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# The Right to Housing\*

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## 1. Introduction

Housing is a pressing public issue in the UK at the moment, as a glance at the newspapers will demonstrate. Successive governments' failure to invest in housing provision has been blamed for a severe shortage of housing (BBC News, 2015). Those seeking housing in the UK face high housing costs, poor renting conditions, and a shortage of social housing.<sup>i</sup>

A crisis such as that faced by the UK raises the question of what justice requires when it comes to the provision of housing. Yet political philosophers have largely failed to engage with this issue. In this paper I address the question of justice in housing by setting out and defending a basic right to housing. The right is, in the first instance, specific to a particular context: it is a right to housing that something like a contemporary Western liberal society ought to include. The right I defend is a positive right to exercise a set of property rights I call "lease rights" over a self-contained living space of a certain standard, for a minimum term of three years.<sup>ii</sup> The different elements of this right will be explained below, but lease rights are based on the rights a person with secure tenancy of rental housing would exercise over that housing.

Perhaps the most distinctive and controversial feature of this right is that it is a right to live alone. Each individual has a right to exercise lease rights over a *self-contained* living space. On this account, if an individual has to live in shared housing (such as a house- or flat-share) due to a lack of resources their basic rights are being violated. This is because, I argue, in such a scenario the individual's freedom of association, specifically their freedom to refuse to engage in a kind of intimate association, is not being protected. The present account, then, offers a significant re-evaluation of the way we view common communal housing arrangements.

The right to housing I defend, therefore, is not simply a right to some unspecified good 'housing', nor is it simply a right not to be homeless. It is a right to housing of a particular quality and type. Having such an account gives us a distinctive understanding of the most serious ways a government's housing policy can fail its citizens. In order to show this, after

presenting my account, I will consider its implications for an analysis of the UK housing situation.

Although little political philosophy has been written on housing provision, one existing literature is relevant to consideration of a basic right to housing. This is the literature on socioeconomic rights. However, as I will argue below, accounts from this literature do not offer an adequate account of a basic right to housing, since they are either too modest, or are insufficiently developed.

The paper proceeds as follows. First, I discuss the socioeconomic rights literature. Second, I set out the basic right to housing I want to defend. Third, I offer a justification for this right. The justification I give makes ultimate appeal to the value of individual autonomy; however, different rights in the set of lease rights are justified with reference to different interests (such as an interest in freedom of association) – interests that are themselves important for individual autonomy. Whilst the justification I offer is therefore a piecemeal one it is one that, in virtue of this, captures the different ways in which accessing housing of the right sort is of fundamental significance. I conclude by spelling out some of the implications of this account for the UK.

## **2. Existing work on the right to housing**

Housing is an under-discussed topic in political philosophy. When it comes to a right to housing, what discussion we have comes predominantly from the socioeconomic rights literature. Socioeconomic rights theorists defend rights to social and economic resources such as healthcare, adequate nutrition, and education. Such theorists almost always include housing on the list of social and economic resources to which individuals have rights. However, we ought to have significant concerns about accounts from these theorists. To show this, I briefly consider what two major types of account of socioeconomic rights have to say about a basic right to housing: minimal accounts, and more demanding accounts.

Minimal accounts of socioeconomic rights take it that these rights secure “the endurance of material life” or “minimal agency” (Morales, 2017). On such accounts, socioeconomic rights are rights to a modest set of goods. For instance, Henry Shue (1996: 23) argues that we have a basic right to subsistence: a right to “have available for consumption what is needed for a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions.” On Shue’s (1996: 23) view, this involves having access

to: unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, minimal preventative public healthcare.

The main concern with minimal accounts is that their implications for housing are implausibly modest. To ensure “the endurance of minimal life” or “minimal agency” the following housing arrangement might be thought to be sufficient: reliable access to a bed in a secure dormitory that is dry, maintained at a reasonable temperature with access to sanitary bathroom facilities and perhaps a secure locker for one’s personal possessions. The aim of this paper is to develop an account of a basic right to housing suitable for a Western liberal society, somewhere like the United Kingdom.<sup>iii</sup> We might expect, in such a context, that a basic right to housing would entitle us to more than simply basic shelter. Whilst expectations about the right are not all that matters, without further defence of restricting social rights to the provision of subsistence goods in this context, we ought to explore other theoretical possibilities.<sup>iv</sup>

More demanding accounts of socioeconomic rights reject the claim made by proponents of minimal accounts that these rights should secure only “the endurance of material life” or “minimum agency.” Consequently, we can be less worried about such accounts justifying only a very modest right to housing. In spite of this, however, such accounts do not provide us with an adequate account of the right to housing, since the right to housing itself receives very little discussion.

To show this, I consider the most developed of the more demanding accounts, from Cécile Fabre.<sup>v</sup> For Fabre, social rights secure individual autonomy and well-being, and do so in virtue of satisfying two types of need. Firstly, subsistence needs, needs which “we all have as human beings” (Fabre, 2000: 35). Secondly, socially-determined needs, needs which “we have in virtue of living in a particular society” (Fabre, 2000: 35). For Fabre, then, social rights secure more than what is needed for simple physical survival, they secure what is required for a minimally decent life in a particular society.

