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SPECIAL ISSUE ARTICLE

The Homelessness Reduction Act 2017: furthering not fracturing marginalisation of those experiencing homelessness

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Abstract
The Homelessness Reduction Act 2017 represents the most significant change to the rights of homeless people in England for decades. Through an analysis of the history of homelessness legislation in England, but focusing on the 'ground-breaking' 2017 Act, this paper explores how the homeless population is represented and 'constructed' in this new legislation and what this tells us about the place of homeless people in our society. In so doing, this paper exposes how the 2017 Act – a state instrument of apparent homelessness prevention – can be read and understood as contributing to rather than obviating the marginalisation and social exclusion of homeless people.

Keywords: housing law; homelessness; marginalisation; social exclusion

1 Introduction

Homelessness, in recent years, has risen up the political agenda in England in policy terms, but also in capturing the public conscience; the latter is perhaps best epitomised by the outpouring of collective grief surrounding the Grenfell Tower fire tragedy of 2017 and the increased public awareness of homelessness during the COVID-19 pandemic.[1] In 2019, the number of homeless households in England was up 46 per cent on 2010 (290,000 households were accepted as homelessness or threatened with homelessness) and, in 2020, an estimated 10,000 people were sleeping rough on any one night, up by over 150 per cent in a decade. Moreover, it has been reported that 70,000 additional households have become homeless as a result of the COVID-19 pandemic so far, with an ongoing and lasting legacy of homelessness anticipated to flow from the impact of the virus.[2] Crucially, homelessness both causes and is the cause of marginalisation and social exclusion. To be homeless is to be excluded from society. Homelessness, and poor-quality and insecure housing all result from or lead to the detachment of citizens from community as well as from family, and from the welfare, labour and housing markets. Homelessness results in the most vulnerable individuals quite literally being pushed to the margins of society, falling outside the protective net of employment, of health care, of welfare, of 'home' and even living on the street. There is a growing appreciation that, while welfare policies can counter social exclusion and marginalisation, they can also contribute to it. In the housing arena, work by Pawson and Kintrea (2002) and others has identified, for example, how social-housing-allocation policy can actively generate social exclusion.

[1]There has been much legislative activity from 2010 including the Localism Act 2011, the Housing & Planning Act 2016 and the new Homelessness Reduction Act 2017, on which see Bevan (2014) and Bevan and Laurie (2017). See COVID-19 initiatives such as the 'Everyone In' scheme and the recent Ministry of Housing, Communities & Local Government policy paper, *The Charter for Social Housing Residents: Social Housing White Paper* (2021).

[2]See Fitzpatrick et al. (2021) and data compiled for *The Observer* newspaper, 9 January 2021.

Drawing on the history of homelessness legislation in England but focusing on the recently enacted and 'ground-breaking' Homelessness Reduction Act 2017,[3] this paper exposes how the 2017 Act – a state instrument of apparent homelessness prevention – can be read and understood as contributing to rather than obviating the exclusion and marginalisation of those experiencing homelessness.[4] The first and, to date, most detailed report into the operation of the 2017 Act (Local Government & Social Care Ombudsman, 2020) has revealed profound weaknesses in compliance by local authorities with the new law and identified key failings in how local councils were implementing its duties, which, it found, ultimately undermines the core ambitions of the Act. Against this backdrop, this paper argues that the 2017 legislation, once set within the context and history of homelessness legislation in England, can be seen as furthering rather than challenging or 'fracturing' marginalisation of the homeless population.

