The idea of Home in Law

Chapter 9

Re-thinking Responses to Displacement and Dispossession

Lorna Fox O'Maley and James A. Sweeney

The essays collected in this book address a diverse range of legal problems, from dispossession by eviction for non-payment of rent or mortgage repayments, to allow economic development, or to forced displacement in times of armed conflict. The laws and policies under scrutiny range from various countries' domestic laws to the European Convention on Human Rights, from the law of European Union to international law, and span what Kersta describes as the micro (the level of individual aspirations, interactions and micro-political struggles), the meso (including the housing systems, their sub-systems and institutional context), and the macro (broadly the national, regional and international context within which housing systems interact with other systems). While the terrain covered is undoubtedly vast, the essays highlight several important and common issues which characterize the human costs of displacement and dispossession: the ways in which the idea of home is present or absent in legal responses to displacement and dispossession; the apparent limitations of legal structures which this exposes; and the opportunities that a 'home' perspective presents for re-analyzing problems involving displacement and dispossession. In this chapter we explore some of the synergies which emerged through our workshop and subsequent work editing the volume, and set out potential avenues for further research.

A common feature of the essays was our deliberate attempt to try to create room in our analyses for the social agent – the displaced or disposessed individual – rather than being restricted by the dominant structure of existing law, which often excludes the experiences of these individuals. As such, our starting point broadly adopted the epistemological traditions of social constructionism, in as much as the chapters have deliberately placed the lived experiences of the displaced or disposessed people at the centre of the discussion, and in doing so, have sought to resist the discursive boundaries of current laws and policies in favour of an

67 Opus Turcica (App no 33401/02), ECHR 9 June 2009 [163].

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2 See P. Kersta in this volume.
exploratory approach. In much the same way as constructionism has sought to examine research questions independent of the demands of policy makers, our goal has been to attempt to develop a research agenda that is independent from the restrictions implied by law and legal method. This approach has steered us towards examining questions which are not always deemed 'relevant' to legal proceedings, for example, Bright's focus on the personal stories of request and respondents in asylum. Thus, in a context which tends to be preoccupied by financial considerations, Bright's focus highlights the importance of identity — both the identity of the asylum seeker (as borrower/property tenants/local authority tenants) and the identity of the person or agency seeking to deport. — the question of whether the occupier's personal story can find a legal voice. Similarly, Keese highlights the need to move beyond the traditional reach of legal rights in the housing systems (the macro, meso and micro), while Sweeney and Fox O'Mahony's analysis of housing and homelessness — as a process which require to focus on the obligations of the international community, via the 'Responsibility to Protect.'

While the issues considered in the collection are wide-ranging, another important common feature is the vulnerability of the people who are at risk of displacement and deportation. This vulnerability is manifest at several levels: the people most at risk of displacement and deportation are likely to be poor and marginalised in the first place, and their vulnerability is only exacerbated by the realisation of the threats of displacement and/or deportation, and further by the exclusion of their voices from legal processes. From the indigenous people displaced in armed conflicts, to asylum seekers, to the occupier of a South African township, occupiers who are seeking to defend their homes in these cases are too easily construed as a class of people who are 'here' but 'not us.' In his seminal analysis of the (self-posed) limits of legal method, 'Thomas Ross' illustrated how the rhetoric of poverty — separating the poor as 'other' — is coupled with the premise that we are helpless to change the 'brash realities' of society, to place the 'problem of poverty beyond judicial power or jurisdiction.' Similarly, in all of the cases considered in this collection the occupier is either vulnerable because they have no property, or because they are not in a position to defend their claim to property. With low income obviously linked to arrests, in a benign economic climate at least, in cases of repossession (see Bright, Dyal-Chand) the vulnerability of dispossessed occupants is likely to exist from poverty, although as Dyal-Chand reminds us, this cannot be disaggregated from other vulnerabilities, such as those resulting from racially motivated behaviour on the part of lenders.

Van der Walt goes on to add, however, that when the party seeking an eviction is the state, the contextual issues are liable to be completely lost in the debate about the legitimacy of the state's action, so that:

Van der Walt continues: "It is necessary to focus on the legitimacy of the process of eviction and on its implications for the individual, and not primarily on the question of whether the occupier is liable to be evicted or not."

On a similar note, Sweeney and Fox O'Mahony show that in the case law concerning asylum seekers in the UK, the debate has been narrowed into the question of who is responsible between central and local government, with the impact on the dispossessed asylum seeker excluded from the discussion. Sweeney's approach to the international law rights to housing and homes offers the possibility to move beyond the 'minimal' question of legitimacy when considering the conduct of the state towards vulnerable people to focus on the obligations of the international community, via the 'Responsibility to Protect.'