When it comes to housing, however, Fabre offers us only a very limited sketch of a what a right to housing consists in. Such a right furnishes us with “a place to live and stay for long enough not to have to worry about finding another place, not to have to walk and queue for hours to do all the things that we cannot do in the public space” (Fabre, 2000: 19). In order for housing to meet our subsistence needs, it should protect us from damp and extremes of temperature, and should have basic sanitation (Fabre, 2000: 36). Fabre argues that other aspects of the right to housing will vary, depending on what the relevant socially-determined needs are, from society to society. However, what a right to housing would look like in different societies or types of society is not explained.<sup>vi</sup>

If, therefore, we are constructing an account of a basic right to housing for a Western liberal society, we cannot draw a great deal on the work of socioeconomic rights theorists.<sup>vii</sup> I now turn to set out my own account of a right to housing.

### **3. The content of the right to housing**

On the view defended here, all individuals have the following basic right to housing:

A positive right to exercise lease rights over a self-contained living space of a certain standard, for a minimum term of three years in any one particular place.

This right is held against the state,<sup>viii</sup> and it functions as other socioeconomic rights do. That is, if individuals lack the resources to house themselves in a way consistent with the requirements of the right, then they have the right to be provided by this kind of housing by the state. I do not discuss here whether this provision should be in the form of state-owned housing or subsidised private rental accommodation. However, if the state provides housing by subsidising private rental accommodation, the rental market would need to be regulated in line with the requirements of the basic right.

Let me now explain the different elements of the right to housing, starting with lease rights. Lease rights can best be explained with reference to a more familiar idea – ownership rights. On a familiar view of what it means to own something, the ownership relation can be analysed as a “bundle” of rights, powers, liberties and liabilities.<sup>ix</sup> The most important rights, powers, liberties and liabilities when it comes to ownership are those which grant: (a) exclusive physical control of the thing; (b) the right to use the thing at one’s discretion; (c) the right to decide which others will use the thing, and how; (d) the right to retain income that can be earned from the thing; (e) the power to alienate the thing, and the liberty to consume, alter or destroy it; (f) the right not to have that thing expropriated; (g) the right to bequeath the thing after one’s death; (h) an absence of any term limit imposed on one’s other rights (a) – (g) in that thing (Honoré, 1987). Lease rights, as they appear in the right to housing, are also a bundle of rights etc.. They represent a time-limited set of rights to exclusive control of the item in question, and are the kind of rights that a tenant of rental housing might exercise. More formally, they consist in (with respect to some item X):<sup>x</sup>

(a) *the right to possess X* – the right to have exclusive physical control over X;

- (b) *the right to use X* – the right to use X at one’s discretion;
- (c) *the right to manage X* – the right to decide which others will use X, and how;
- (d) *the right to security* – the right to continue to exercise (a)-(c) over X for the duration of a set term;
- (e) *no absence of term* – a term is set on the time for which (a)-(d) are exercised.

At least some of these “sticks” are different to, or more limited than, their counterparts in the bundle of ownership rights.<sup>xi</sup> Most importantly, the right to possess is more limited in that it permits the owner of the item (in the case of housing, the landlord) to inspect it, and conduct repairs, and, as will be discussed in section 4.iv below, the right to security has different implications. Those who exercise lease rights also, of course, lack “sticks” included in the bundle of ownership: most importantly, the power to alienate the thing and the liberty to consume, alter or destroy it.

Finally, by a “self-contained living space” I mean something like an individual flat: somewhere with at least leisure and sleeping space, cooking facilities and a bathroom.

#### **4. The justification for the right to housing**

The theory of basic rights I endorse here is an interest theory. Basic rights have their special status because they put in place the general conditions which protect the interest in *autonomy*, understood as the ability to develop a life plan that is in some sense one’s own, and execute that plan.<sup>xii</sup> If individuals are to be autonomous, their right to housing must be protected.<sup>xiii</sup>

Whilst the justification for the right to housing to follow makes ultimate appeal to the value of autonomy, however, individual “sticks” in the bundle of lease rights are not justified with direct reference to autonomy: these sticks protect interests the protection of which are themselves necessary for autonomy to be secured. Different sticks protect different interests. Consequently, the justification for the right to housing will proceed piecemeal, beginning with the right to use housing.

##### **i. The right to use housing**

Why should individuals have a right to use a living space? Answering this question is fairly straightforward. Individuals require somewhere they can sleep, prepare food, use the facilities of a bathroom, and be at leisure. Some of these are pre-requisites for basic health, and basic health is a pre-requisite for autonomy. Being able to relax and be at leisure is also a pre-

requisite of autonomous activity since otherwise we can never replenish our mental and physical resources.