The paper proceeds in four parts. After this short introduction, section 2 examines the concepts of social exclusion and marginalisation, and their relationship with homelessness. Section 3 introduces Jacobs, Kemeny and Manzi's (1999) minimalist/maximalist approach to homelessness discourse as a productive analytical lens through which to explore social exclusion in homelessness law and policy before this framework is deployed, in section 4, to critique how those experiencing homelessness are represented and 'governed' under the Homelessness Reduction Act 2017. Through an examination of the central provisions of the 2017 legislation, it is argued that the new law shifts spasmodically, oscillating between and responding to both minimalist and maximalist instincts and impulses. It is contended that, in key respects and counter to the stated ambitions of the new law, the 2017 Act advances a minimalist agenda, promoting advanced liberal notions of self-work, of ethical incompleteness, and offers a construction of those experiencing homelessness according to notions of threat and disengagement. The Act projects images of homeless people as pathologised and uncooperative, thus furthering as opposed to fracturing long-standing social exclusion of this vulnerable population. In sections 5 and 6, the paper draws together its analysis and concludes by musing on how more dynamic, person-centred homelessness legislation could genuinely achieve the preventive objectives of the 2017 Act and promote social inclusion.

2 Marginalisation, social exclusion and homelessness

The concepts of marginalisation and social exclusion have long been contested and have provoked intense debate amongst academics across diverse disciplines seeking to unpack and define these terms, identify their limits and probe their potentiality as theoretical frames. At its most fundamental level, marginalisation and social exclusion describe a lack of social inclusion – an othering, a forcing of individuals or groups out from the protective centre to the borders of society. Allied to this is the undeniable, if not always easy to delimit, connection between social exclusion and the notion of poverty. As Room (1995, p. 105) has helpfully explained, poverty focuses on *distributional* issues (i.e. a lack of resources) while social exclusion focuses on *relational* issues and connotes 'inadequate social participation, lack of social integration and power'. Expressed differently, Marsh and Mullins (1998, p. 752), drawing on notions of the political, social and civil rights of citizenship as explored by T.H. Marshall (1950), summarise social exclusion as 'the failure of certain citizens to enjoy full citizenship rights'. Thus, as Room has explained, where citizens are prevented from securing their social citizenship rights, they 'will tend to suffer processes of generalised and persisting disadvantage and their social and occupational participation will be undermined' (Room, 1995, p. 7). Before this paper moves on to explore whether the 2017 homelessness law operates as an accelerator rather

[3]This paper focuses on the position in England. Housing is a devolved issue and thus law and policy have developed quite discretely in Scotland, Wales and Northern Ireland, and these devolved matters fall outside the scope of this work.

[4]The terms 'those experiencing homelessness' and 'homeless people' are used in this paper in preference to 'the homeless', as the latter can be construed as itself contributing to the marginalisation of those living through homelessness: see e.g. Nichols *et al.* (2018).

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than an alleviator of marginalisation of those experiencing homelessness, the relationship between homelessness and social exclusion must be unpacked.

Homelessness and social exclusion are commonly and fruitfully explored together in academic and policy debate. Homelessness denotes the state of not having a home or, more precisely and legalistically, having 'no accommodation available for … occupation'.[5] In this sense, homelessness is the totemic example of living on the margins – the very epitome of what it means to be excluded from enjoyment of full citizenship rights. Street homelessness, in particular, is the quintessence of what it means to be cut off from society, quite literally out in the cold. Those without access to housing find themselves not just locked out of the housing market, but also often excluded from family, from the labour market, from education and health-care services, and from what Anderson (1999, p. 156) has described as the 'wider aspects of well being in social participation taken as "usual" among the majority in society'. To be homeless is to be on the fringes of society, to be at a social disadvantage and to be socially (and spatially) marginalised. Homelessness can lead to social alienation, damaging repeated cycles of homelessness–rehousing–homelessness and even disenfranchisement and powerlessness. Social exclusion is the 'process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they live' (Silver, 2007, p. 15). This notion of social exclusion as social rupture is particularly apposite in the homelessness context in that it captures powerfully the experience so often recounted by homeless people of being steadily removed from meaningful participation in society as a result of their housing deprivation and routinely feeling invisible even when in plain sight (Walker, 2019). Almost by definition, then, those experiencing homelessness are incontrovertibly the most excluded in our community: socially, politically and spatially.