Our approach also echoes constructionism in its attempts to 'question the status of given assumptions and interrogate the process of "claims-making."' in law as it responds to and implements policy. Rather than applying positivist analysis to rewrite law, the authors 'focus on broader social processes and... the importance of social, political and economic context,' to highlight issues which legal processes do not traditionally bring to the fore. For example, van der Walt's study of the eviction of residential occupants by the state for the purposes of economic development notes that in 'ordinary' cases eviction (where the state might be seen as performing a more neutral adjudicating role), the nature of different types of claims to land and, 'the hierarchical domination' of ownership 'means that: (even when contextual features enter the equation, courts' professional tendency to enforce the law of eviction "naturally", "neutrality" or "objectivity" will more often than not still privilege the protection of owner rights and result in more or less mechanical evictions of unlawful or weak occupants who are unable to prove legal occupation rights that are strong enough to meet the owner right.)'"
and Bright highlight the importance of identity in legal responses to dispossession in two different jurisdictions. Bright's essay demonstrates the contrast between possession proceedings against local authority tenants, where the personal home story can be heard, and cases involving private landlords where:

If there is a personal home story to be heard, it probably will not be. And if a try-to-let tenant is a good tenant but it is the landlord who is in default, there is nothing to be done. The occupier has no voice, and will be lucky to receive much notice of having to move.11

Not only is the personal story of the occupier not likely to influence the outcome of the case, there is likely to be no opportunity for the court to hear about the likely impact of the dispossession on the occupier. So far as mortgage borrowers are concerned, much depends on the forbearance of the individual lender, with recent initiatives focusing on the development of good practice amongst lenders, rather than focusing (directly at least) on the consequences of losing their home for dispossessed borrowers. Indeed, the lack of empathy on the part of the government for the human experience of repossession and the adverse consequences that follow loss of home in these circumstances was highlighted in the comments of then UK housing minister John Healey when he claimed that: 'For some people it can be the only, and it can in fact be the least, option for them to allow their home to be repossessed. Sometimes it is impossible for people to maintain the mortgage commitments they've got. It may be the best thing in those circumstances.'12

Both Dyal-Chand and Bright challenge us to think about how the legal process might take greater account of the human impacts of dispossession, and the first steps in mapping who is privileged under the prevailing system, and who is excluded. Bright reminds us that 'with UK responses to the credit crunch largely taking the form of optional 'good practice' protocols:

The more vulnerable borrowers - those with poor credit histories, illnesses and unreliable income levels - are much more likely to fall into arrears and to have borrowed from the sub-prime lenders who, as we have seen, pursue more aggressive arrears and repossession policies and are not involved in several of these progressive government initiatives.13

11 Bright, in this volume, 36.
13 Comments were made on a BBC Radio Five Live interview, and reported in Daily Express newspaper, 15 February 2010; http://www.express.co.uk/pa/view/1767505/Housing-ministers-in-week-to-lose-your-home (accessed 20 September 2010).
14 Bright, in this volume, 28.
the effect of favoring applicants with greater cultural capital over those who are more vulnerable. Viewed this way, stricter policies do not reduce the number of applications for asylum, but alter the quality of the successful applicants. This is potentially—rather than substantive—it would seem to shift the focus of the powers away from the needs of the applicant on to the needs of the receiving state, for people who will be less reliant on the welfare state, or for certain categories of weaker, for example, that are far more suitable for consideration under mechanisms for economic migration. Forced migration—in circumstances which often involve violence and trauma—has major impacts on home and identity, with displacement and dispossessions having profound and long-term implications for those who are separated from their homes and homelands, and this can only be exacerbated where the displaced people are already vulnerable. Buysse provides valuable examples of cases where displacement resulted in violent destruction of homes (houses burnt down by security forces) or where displaced people were denied access to their homes because they were located in a region of conflict, while Bream argues for a duty to protect based on collective responsibility for all peoples 'especially the most vulnerable'.

The vulnerability of the dispossessed claimant is only heightened when the party on the other side of the dispute is relatively strong or aggressive. In the case of repatriations, this can be the 'strongly-backed claim of ownership', which easily swamps the relatively weak claim to use a house as a result of the 'hierarchical domination of ownership', particularly when it is advanced by a court—light in the tendency of the courts to prioritize the needs of creditors above other considerations. In the context of expropriation for economic development (van der Walt), the opposing party is far better equipped, and this is also the case in relation to the exclusion of asylum seekers from housing and welfare benefits (Sweeney 20).