However, it might be thought that places to sleep, wash, and so on could be provided for individuals without providing them with housing.<sup>xiv</sup> We could simply provide individuals with guaranteed access to different locations (bathrooms, leisure facilities, a place to sleep), where they could perform the relevant actions. Whilst, however, providing such guaranteed access would ensure that individuals can perform the relevant actions, it is not adequate from the perspective of autonomy. Firstly, given that the relevant activities tend to be performed successively (we relax and use the bathroom before we sleep, for example; we wash and eat after we have woken up), it is significantly easier and more convenient for individuals to be able to perform them in one place. Ease and convenience, when performing the basic prerequisites of autonomous activity, are important: in order to be able to devote the relevant time and energy to their life plans, individuals should not have to devote too much time and energy to performing these basic activities (Fabre, 19). Yet having one's sleeping place, place of relaxation, and bathroom in separate locations would require individuals to expend significant energy and time planning to move, and moving, between these places (and, moving the relevant possessions with them). Secondly, some of the relevant activities are inter-related: for example, one point of relaxation is to prepare for sleep. If, following the relevant relaxing activity, the individual has to once more galvanise themselves in order to move location to their place of sleep, this seems to undermine its purpose. We have good reasons, then, to think that individuals should be able to perform the relevant activities in a single location.

In addition to this, the place in which an individual does these things needs to be the same place, over a period of time. This is to provide basic stability: to prevent individuals constantly having to negotiate changes in their place of habitation, something that would undermine their ability to develop and exercise a plan of life. We might also think that this place is somewhere where individuals should not experience too many constraints on doing what they wish: part of what constitutes relaxation, we might think, is the ability to do activities of one's choosing. Consequently, the right to use that is justified is an open-ended right, not a right that only permits the use of a living space for a particular purpose or set of purposes.<sup>xv</sup>

Finally, individuals have a right to use a living space of a certain size and of a certain quality. Some of the relevant requirements of quality have to do with the importance of housing for basic health – for instance, housing should not be damp or unsanitary. With respect to other aspects of housing, such as size and quality of furnishings, it may be that we ought to use accepted standards from the country in which the right is to be implemented. I do not discuss

this issue further here, although in discussing the case of the UK, I draw on housing quality standards provided by UK legislation.

**ii. The right to possess housing**

I now turn to justify the inclusion of a right to possess, a right to exclusive physical control, as part of a basic right to housing. I argue that individuals should have a right to the exclusive physical control of a self-contained living space.

It is fairly straightforward to argue that an individual should be able to exclude the majority of other persons from their living space: if any other person can enter one's living space as they wish, one's basic safety and security is compromised. However, these considerations do not rule out a right to housing understood as nothing more than a right to be communally housed. At present, many share housing with others, often with relative strangers, without their basic safety being called into question.<sup>xvi</sup> Arguments from safety and security, then, justify at best some kind of jointly held right to possess, of the kind exercised by those who live in shared housing.<sup>xvii</sup>

In what follows, I argue that one's basic right to housing cannot be furnished by the provision of communal housing arrangements. Individuals are entitled, as a matter of basic right, to exercise a right to possess over a self-contained living space. To show this, I consider two scenarios in which an individual applies to the state for housing, and is furnished with housing in the form of a minimally communal housing arrangement. I argue that it is unacceptable for the applicant's right to housing to be satisfied in this way.<sup>xviii</sup> The scenarios are:

- (a) *Shared Bedroom*. In *Shared Bedroom*, the state provides for the individual's housing needs by offering them a space in a flat, which they will share with another person. These two individuals share a bedroom, living room, kitchen, and bathroom.
- (b) *Shared Flat*. In *Shared Flat*, the state provides for the individual's housing needs by offering them a space in a flat, which they will share with another person. These two individuals have their own bedrooms,<sup>xix</sup> but share a living room, kitchen, and bathroom.

It might be thought that the most promising way to justify a right to possess over a self-contained living space is by appealing to privacy interests.<sup>xx</sup> However, as I show below, appealing to privacy interests cannot provide us with such a justification, since it only shows us that *Shared Bedroom* is unacceptable, not *Shared Flat*. One might be tempted, of course, to



conclude from this that all that *can* be justified with respect to housing is the exercise of a right to possess over a private room, not a self-contained living space. However, I will argue that this is not so: if we appeal to the individual's interest in freedom of association, specifically, their interest in freedom of intimate association, we can show why both *Shared Bedroom* and *Shared Flat* are unacceptable.