Increases in homelessness and social exclusion are fuelled by the lack of affordable, secure housing, resulting in the rationing by the state of scarce housing resources (Shelter, 2019), changes to the welfare system (in particular since 2010 and the introduction of Universal Credit on a rolling basis from 2013) (Hickman *et al*., 2017), the lack or otherwise limited regulation of the private- and social-sector housing (Wilson *et al*., 2019) as well as obstacles to accessing housing support (St Mungo's, 2018) and the often uneasy relationship between housing and immigration policies (McKee *et al*., 2021). Thus, the macro-drivers of housing exclusion are a complex amalgam of structural, institutional as well as individual factors. Moreover, housing exclusion is not experienced equally, with particular geographies and demographics suffering disproportionately including the young, BAME groups, low-income households and those in highly populated urban areas (Preece *et al*., 2020; Fitzpatrick *et al*., 2021; Tomas and Dittmar, 1995). We see across the housing landscape as a whole how housing policy and state intervention (and lack of it) are implicated in and responsible for creating the environment in which social exclusion through housing precarity flourishes.

As Somerville (1998, pp. 762, 772) explores, social exclusion involves 'a sense of social isolation and segregation from the formal structures and institutions of the economy, society and the State' and 'social exclusion *through housing* happens if the effect of housing processes is to deny certain social groups control over their daily lives, or to impair enjoyment of their wider citizenship rights' (emphasis). Unpacking this, it can be argued that homelessness contributes to social exclusion in two principal senses: first, in a *direct* sense, in that citizens without access to housing are unable to participate fully in society and thereby are barred from exercising their citizenship rights to the fullest; second, in an *indirect* sense, in that housing confers social capital on individuals and has consequences for social standing, status, class, employment opportunities, social mobility, life chances and social cohesion – all of which those living through homelessness cannot access (Lee and Murie, 1997). Hence, inherent in the very notion of housing provision is the potential for both inclusionary as well as exclusionary impacts: inclusionary if housing is available; exclusionary when it is unavailable.

[5]As defined in s. 175(1) of the Housing Act 1996. On this definition, those staying with friends, sofa-surfing, squatting, living in unfit housing affecting health or in hostels, B&Bs, night shelters and those at risk of domestic violence are considered legally 'homeless'.

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By way of example, the large-scale house-building programmes initiated from 1945 into the 1970s that, despite some academic disagreement as to their precise impact, brought quality and affordable houses to the masses and the associated slums clearance schemes demonstrate *social inclusion* through housing policy. In sharp contrast, the well-publicised unaffordability and poor quality of the burgeoning private rental market seen in the last two decades, falling rates of homeownership and the confinement of the young to 'Generation Rent' in England provide contemporary illustrations of *social exclusion* through housing. Just as the concept of social exclusion is itself ambiguous, shifting and contested, so too are discourses of homelessness, its causes and the appropriate policy and legal responses. The focus of this paper, however, is to ask what role the law plays and, more specifically, what role the Homelessness Reduction Act 2017 plays in this vacillation between housing law and policy as the site of both social inclusion and social exclusion.

3 Minimalist and maximalist discourses of homelessness law and policy

A productive lens through which to explore the relationship between homelessness law, policy and social exclusion is offered by Jacobs, Kemeny and Manzi (1999), who advance an account of homelessness provision in England that distinguishes between 'minimalist' and 'maximalist' discourses. This analysis is instructive in elucidating the interrelationship and contestation of homelessness, social exclusion and marginalisation in providing a rewarding framework through which to examine the extent to which housing law and policy alleviate or contribute to social exclusion. Minimalist discourses engage a narrow definition of homelessness under which those experiencing homelessness are implicated as the cause of their own housing displacement, which, on this view, is the result of their own fecklessness, personal pathology, choices, shortcomings and (in)actions. Policy approaches motivated by and responding to a minimalist discourse of homelessness are those that centre on changing the behaviour of homeless individuals. A minimalist account emphasises the distinction between the deserving and the undeserving homeless applicant, the former being accepted as in need of support with the view that homelessness arises through no fault of their own while the latter is regarded as responsible for their own homelessness as a result of their inappropriate behaviour (e.g. rent or mortgage arrears or antisocial behaviour). Equally, a distinction is drawn between single homeless people who are expected to take responsibility for themselves and for whom broad homeless support would be a disincentive to improve their behaviour and the genuinely 'needy' homeless such as those with young children for whom support should be given. Policy measures premised on a minimalist discourse prioritise and are conditional on acceptance of and 'buy-in' to defined behavioural norms such as employment training requirements and demonstrating a commitment to active job seeking. Additionally, minimalist discourses routinely spring from and are justified on the grounds of financial constraint and of the need for resource rationing.