20 See N. Buysse, ‘Who in the New European Refugees?’ (2008) 3(1) European Law Review 113, arguing at 115 that restrictive EU policies have filtered out ‘certain refugees from the category of the European refugee. Not only must an European refugee fulfil the requirements set out in the (EU) Qualifications Directive, but she must also possess certain explicit characteristics: financial resources, economic mobility, an evident of power and a willingness to take risks. Though a number of the proclaimed powers these states, the most vulnerable are filtered out...’


22 Bream, in this volume, pp. 199, et seq.

23 For an extensive analysis of the conflict between ‘strong’ property rights and the provision of marginalized and weak land users see A.J. van der Walt, Property in the Mangoes (Hart Publishing, Oxford 2009).

24 See A.J. van der Walt, in this volume, p. 56.


and Fox (2008). While these cases demonstrate the relative strength of the dispossession’s legal rights, in the displacement cases discussed in Keana, Buysse and Bream the ‘displaced’ may also (or instead) show strength through aggression. For example, in Buysse’s discussion of security forces burning homes to the ground, or in other cases of displacement resulting from armed conflict,

Furthermore, in each case, the displaced or dispossessed person’s vulnerability is compounded when they lose their home. The ‘homeless’ person faces both the practical dilemma of losing their shelter and the psychological impact of losing their home, which has been shown to trigger extreme responses, including alienation and grief amongst the dispossessed occupiers. Brown and Perkins study of reactions to displacement found that the loss of normal attachments creates a stressful period of disruption followed by a post-disturbance phase of coping with loss and attachments and creating new ones. Fried and Porter (2009) have both examined the impact of displacement from the displacement of refugees in which several homes in a neighbourhood were destroyed for urban planning or development reasons (referred to ‘domestic’). Fried described displacement from home as ‘a crisis with potential danger to mental health’ and as triggering

feelings of painful loss, the continued longing, the general depressive tone, frequent symptoms of psychological or social or somatic distress, the activist work required in adapting to the changed situation, the sense of helplessness, the occasional expression of both direct and displaced anger, and susceptibilities to isolate the lost place.

Although the ways in which the loss of home is experienced in any given case will vary, the generally negative effects of displacement have been described as ‘a widespread and serious social phenomenon’. Although the most extreme reactions occur in only a minority of cases, the greater the number, dissociation does lead to intense personal suffering despite moderately successful adaptation to the total


31 Ibid.

32 Ibid., 167.
sensation of relocation. Similarly, Porteous claimed that 'domestic violence has negative social and psychological effects on its human victims' with the significant factor for the occupants being the forced relocation of their homes. This study insisted the 'double displacement', dispossessed from their homes and displaced from their homeland. The state of exile has been described as:

...a painful or punitive banishment from one's homeland. Though it can be voluntary or involuntary, internal or external, exile generally implies a lack of safety, an imminent danger, usually physical, that makes the home no longer

The impact of double displacement is captured in the following description of Croatian refugees:

...it is not only the concept of homeland that has been transformed, but also their home in the more basic, physical sense. From sites of personal control, they were transformed into sites of danger and destruction. People were forced to leave their homes in order to escape war, fear, military attacks and violence. Many homes literally ceased to exist. 36

Kodikall has described forced migrants as experiencing a sense of powerlessness and dependence, frequently mixed with an intense anxiety about their new circumstances and, wrong feelings of homelessness. 37

The importance of home for psychological security only exacerbates the existential anxiety experienced by dispossessed people. This in turn is heightened as the status of being without a home — with all the adverse impacts this has on

33 Ibid.
35 Ibid., 159.

well-being — significantly undermines the ability of displaced and dispossessed people to defend their claims. If we accept that home and housing are 'gateway rights' (Sweeney and Fox O'Mahony) which provide the base for civil and political participation, then we must also ask how some of the displaced are able to resist the conditions of homelessness. The study insists on the need for us to seek out the ways this occurs, and the underlying mechanisms that make it possible. The need for the development of a comprehensive understanding of displacement and dispossession within the political system is clear. The study concludes with a set of recommendations for the development of a comprehensive system of rights for displaced and dispossessed people.
Similarly, Dowie has described the difficulties associated with the concepts of home and
homelessness, how it is not an empirical variable whose meaning we might define in advance of
careful measurement and explanation. As a consequence, understanding in this
area is plagued by a lack of verifiability that many will find frustrating. 42

This challenge is compounded by the fact that the legal tools that might be
identified as most relevant in the project of developing the concept of home for
homelessness and displaced people also set in place relative rather than absolute
standards. Kretz writes in his essay that the right to housing is international law
necessarily - as a social and economic right - sets a relative standard which, while
ensuring minimum core obligations are set, pitches those obligations at the lowest
common denominator. While states which are signatories to the International
Covenant on Economic, Social and Cultural Rights, for example, have committed
to the principle of progressive realization of the right to housing set out in that
document, it is not possible to legislate for progressive realization, which depends
on the willingness of states to engage with good practice.

