonable steps have been taken by the occupier to ask them to leave and the squatters have caused damage to the property or exhibited threatening, abusive or insulting behaviour towards the occupier.[5] Similarly, the offence of 'aggravated trespass', committed when a person trespassing on land intimidates a person on that land, or adjoining land, from engaging in any lawful activity reflects the role of the state in protecting private actors; while the offence of criminal damage under section 1 of the Criminal Damage Act 1971, empowered the state to punish any damage done by a trespasser while trespassing.

Section 144 has bolstered the existing slate of criminal offences and police powers surrounding unlawful occupation by criminalising the activity of squatting in a residential building outwith any 'aggravating' factor, so that the act of 'simple' trespass to a 'residential building' is punishable by up to 51 weeks' imprisonment and/or a fine of up to £5,000. This extension of

3 A 'protected intending occupier' is one who, while not in occupation of the property at the time the squatting commences, has an immediate need to occupy it as a home.

4 Criminal Justice and Public Order Act 1994, s78.

5 Criminal Justice and Public Order Act 1994, ss61(1), 62A, 62B and 62C.