By contrast, a maximalist homelessness discourse takes a 'structuralist' and broader view of the circumstances and moral blameworthiness of homelessness. Homelessness is defined expansively as capturing any individual with a housing need and anyone without access to appropriate housing – widely construed. Unlike minimalist discourses that fixate on the behaviour of homeless people, maximalist discourses locate the cause of homelessness as structural requiring far-reaching policy intervention by the state. On this view, people become homeless because of a lack of supply of affordable housing, inadequate welfare benefits, poor housing regulation and as a consequence of failures by the state in the provision of social services. On a maximalist conception, rent or mortgage arrears are accepted as arising from structural, economic or social factors such as a loss of employment, illness and relationship breakdown for which the individual homeless person is not regarded as morally blameworthy. Those forced into unemployment and homelessness as a result of the COVID-19 pandemic and its far-reaching socio-economic implications would be construed, on a maximalist account, as lacking moral culpability for the deleterious housing (amongst other) consequences provoked by the global health crisis. Policy measures engaging a maximalist discourse advocate broad housing

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provision without conditionality, restrictions or qualifications that generally limit housing to those can demonstrate a lack of fault for their homelessness.

We might argue that central to Jacobs, Kemeny and Manzi's minimalist/maximalist frame is the question or exercise of the allocation of responsibility for the incidence of homelessness. We can interpret the distinct minimalist and maximalist approaches to homelessness provision as motivated by polarised interpretations of who or what institution should shoulder the responsibility and burden of housing precarity. On a minimalist account, the individual homeless applicant is identified as responsible for their own housing circumstances where, by contrast, on a maximalist account, the state is identified as perpetrating or failing to prevent homelessness in the face of broader structural, social and institutional conditions. Seeing and reading Jacobs, Kemeny and Manzi's minimalist/maximalist framework through this prism of the allocation of responsibility (or perhaps more provocatively the apportionment of moral blame) for the occurrence of homelessness highlights the productivity of this analytical lens and makes the connection between social exclusion and the fundamental, long-standing tension that exists in homelessness law and policy of individual responsibility vs. state responsibility for homelessness.

How, then, are we to construe homelessness legislation and policy in England: as operating according to a minimalist or a maximalist discourse and what can this analytical framework tell us about the Homelessness Reduction Act 2017 and its relationship with the marginalisation of homeless people? This will be explored in the coming sections and, perhaps unsurprisingly, the picture is revealed as mixed and varied. As this paper will demonstrate, homelessness policy from the 1970s to the 1990s and now under the 2017 Act reflects an oscillation between competing minimalist and maximalist discourses, often with minimalist and maximalist provisions operating cheek by jowl in the same legislative instrument. This has particular ramifications for an assessment of the inclusionary and exclusionary effects of the legislation and what this can tell us about marginalisation of homeless people through law. Before we turn, however, to the new legislation under the Homelessness Reduction Act 2017, it is instructive to explore briefly how the broader legislative scheme governing homelessness provision in England, under the Housing Act 1996 and the forerunner to the 1996 Act, the Housing (Homeless Persons) Act 1977, fit into the context of social exclusion and how it should be understood according to minimalist/maximalist accounts of law and policy. Homelessness law did not begin with the 2017 Act and thus we must first examine the 1977 and 1996 legislation.