Thus, Kretz argues for the need for a 'whole systems' approach, which transposes
interpersonal housing rights into meaningful legal and non-legal standards. We
would argue that legal scholarship must play an important role in this process. For
one thing, the absence of home arguments in many of the legal narratives examined in
the collection demonstrates a need to begin by articulating the home claim more
coherently. In order for a problem to be identified as requiring policy attention
so as to be accepted and acted upon within the policy 'field', a number of factors
need to be in place. Firstly, the problem must be defined, as 'the policy approach to
a problem-focused inquiry' 43 in which social problems are 'formulated and framed'.

Adamsen has argued that:

the particular aspect of unity which come to be defined as a 'problem' are
merely self-evident problems as such. For an aspect of the real as we defined as
a 'problem' it needs first of all to be constructed and articulated as an object
useful for diagnosis and treatment in and through a narrative discourse which
enters with it an 'authority', in its broadest sense is assumed by an individual
organization, or a network of symbolic capital to make the problem into an
unproblem, i.e. to develop a narrative which will be 'insisted on' and 'needed'.

42 K. Dowie, 'Home and Homelessness', in J. Allen and C.M. Wemer (eds), Home
Environmental Movements (Pion/Trask, New York, 1983) 34.
43 W. Palison, Public Policy: An Introduction to the Theory and Practice of Policy
Analysis (Edward Elgar, Cheltenham 1995) 85.
44 R. Adamsen, 'Institutions of Policy' the Construction of Urban Problems and Urban
Policy in the Official Discourse of British Government. (Government and Policy
Analysis (Edward Elgar, Cheltenham 1995) 87.

In exploring the issues of displacement and dispossession as they are represented
(at or not) in legal contexts, the essays in this collection try to draw together a
narrative concerning the idea of 'loss of home in law' which reveals some of the
problems with addressing these issues in legal frameworks. The second step in
this process is to influence the policy agenda to recognize a problem as such, so that,
in turn, a coalition of support can be formed to ensure that institutional measures
are implemented to 'solve' the problem. 45 Jacobs et al. have also emphasised:

the role of power in bringing housing problems into prominence, the lobbying
exercised to first establish housing problems on political agendas, and then
influence the policy-making process and finally the decisions to devise specific
policies, including justifying the allocation of resources to legitimate
interventions. 46

We argue that legal scholarship plays an important role in defining the problem
of displacement and dispossession, by scrutinizing the law to reveal the presence or
absence of home valued in legislative policies and judicial decisions, by identifying
potential avenues by which the claim to home can be articulated within and
without legal frameworks, and by lobbying for greater attention to be paid to the
human interests of displaced and dispossessed people. There is, of course, a strong
necessity to distinguish what we propose. As Broms essay indicates, whether or
not the human consequences of displacement and dispossession are even discussed
within the legal arena may depend on what the state thinks is possible for. So,
while the state (excluding the state as manifested through the institution of law) may
consider itself responsible for matters such as state security (Broms, Immigration
(Woody and Fox O'Malley), economic development (van der Walt) and even
support for the (owner-occupied) housing market (Gray-Charl) or the property
rights of creditors and landlords (Broms), it is much more difficult for the state
with responsibility for the dignity and worth of the often marginalised displaced
or dispossessed person.