A privacy argument for a right to possess can most plausibly be constructed through appeal to the interest in secrecy.<sup>xxi</sup> An interest in secrecy is an interest in not having certain kinds of information about ourselves fall into the hands of others, in particular certain kinds of private or sensitive information. The importance of such an interest, from the perspective of autonomy, can be understood as follows. Secrecy protects individuals from the humiliation of having sensitive personal information shared with those with whom they would rather it not be shared; such humiliation undermines one's faith in oneself and one's projects.<sup>xxii</sup> If we know that others cannot obtain information about certain of our habits, behaviour and pursuits, this allows us to proceed with these activities uninhibited allowing for relaxation, and the expression of individuality that is closely linked to self-determination.<sup>xxiii</sup> Knowledge that others cannot obtain information about our relationships – close or otherwise – is important for them to flourish.<sup>xxiv</sup>

Considering *Shared Bedroom* and *Shared Flat* from the perspective of the interest in secrecy, it seems clear that such an interest is violated in *Shared Bedroom*. In *Shared Bedroom*, each sharer has access to highly sensitive and personal information about the other. This is because neither sharer has continuous access to a private room; consequently, the other can potentially witness, and as a result come to know about in great detail, almost all the acts they are likely to perform in the home. These include the acts associated with highly sensitive and personal information such as having sex, having very personal conversations, expressing profound or difficult emotions (grief, panic, or despair, say), performing private hobbies. It is therefore difficult to see how the secrecy of each is not compromised.

In *Shared Flat*, however, it is much less clear that secrecy is compromised. The two sharers in *Shared Flat* do, clearly, have a privileged kind of epistemic access to one another. When two people share a flat, that is share an entrance, hallway, kitchen, living room and bathroom, and share it over a period of time, they are likely to come to know a significant amount about one another. Some of what they are likely to come to know is information we think of as sensitive, or personal. They will know, for instance, who the other person is sleeping with, and what kinds of relationships they are having (a string of one-night stands, for instance) – although they will not witness the sex, or hear the details of intimate conversations. They

also, will know about the “non-public” side of the other person – what they are like when relaxed, in the home, when their public face is absent. However, it is difficult to see the fact that each sharer has access to this kind of sensitive information as, in itself, constituting a violation of the interest in secrecy. It is access to the highly personal or sensitive information discussed in reference to *Shared Bedroom* above that appears to raise concerns from the perspective of this interest. In *Shared Flat*, however, this access is lacking, since each sharer has a private room.

This means that an appeal to privacy interests does not justify the exercise of a right to possess over a self-contained living space. What does justify the exercise of such a right, I will argue, is appeal to an interest in freedom of intimate association.

Freedom of association is an important, basic, liberal freedom. It is an individual’s freedom to enter into relationships with others, to refuse to enter into them, and to leave them once they have begun (Alexander, 2008: 1). It is violated if we force people to associate with those they do not wish to, or prevent individuals from associating with those they do wish to (Alexander, 2008: 1). Freedom of *intimate* association is the liberty of the individual to enter into (or refuse to enter into, or leave) intimate relationships such as friendships, romantic, and sexual relationships (White, 1997: 381). It is a freedom, importantly, that we take to merit particularly stringent protection. This is because of the close relationship between protecting it and protecting autonomy, since our intimate relationships with others have a profound effect on who we are, and what our fundamental commitments are (White, 1997: 377-379, 386).

Below, I will argue that in both *Shared Bedroom* and *Shared Flat*, freedom of intimate association is not adequately protected, because both of these scenarios involve the sharers in a form of intimate association. A commitment to protecting freedom of intimate association requires that individuals are able to refuse to engage in forms of intimate association. If, however, the only housing available is of the *Shared Bedroom* or *Shared Flat* type then they cannot, realistically, refuse it.

In order to argue this, it first needs to be understood why living with another person in the kind of communal arrangements involved in *Shared Bedroom* and *Shared Flat* counts as a type of intimate association.

Such an idea might initially be resisted on the grounds that for an association to count as intimate it must involve a loving or caring relationship.<sup>xxv</sup> However, there is good reason not to understand intimate associations in this way: doing so would mean we no longer counted freedom of sexual association as part of freedom of intimate association, since sexual relationships do not necessarily involve love or care.

Grasping three important features common to *Shared Bedroom* and *Shared Flat* makes it clear why we should view these scenarios as involving intimate association. Before setting these out, however, it is worth noting that we do already closely associate co-habitation and intimacy: those in serious romantic and caring relationships typically cohabit, and this cohabitation is understood as an important part of the project of building a joint life with another person.

The first relevant feature is that the co-habitation in both of these scenarios involves continuous and considerable close physical association with another person, since the sharers occupy a confined physical space, a flat, with one another, and will encounter each other frequently as they move between rooms, to and from the exit, use the living room, and so on. Continuous close physical association, we might think, in itself constitutes a type of intimate association.

Secondly, the co-habitation common to *Shared Bedroom* and *Shared Flat* involves each sharer having privileged epistemic access to the other. This is the access mentioned in the discussion of whether privacy was protected in *Shared Flat*, above: access to personal and sensitive, but not what I have called “highly” personal and sensitive information about the other person.

In both *Shared Bedroom* and *Shared Flat* the two sharers will come to know facts about the other’s life-style and relationships that are not known to, say, that other’s colleagues, or strangers (or perhaps even their family and friends), for instance, who the other is sleeping with; what kinds of relationships they are having; how that person interacts with their partner in a home environment. They will come to know facts about what we might call the “non-public” side of the other person, since a person’s home is a primary venue for this non-public side.<sup>xxvi</sup> When at home, we engage in behaviours we would not engage in with work colleagues or strangers such as wandering around in our pyjamas, or without make-up; we allow different sides of our personality to emerge – perhaps at home we are outspoken whereas our public face is much more guarded; we also allow emotional states, such as tiredness and vulnerability to emerge that we do not elsewhere. Since, as noted above, the two sharers will encounter one another frequently within the flat, they will encounter one another whilst this “non-public” side is visible. Consequently, they will come to know about each other’s non-public side and, over a period of time, be able to build up a considerable picture of it.