3.1 The Housing (Homeless Persons) Act 1977

The 1977 legislation (De Friend, 1978; Crowson, 2013) heralded the first statutory definition of homelessness in England and Wales, and imposed on local authorities, for the first time, a duty to house those broadly defined as homeless. Yet the 1977 Act, introduced through a private members' bill, was itself, at its heart, a compromise and arrived only after extensive bargaining between pressure groups, central and local government, thus amply demonstrating 'the playing out of competing discourses' (Clapham, 2008, p. 81). So, while the legislation, on one view, might be seen as a win for maximalist discourses in that it extended state assistance to citizens not previously protected and rooted the definition of homelessness to notions of an absence of accommodation or accommodation that it was 'reasonable' to occupy, strong lobbying from proponents of a minimalist homeless discourse succeeded in implanting deep conditionality into the legislation. Thus, a range of restrictions on qualification for housing support were entrenched in the legislation that sought to bar or exclude certain categories of applicant. The result was that local authorities only owed a homelessness duty if a homeless applicant could show that they fell within the statutorily circumscribed criteria for qualification of 'priority need', 'intentionality' and 'local connection'.

These legislative obstacles that endure today, albeit in amended form, represented a clear victory for advocates of a minimalist approach (including Conservative ministers at the time) who saw these restrictions as necessary to both limit the burdens on local government and ensure that support went to those 'deserving' of help. The 1977 Act therefore granted to authorities considerable latitude

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to reject applicants, seemingly according to an assessment of who was 'deserving' of assistance. Well into the 1990s, much political fervour and many newspaper-column inches were expended seeking to shame and deter so-called 'social security scroungers' (Clarke, 1990) including single women who would, it was claimed, get pregnant to secure housing (Crowson, 1994). Whole groups of homeless people were therefore presented as agents of their own misfortune and the inclusion of 'priority need' and 'intentionality' in particular can be seen as clear examples of the continued potency and prevalence of the deserving/undeserving distinction redolent and so emblematic of the Old English Poor Laws. Largely, women with dependent children were to be regarded as 'deserving' and single homeless individuals as 'undeserving' on the basis that they were fainéant, work-shy or, at least, would be disincentivised if housing support were to be offered. Exclusion from assistance on the grounds of some measure of perceived behavioural defect was therefore resonant in the backdrop to the 1977 law.

3.2 The Housing Act 1996

The Housing (Homeless Persons) Act 1977 was later consolidated into the Housing Act 1996 (Cowan, 1997), which, in key respects, maintained the essential framework of the 1977 legislation. Part VII of the Housing 1996 Act as amended[6] remains the key source and scaffolding of homelessness law in England even after the enactment of the 2017 Act. The 1996 Act builds on but does not overhaul the approach adopted under the Housing (Homeless Persons) Act 1977. Thus, under Part VII, a homeless applicant will only be owed the so-called 'main housing duty' if the applicant is: (1) eligible for assistance; (2) in 'priority need'; (3) not intentionally homeless; and (4) can demonstrate a local connection to the local-authority area.[7] The effect, in the same vein as the 1977 Act, is that the 1996 legislation 'confers legitimacy' (Somerville, 1998, p. 777) on certain individuals who can surmount, in other words jump through, these legislative hoops.