Having recognised the limitations of employing a rights and entitlements model
in this context, we argue that a viable route forward - which resonates with the
theme of progressive realization - is through seeking to develop good practice,
for example, in the extent to which states engage with 'soft law' standards, and
its influence policy. A clearer articulation of the power of the policy is crucial in either case.
Policy analysts recognise that 'bills are things that people speak for themselves,
they require an interpreter'. The power of law in influencing and supporting this

45 See K. Jacobs, L. Kerney and T. Mezz, 'Power, Discursive Space and Institutional
46 Ibid, 430.
47 W. Palison, Public Policy: An Introduction to the Theory and Practice of Policy
Analysis (Edward Elgar, Cheltenham 1995) 87.
process was demonstrated in Ross’s seminal study of the rhetoric of poverty, in which he highlighted the role of legal methodology and significantly the self-imposed limits on our expectations of what law can achieve, in defining the problem of poverty and law’s lack of responsibility. Through the premise that we are helpless to change the ‘barred realities’ of society, plus placing the ‘problem’ of poverty beyond judicial power or jurisdiction. Yet, this also reveals the important and potentially powerful role of legal scholarship in articulating the problems of displacement and dispossession from home, and in indicating how they might be resolved by law. Blumer argued that ‘Social problems lie in and are produced by a process of collective definitions’; while Jones has added that ‘whoever initially identifies a social problem shapes the initial terms in which it will be debated.’ More recently, Alkmin has added that:

the definition and construction of a ‘problem’ contains within it the ‘solution’ to this problem. Moreover, the construction of a ‘problem’ (and its ‘immanent solution’) involves the development of a particular discourse—casting (i.e.) depicting portray as the ‘solution’ and means of the problem.‘

In ‘official’ policy making, the dominant discourse determines which stories are told, condensing the innumerable solutions to the problems which are identified, and

By presenting a ‘problem’ in this manner, a narrative attempts to foreclose debate and prevent a ‘problem’ from being thought of in ways that are not congruent with the dominant discourse from which the narrative is derived.

We have argued elsewhere that the need for legal scholarship to critique the official discourse which exudes consideration of the experiences of displaced and dispossessed from law and policy through the development of an

oppositional discourse’ shaped through the lens of human experiences. For one thing, as Smith has argued, when presenting greater reference to human (ethical and social) considerations in a similar context, ‘while a certain tension on these points might be expected among politicians and policy-makers, it is increasingly hard to justify in the research community.’ In addition, Ross’s study of the rhetoric of poverty demonstrates the importance of the way that we (as scholars) talk about issues to the development (or not) of legal strategies to address them. In their examinations of the various contexts in which displacement and dispossession takes place, and by framing their analyses through a focus on the human experiences of losing home, the contributors to this collection make a valuable contribution to the exposition of the issue, and provide a fresh perspective from which to seek solutions to these problems. In doing so, and in addition to the proposal set out in the individual essays, the suggestions that emerge might usefully inform further research and could form the basis for lobbying for the development of good practice in the ways that lawyers think and talk about displacement and dispossession.

Firstly, we recognize the difficulties with applying a strict legalistic approach (rights and entitlements) in relation to a very human and personal problem (see Bright’s discussion of how and why the ‘people’s home stories’ of occupants are sometimes ‘高峰’) into the decisions of individual judges, also Sweeney and Fox O’Malley on the way in which, left to the political will, housing and home for asylum seekers are excluded from ‘official’ policy but can be re-introduced by (individual judges). One of the difficulties, it might be argued, is bringing the human dimensions of homes considerations to how in context involving dispossession or displacement is the risk that attachments to home might be perceived as mere emotion, and so fail to carry weight within the legal arena. The key to addressing this, we argue, is to focus on the impact of losing home for the displaced or dispossessed occupier. As one home theorist has suggested in another context: the ‘problem lies with the fact that we are dealing with environmental intangibles – attachments, utility, loss – which are intangible, difficult to articulate, and less easy to ignore by the cost-benefit brigade.’ By focusing on the damage or detriment to the occupier, on what is lost. It is – theoretically at least – more likely to be possible to capture the harm which will be occasioned to any occupier in any given case. In one sense, the impact of losing one’s home can only ever be quantified after the event, since ‘being intangible, qualities of home are often

55 S. Smith. ‘Banking on Housing: Specializing on the Role and Relevance of Housing Wealth in Britain’ (paper prepared for the Joseph Rowntree Foundation Inquiry into Home Ownership 2010 and Beyond, 2005). Smith’s comments were made in support of re-evaluating the credit market for home ownership from an ethical and social, rather than merely financial perspective.