It was concluded above that this kind of privileged epistemic access is not privacy-violating. However, the privacy literature has long noted that the kind of information others have about us is at least partly constitutive of the kind of relationship we have with them.<sup>xxvii</sup>

What is partly constitutive of an intimate relationship is possession of the kind of knowledge that the two sharers in both *Shared Bedroom* and *Shared Flat* will have. That is, knowledge of private or personal details about another person's lifestyle, relationships and behaviour, and, knowledge of their non-public side – their non-public emotional life, the non-public manifestation of their personality, and so on.<sup>xxviii</sup>

It might, of course, be argued that a relationship cannot be classed as intimate without the sharing of highly personal or sensitive information, of the sort that those in *Shared Flat* lack access to. This, however, would be a mistaken view: those in intimate relationships need not share everything with one another. Close friends, for instance, may not know the details of each other's sex lives, or necessarily witness each other in moments of deepest emotion.

The third relevant feature is that, in the cohabitation arrangements in *Shared Bedroom* and *Shared Flat*, each sharer does not simply come to know about, but interacts extensively with the non-public side of the other person. Again, since a person's home is a venue for each person's non-public side, and since the two sharers will, in virtue of sharing the communal spaces in the flat, encounter one another frequently, each will engage with the other when they are tired or vulnerable, when they reveal a different side of their personality, and so on. Engaging with another person when their public side is emergent, as well as simply having knowledge of that side, is a significant feature of intimate relationships.<sup>xxix</sup>

I noted above that on standard accounts of freedom of association, freedom of intimate association gets particularly stringent protection because of the close relationship between its protection and the protection of autonomy. Our intimate relationships have a profound effect on who we are and what our fundamental commitments are (White, 1997: 377-379, 386). The argument that *Shared Bedroom* and *Shared Flat* involve intimate association is strengthened by the observation that each sharer is in a position to significantly influence the other and the other's fundamental commitments.<sup>xxx</sup> There is, of course, simply the frequency of interaction in *Shared Bedroom* and *Shared Flat*. More importantly, when one person consistently has their guard down with another this makes them particularly susceptible to their influence, and when one person reveals their non-public side to another person the knowledge that other person has of them gives them better grounds for exerting influence. Finally, possessing sensitive information about another person and having access to them when they are, for instance, tired and vulnerable, makes it easier to influence them negatively – to hurt or humiliate them in ways that undermine their view of themselves or their fundamental commitments.

Having shown that the living arrangement involved in *Shared Flat* involves intimate association, we are now in a position to see why this scenario is unacceptable.<sup>xxxi</sup> In this case,

an individual cannot, realistically, refuse to engage in a form of intimate association. If we are committed to the importance of freedom of intimate association, we should be concerned about a state of affairs in which an individual has no option but to engage in a form of intimate association. In such a state of affairs, their freedom *not* to associate is not being adequately protected. Note, too, that it does not matter if the person seeking housing is given some choice about who they are to share housing with. This is because a commitment to protecting freedom of intimate association implies that individuals should be able to refuse this kind of association full stop. To compare, we still have a breach of intimate association if person A is forced to marry another person, but is given some choice over who that person is.

Let me now consider some objections to this line of argument. First, it might be argued that there is little difference between the two sharers in *Shared Flat* and two office mates, or two neighbours – yet we would not see office-mates or neighbours as involved in intimate associations. There are, however, significant differences here. Firstly, it is within the home, I have argued, that an individual’s “non-public” side emerges. It is therefore because they share communal spaces in the home that the two sharers have privileged epistemic access to, and get to extensively engage with, each other’s non-public side. Neither office mates nor neighbours, therefore, have anything like the same access to, or ability to engage with, each other’s non-public side, since they do not frequently observe and interact with each other within the home. Secondly, whilst a neighbour may have some epistemic access to facts about their neighbour’s lifestyle and relationships (perhaps, they smell what they are cooking, observe who visits them, overhear raised voices), their access is still fairly limited compared to that of a flat-mate. They cannot, for instance, observe (as a flat-mate can) what someone is like when they are relaxing at home with their partner, or gain knowledge of the precise nature of the relationship each visitor stands in to their neighbour.