Again, as we saw with the 1977 Act, the provisions of the 1996 legislation operate according to competing maximalist and minimalist tendencies. So, the 1996 Act is maximalist in that homeless applicants who can bring themselves within the circumscribed qualification criteria are entitled to a wide range of support services, advice and ultimately the provision of housing. In this way, the homelessness legislative framework operates, arguably, in a socially inclusive manner. A good example is the categories of 'priority need', which were broadened under the 1996 Act and include pregnant women; those living with dependent children; those who are vulnerable as a result of old age, illness, disability or other reason; and those who are homeless or threatened with homelessness by reason of an emergency (Housing Act 1996, s. 189(1)). These categories were expanded still further in 2002 under the Homelessness (Priority Need for Accommodation) (England) Order 2002 to, additionally, include: sixteen- and seventeen-year-olds not owed a duty as a child in care or as care leavers; those under twenty-one who were in care between sixteen and eighteen; those who are vulnerable as a result as having lived in institutions, including those over twenty-one who have been in care, those who have served in the armed forces, those who have been in prison and those vulnerable as a result of fleeing violence (Homelessness (Priority Need for Accommodation) (England) Order 2002/2051, Arts 3–6). Thus, while 'priority need' is an inherently conditional, gatekeeping, restrictive measure, this broadening of the categories can be seen as a more maximalist approach than that in the 1977 law. The strictness of the 'intentionality' provision under the 1996 Act was also somewhat diluted to favour homeless applicants in that intentionality was now to be equated with purposiveness and a degree of positive action or inaction (Housing Act 1996, s. 191).

[6]The Housing Act 1996 has been amended, inter alia, by the Homelessness Act 2002, Localism Act 2011, Housing & Planning Act 2016 and the Homelessness Reduction Act 2017.

[7]Housing Act 1996, ss. 185, 186, 189, 191, 175, 199, respectively. The main housing duty requires the local authority to provide suitable temporary accommodation to the applicant (and any 'associated person') until such time as the main duty is discharged.

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However, beyond this, the 1996 Act remains a decisively and distinctly minimalist regime in which classic and characteristically minimalist measures such as gatekeeping, filtering-out, exclusionary techniques and those designed to actively limit the obligations owed to homeless people prevail. The qualification criteria therefore positively exclude part or groups of society and thereby contribute to social exclusion. The 'eligibility' condition, which is first and foremost a question of immigration status, is the most blatant example of an uncompromising, socially exclusionary provision under which those subject to immigration control are singled out, disqualified and thereby excluded altogether (subject to limited exceptions).[8] Equally, the requirement that a homeless applicant must not be 'intentionally' homeless is, in effect, a revival (or more accurately a survival) of the fixation of the Old Poor Laws on distinguishing between deserving and undeserving citizens. Unintentional homelessness is to be equated with deservingness; intentional homelessness with undeservingness with heavy undertones that the irresponsible homeless are to be specifically designated as undeserving of assistance. The criterion of intentionality is therefore one designed to cleave between appropriate and inappropriate applicants, or, put differently, to distinguish between the legitimate homeless who are included within the protective net and deserving of assistance and those who are excluded, fall outside the protective net and are pushed to the margins (Cowan, 1997). Finally, the requirement for applicants to prove a local connection is, plainly, another exclusionary measure, on this occasion operating as a geographic constraint on qualification for support – a method of spatial exclusion. This is unsurprising as the general tenor in parliament prior to enactment of the 1996 Act was of the need for financial constraint on local authorities; of expressed concern at those unfairly gaming the system through 'queue-jumping'; that certain groups of homeless were being unduly 'fast-tracked' through the system and were taking precedence over other needier individuals.

The ideology that emerged and informed the provisions of the 1996 Act was therefore a minimalist one: that homelessness assistance should be constrained, that perceived unfair 'special treatment' of homeless people be redressed and, crucially, that any assistance offered should be short-term and not 'life-long' (Department of the Environment, 1995, p. 36). The resultant legislation therefore represents, in large part, a tightening in both the definition of homelessness and in the qualification criteria for support. Coupled with the residualisation of social housing seen most evidently from the 1990s onwards, a dominant, minimalist discourse took hold under the 1996 Act. Homelessness was increasingly presented as a narrow or peripheral social problem to be equated with 'rooflessness', thus marking a clear break from the more permissive, maximalist discourse of the 1960s – a social problem in which universalist understanding of housing provision was undermined and in which the state should play a more limited role, on a short-term basis and only for those genuinely 'deserving' and in need.