One approach, which we suggest may be worth pursuing in this context, would be to focus on particular groups of individuals to reflect the idea that different individuals might attribute different types or degrees of value to their homes, or be particularly adversely affected by loss of those homes. So, the idea of homes in law might focus on evidence of particular vulnerability which might indicate that the group are at a heightened risk of suffering adverse effects from displacement or dispossessio. The group-based approach also resonates with the process of defining social problems for policy making discussed above, with the development of a convincing narrative as the starting point for recognising a housing problem. Alexander has observed that ‘individual narratives do not exist in isolation, but reflect (and simultaneously create) a deeper more pervasive narrative linked to particular social (class or group) interests.’ The work of social groups might be expressed as the well-being of children; another could be based on structural factors, for example low income; or a critical gendered perspective which recognises structural inequality and the unequal distribution of responsibilities; or, where people have experienced trauma and violence, for example in armed conflict, it might be appropriate to argue that, as a group, their need for protection against further displacement is greater as a result of the vulnerabilities caused by these experiences.

As the same time, we also need to be sensitive to the role that certain groups of occupiers who are in fact vulnerable can be portrayed as ‘traitors’ (due to their ‘otherness’), and that such regressive arguments can potentially subvert claims that their needs should be a priority. Given the example of the rhetorical separation of the ‘poor’ as different, deviant, morally weak, achieved, in part, through the separation and stigmatisation of people in poverty using themes of difference and deviance which enable us to distinguish groups of people as ‘them’ and ‘us’, and ‘to make their suffering intellectually coherent’. The two main categories of occupiers running throughout the papers in this collective might be described as ‘the poor’, on the one hand (Bright, Dyke-Chandler, van der Walt and ‘exiles’ — refugees, asylum seekers, internally displaced persons — Sweetney and Fox O’Malley, Biyau, Khama, Breau) on the other. In both cases, there is a risk of ‘victimisation’ which must be met head on in any attempts to establish a convincing narrative which scrutinises the human needs of displaced and dispossessed people, rather than constructing their very existence as a ‘social problem’. In doing so, it is also work remembering that everyone has to ‘be somewhere; we all have to live somewhere, physically, materially and socially; and that displacement and dispossession merely move the problem/the phenomenon.

Another of our presumptions was that the idea of homes in law, particularly in relation to displacement and dispossessio, is complex and often difficult, both in respect of the range of legal and extra-legal strategies that might be adopted to enable home claims to be more coherently represented in the legal arenas, and in relation to the interactions between these strategies and social policy contexts. We have noted above that in many senses the strict legal conception of rights and entitlements does not prove fruitful, but suggest that a more valuable strategy is to adopt a ‘whole system’ approach, taking account of the matrix of housing rights which are recognised and acknowledged to relate to housing and home, from human rights law at the ‘hard’ enforceable end of the spectrum to soft law approaches which build norms through the articulation of responsibilities towards people who live at risk margins, and through these norms to influence policies. Anna captures this process when he describes the idea of human rights functioning as a ‘multi-point’ for the development of law and policy around the globe. An example of this process in practice can be seen in the Participation in the Practice of Rights project in Northern Ireland and the work of the Community Action Network with the London Rights in Action group in Dublin, which demonstrate how the moral norms articulated by rights-behavers can be utilised to put pressure on duty-bearers to deliver, and so give content to the right to housing and other rights. Similarly, firearms illustrates the role of norms in the emergence of customary principles, which in turn can be influential in the policy-making process.
In practice, the problems associated with displacement and dispossession raise difficult questions, which are hard to answer in a context of limited resources, and sometimes against a backdrop of media and public opinion – even political, consent – which appears to diminish sympathy for the displaced or dispossessed occupiers – whether through framing asylum seekers as ‘cultural’, ‘illegal’, ‘invaders’ and ‘social parasites’ on the welfare state, or by casting people who cannot pay their rent or mortgage as ‘failures’ in the individualist, market-dominant ownership society described by Dyal-Choudh. We do not suggest that evicting displacement and dispossession, whether as a local, national, or global level, is simply a matter of lawyers and policy makers choosing to make it so. Yet, on the other hand, the impact of the global recession is bringing home to all of us our vulnerability to dispossession might potentially be viewed as a “tipping point” for understanding and responding to the human consequences of losing home. In considering the role of the academic in responding to these problems, our modest aim in this collection is to demonstrate how, and that there are different choices to be made, the key importance of articulating the ‘home’ constructions on the side of the occupier, as well as recognizing the competing interests of the ‘strong’ claimants on the other side. We argue that a clearer and more coherent understanding of the conceptions of housing that underlie, and fuel, rather than allow dominant, to automatically trump less robust claims, particularly when this may lead to the loss of homes by vulnerable, insecure or marginalised people, it should be framed by focusing on how displacement and dispossession impacts on the people who are affected, adopting a ‘whole system’ approach, with particular attention to the role of human rights norms in transmitting the values of housing and home into the legal discursive

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