A second concern is that in *Shared Flat*, each sharer has the opportunity to avoid intimate association. This is because, each could simply stay in their bedrooms, or adopt a policy of not presenting their ‘non-public’ side in the communal areas of the flat.<sup>xxxii</sup> If they did this, the other sharer would lack privileged epistemic access, and would not be able to engage with their non-public side. It might also be argued that some people who share flats do, in fact, behave in this way; consequently, I mischaracterise flat-sharing. Let me respond to the concern about mischaracterising flat-sharing first. Whilst cases of flat sharing may occur in which sharers stay in their bedrooms (and so on), the arguments above are based on making a reasonable assumption about patterns of usage of a shared flat – in particular, that the sharers will use the communal spaces for their relevant purposes, and that they will behave whilst at

home as if they are at home, namely, by allowing their non-public side to surface. In response to the concern that each sharer has the opportunity to avoid intimate association, the relevant response is that this is not a satisfactory kind of opportunity. The sharers have the opportunity to refuse intimate association only through significant restriction of their ability to rest and be at leisure – an ability the right to housing is supposed to protect. They either cannot use the communal spaces to rest and be at leisure, but must remain confined to their rooms, or they cannot treat their home as somewhere where they can let down their guard or take off their public face. Letting down one’s guard, and taking off one’s public face, are closely associated with relaxing and being at leisure.

Finally, it might be objected on different grounds that the individual seeking housing in the *Shared Flat* scenario does not, strictly speaking, have no option except to enter into an intimate association. They could refuse state housing assistance, and either go without housing, or go without housing of the required minimum quality. Again, however, what seems important here is that the individual has no acceptable alternative<sup>xxxiii</sup> to intimate association: their choice is between decent housing that involves intimate association, and not being housed decently. Given the important interests at stake when it comes to having access to decent housing, being without it is not an acceptable alternative.

### **iii. The Right to Manage**

I now turn to consider why individuals should have a right to manage their living spaces. The justification here follows naturally from the justification for the right to possess. A right to manage with respect to a living space, to recall, is a right to admit others into that living space, and to exercise some control over what they do whilst they are in that space. This right is justified by the other aspect of freedom of association: the liberty to be free to associate intimately with chosen others. Once it has been established that individuals have a right to use and a right to possess some living space, it might be thought that a right to admit others follows naturally, ensuring that individuals can engage in the kind of intimate association that is inviting another into one’s private space.<sup>xxxiv</sup>

### **iv. The Right to Security, No Absence of Term, Minimum Term Length**

Let me now turn to the justification for the right to security and the right to a minimum term length. I have stated above that the minimum term length for the right to housing is three years. I will also give a justification for why there is no *absence of term* on a right to housing – since some might want to argue that rights to housing ought to be permanent rights.

A right to security, in the context of ownership rights, is an immunity against expropriation – the owner, to paraphrase Honoré (1987), in virtue of possessing this right can expect to remain owner of the item in question for as long as they choose, barring circumstances such as insolvency. In the context of lease rights, a right to security is not an immunity against expropriation in this sense; it is a right to continue to exercise the other “sticks” in the bundle over the item in question, for the duration of a tenancy or lease, barring circumstances such as violation of the tenancy agreement. The right to security does not imply a particular length of term; however, the reasons why there should be a right to security also sets a lower limit on a length of term.

Why should individuals have protections against being removed from their housing before the end of their lease? The answer is that individuals have a fundamental interest in being able to maintain a stable personal environment, which implies that they should not have to change their place of habitation too frequently. If individuals do have to change their place of habitation too frequently, their autonomy will be severely compromised because their mental attention will be focused on negotiating continual changes in their personal environment. This interest in stability is sufficiently important that it justifies a general presumption against tenant eviction during the period of tenancy, for almost any reason.

I would suggest that a minimum length of term for tenants should be around three years.<sup>xxxv</sup> The selection of this length is, of course, somewhat arbitrary. I do, however, want to resist the claim that individuals have a basic right to very long tenancies (tenancies, say, of more than a few years) or could tolerate significantly shorter tenancies (say, under a year). This is because it seems, respectively, that people *can* negotiate changes in their personal environment without serious consequences for autonomy if these do not happen too frequently, and because to have to move house more than once a year would certainly be highly disruptive. This is also why there is also no absence of term included in the set of lease rights.

This concludes my argument for the claim that individuals should have a basic right to exercise lease rights over a self-contained living space. I now turn to consider further features of the right, and an objection.

#### **v. Further features, and objection**

Two features of the right to housing remain to be mentioned and an objection addressed.

Firstly, I have not yet discussed the question of whether individuals are entitled to exercise their right to housing in a particular place. However, it seems straightforward to claim that if the right to housing is meant to protect autonomy, then individuals ought to be able to

exercise the right within reasonable reach of where their central plans and projects (for instance, their employment) are located. This does not imply, however, that individuals are entitled as a matter of basic right to live in a very specific location that they happen to prefer, if other locations are also within reasonable reach of their central plans and projects.

Secondly, I have so far only discussed individuals as the bearer of the right to housing. However, it seems clear that individuals should be entitled to live with their partners, families, and with those with whom they are in caring relationships more broadly, and should be provided with housing of a sufficient size to accommodate the whole unit.

Finally, it might be objected that a right to housing ought to be understood as a right to own housing. An argument along these lines might be made based on a concern about domination. Where individuals lease housing, it might be argued, they are at the mercy of a landlord, who could use their power as a basis for ill-treatment. Whilst, however, domination by landlords might be a concern in existing rental markets where tenants lack important legal protections, such a concern is misplaced in a context in which the state is committed to the protection of citizens' basic right to housing. In such a context, tenants have a right to security, which severely restricts landlords' ability to evict. Tenants are entitled to live for a minimum of three years in one place. If they have to move after this length of time they have a basic right to access to new housing in the required location. Consequently, an argument for right to own housing made on the basis of a concern about domination is unsuccessful.<sup>xxxvi</sup>

## **5. Implications for the UK**

This paper began by noting that the UK is currently experiencing a housing crisis, about which political philosophers have had little to say. Let me briefly spell out the implications of a commitment to protecting this right, for the UK housing situation.

The implication of my discussion above is that anyone who lacks the resources to actually exercise lease rights over a self-contained living space ought to be viewed as having a rights-based claim on the state to be provided with the relevant kind of housing or with the resources that are required to be able to access this housing on the private market.

This means that anyone who is (a) homeless; (b) living in low quality housing;<sup>xxxvii</sup> (c) living somewhere with a tenancy of a length less than three years; or (d) living somewhere that does not count as "self-contained" (for instance, in shared housing) as consequence of a lack of resources, or as a consequence of there being a lack of the available good (for instance, a lack of available rental housing with three year tenancies), ought to be viewed as having such



a rights-based claim on the state. If the state were unable to or did not provide the relevant housing and/ or resources to those who made such a claim, then their right to housing would be violated.

In the UK, many are housed in ways falling short of what is required by the right to housing. 29% of those who privately rent and 14% of social housing tenants live in housing not classed as “decent” (Department for Communities and Local Government, 2016). 114,790 households applied to their local authority for homelessness assistance in 2015/16, an 11% rise since 2010/11 (Crisis). 14% of the private rental sector and 11% of the social rented sector consisted of multi-person households (more than one family, or more than one ‘lone person’ sharing housing) (Department for Communities and Local Government, 2016). Although this figure does not tell us how many inhabit multi-person households because they lack the resources to live alone, the recent rise in people sharing housing for financial reasons is a popularly well-documented phenomenon.<sup>xxxviii</sup>

Furthermore, recent UK governments have done little to ensure that all can live in housing consistent with the basic right to set out above. The current housing crisis is thought to be caused by the failure of successive governments since the 1970s to ensure that sufficient new homes are built (Halligan, 2015). Local councils in the UK have been accused of failing to ensure that rental properties are up to the quality standards set for such properties (Wall, 2016). Only recently has the present government suggested moves towards a rental market that is more consistent with the satisfaction of a basic right to housing as set out above, indicating that they would incentivise landlords to provide three-year tenancies (Helm, 2017). Finally, there are, at the time of writing, 1.8 million households waiting for a social home, meaning that large numbers of those whom the UK state sees as entitled to housing support (normally because of low income) end up in subsidised rental housing, which is more likely to be of poor quality and, unlike social housing, may not provide the security set out by the right to housing (Shelter). Consequently, then, the UK is in a worrying situation with respect to satisfying its citizens’ basic right to housing.

## **6. Conclusion**

The task of this paper has been to set out and defend an account of a basic right to housing that can be taken to apply, in the first instance at least, in something like a Western liberal society. Accepting this account has the following important implication: that those who live in shared housing because they lack the resources to live alone are having their basic rights violated.

The right, as defended, may be viewed as a demanding one.<sup>xxxix</sup> That a proposed right is demanding should not, however, be viewed as a concern if protecting this right is what is necessary to protect people's fundamental interests – precisely what I have argued, above. Using such a right to evaluate troubling present-day housing situations such as that in the UK does tell us, somewhat depressingly, that things are even worse than we thought – many whom we might have considered to be in a reasonable state of affairs with respect to their housing are in fact having their basic rights violated. However, the fact that the arguments of this paper issue in a depressing conclusion should not lead us to think that they issue in false one. Indeed, it would be of grave concern if, in an attempt to avoid such a conclusion, we came to view people's claims to have their basic interests protected as excessively demanding.

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<sup>i</sup> Between January 2011 and July 2017, private rental prices in Great Britain increased by 15.0% (Office for National Statistics, 2017). Between 2014 and 2015, 29% of those who privately rented and 14% of social housing tenants lived in housing not classed as “decent” (Department for Communities and Local Government,

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2016). According to the housing charity Shelter, there are currently 1.8 million people waiting for a social home.

<sup>ii</sup> I have discussed something like this set of rights in Wells (2016). At the end of that paper, I suggest that a Rawlsian account of justice may plausibly include a basic positive right to lease housing, but do not provide any further specification or defence of such a right. Note, too, that the arguments of that paper are distinct from the arguments of this.

<sup>iii</sup> It should be said that it is not Shue's aim to develop such an account. See Shue (1996: xi).

<sup>iv</sup> A common general criticism of minimal accounts of socioeconomic rights is that they are "unacceptably restrictive." See Morales (2017).

<sup>v</sup> For other more demanding accounts see Copp (1992) and Fredman (2008).

<sup>vi</sup> Fabre (2000: 36) only notes that in the UK, for instance, we require more indoor space for reasons to do with climate and the way we value privacy.

<sup>vii</sup> It might be thought that the property literature would discuss a basic right to housing. However, there is in fact little specific discussion of a basic positive right to housing. A notable exception is Waldron (1988) who argues that we have a basic right to *own* housing.

<sup>viii</sup> In this respect my account is consistent with the accounts of socioeconomic rights theorists like Copp (1992).

<sup>ix</sup> On this see Honoré (1987).

<sup>x</sup> See note ii.

<sup>xi</sup> For further discussion of the distinction between renting and ownership, see Wells (2016).

<sup>xii</sup> This special status consists, for the purposes of the present account, in the protection of basic rights having special priority over other social and economic goals. This is broadly the Rawlsian view of basic rights. See Rawls (2001).

<sup>xiii</sup> I have not said anything here about the controversial nature of socioeconomic rights. However, if we want to persuade sceptics that there are such rights, it makes sense to argue that they are necessary to protect the kinds of interest already taken to underpin other basic rights. Existing socioeconomic rights theorists ground such rights partly in an appeal to autonomy – for instance, Fabre. For further discussion of common criticisms of socioeconomic rights see Copp (1992).

<sup>xiv</sup> Thank you to an anonymous reviewer for raising this concern.

<sup>xv</sup> The distinction between a right to use something at one's discretion, and the right to use something for a specific purpose or purposes is made by Harris (1996).

<sup>xvi</sup> It may be that where children are involved, concerns about safety and security alone yield a justification for a family having rights of exclusive use over their housing. However, this still leaves a gap in the argument for all other cases.

<sup>xvii</sup> Arguments for safety and security do, however, imply that those who jointly hold the right to possess are a fairly stable constituency, and not a quickly-changing succession of people.

<sup>xviii</sup> I make the assumption here that if these communal housing arrangements are unacceptable, then other communal housing arrangements (involving more people, for instance) are unacceptable on the same grounds.

<sup>xix</sup> Assume that each sharer has a duty not to enter the bedroom of the other without consent.

<sup>xx</sup> In the privacy literature itself, rather surprisingly, there is little discussion of whether protecting privacy interests requires positive rights to housing. More generally, as Anderson (2008: 83) points out, discussions of the right to privacy do not make clear whether this right is negative or positive, nor whether, if positive, society must "furnish its material basis."

<sup>xxi</sup> It might be thought we could appeal to interests in solitude and seclusion. However, arguably protecting these interests could be done without even providing individuals with continuous rights over a private room. See Munzer (1990: 95).

<sup>xxii</sup> This is the Rawlsian view. See Rawls (2005: 319).

<sup>xxiii</sup> See, for instance, Gavison (1980: 447).

<sup>xxiv</sup> Accounts that link privacy with intimate relationships are offered by Rachels (1975), Inness (1992), Fried (1970), Gerstein (1978), and Gavison (1992).

<sup>xxv</sup> For an account of intimacy with these kinds of implications for how we understand intimate associations see Inness (1992), who defines an intimate act as one drawing its meaning from love, liking, or care.

<sup>xxvi</sup> As noted in the paragraph below and endnote xxviii, in making the connection between revealing certain facts, and one's "non-public" side, and intimate relationships, I draw on Rachels (1975).

<sup>xxvii</sup> See, in particular, Rachels (1975). Such discussions also emphasise that this connection is one reason we have to be concerned about having control over others' access to ourselves and information about ourselves.

<sup>xxviii</sup> See Rachels (1975).

<sup>xxix</sup> Again, see Rachels (1975).

<sup>xxx</sup> Thank you to Christopher Bennett for prompting me to think about this point.

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<sup>xxx</sup> Note that my argument is not that living alone is in every respect superior to living in flat share; it is that if one has no option but to live in a flat-share, one's fundamental interest in freedom of association is not protected, and this is unacceptable. Thank you to an anonymous reviewer for raising this point.

<sup>xxx</sup> Thank you to an anonymous reviewer for raising this concern.

<sup>xxx</sup> On this see Olsaretti (2004).

<sup>xxx</sup> Because the right to manage is justified because it protects the freedom *to* associate, such a right does not imply rights of alienation such as the right to sublet.

<sup>xxx</sup> This is the current minimum length of residential tenancy in France.

<sup>xxx</sup> Essert (2016), who justifies a positive entitlement to housing on the basis that housing is necessary to ensure that individuals are not dominated, also appears to think that secure tenancy rights are adequate in this respect.

<sup>xxx</sup> Since 2004, public housing in the UK is meant to meet the Decent Home Standard: that is, meet certain health and safety standards, be in a reasonable state of repair, have relatively modern facilities and services, and have effective heating.

<sup>xxx</sup> See, for instance, Collinson (2015).

<sup>xxx</sup> Thank you to an anonymous reviewer for prompting me to discuss this point.