4 The Homelessness Reduction Act 2017: operationalising the minimalist/maximalist framework

This section deploys and operationalises Jacobs, Kemeny and Manzi's minimalist/maximalist framework in relation to the 2017 Act (Bevan, 2021; Cowan, 2019; Loveland, 2018)[9] to probe what this can tell us of the marginalisation and social exclusion of those experiencing homelessness in contemporary homelessness law and policy. Given the stated ambitions and indeed the explicit nomenclature of the 2017 Act (namely the reduction of homelessness), one would anticipate the 2017 scheme to operate in a wholly inclusionary manner and that exclusively maximalist measures aimed at preventing housing displacement would dominate the new legal landscape. In part this is true. However, as will be demonstrated in this section, in key respects, this is not how the legislation functions. Rather, this section exposes the overtly minimalist impulses that sit at the heart of the legislation serving as a

[8]The exceptions are provided in Regulation 5 of the Allocation of Housing and Homelessness (Eligibility) England Regulations 2006 SI 2006/1294 (as amended) and explained in para. 7.12 of the *Homelessness Code of Guidance*, MHCLG (February 2018).

[9]The 2017 Act came into force on 2 April 2018 but began life as a private members' bill of Bob Blackman, Conservative MP for Harrow East, who described it as 'the longest and most expensive Private Member's Bill to successfully become legislation'.

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counterweight to the apparent maximalist ambitions of the new law. This section begins by identifying how the 2017 Act might superficially be construed as a maximalist project in both legislative intention and within its 'headline' statutory provisions before turning to locate and explore how the 2017 Act should, in fact, more faithfully be read and understood according to a distinctly minimalist discourse.

The Homelessness Reduction Act 2017 passed into law in April 2018, none other than the fortieth anniversary of the enactment of the Housing (Homeless Persons) Act 1977, and promised a culture change in homelessness law and policy. The 2017 Act (Bevan, 2021; Cowan, 2019), which, like the 1977 law, began life as a private member's bill and followed a lengthy review of existing homelessness law conducted by an independent panel of experts convened by housing charity Crisis in 2015, has been styled as 'the most ambitious reform in decades' (Sajid Javid, then Communities Secretary, 2018). The 2017 Act amends Part VII of the Housing Act 1996 by expanding existing duties and 'bolting on' new legal duties owed by English local authorities to provide a sliding scale of assistance for homeless people and those 'threatened with homelessness'.[10] In essence, the 2017 Act compels local authorities to intervene at an earlier stage to prevent and reduce homelessness. There are five central changes at the core of the 2017 Act: first, a renewed emphasis on the provision of advice to anyone threatened with homelessness (Homelessness Reduction Act 2017, s. 2); second, a new duty to assess eligible applicants and work with them to agree a 'personalised housing plan' (Homelessness Reduction Act 2017, s. 3); third, a new duty on local authorities to intervene to prevent homelessness (the 'prevention duty') (Homelessness Reduction Act 2017, s. 4) accompanied by a widened definition of 'threatened with homelessness' from twenty-eight days (originally under the 1996 Act) to fifty-six days (Homelessness Reduction Act 2017, s. 1); fourth, a duty on local authorities to relieve homelessness (the 'relief duty') (Homelessness Reduction Act 2017, s. 5); and fifth, a new 'referral duty' (Homelessness Reduction Act 2017, s. 10) that places an obligation on public authorities to refer those homeless or threatened with homelessness to a local-authority housing department.

The machinery of the 2017 legislation therefore coalesces around three connected ideas: (1) advice and assessment; (2) prevention; and (3) early intervention – all of which are designed to prevent and mitigate homelessness. On this reading of the legislation, the 2017 Act might be regarded as a manifestly maximalist project in that its enactment is a recognition of the need for greater state intervention into the lives of those facing homelessness, an acknowledgement that the existing homelessness regime alone did not provide sufficient protection and an appreciation of the need to broaden the housing assistance owed by local government. This was conceded in the Explanatory Notes accompanying the Bill's passage through parliament which noted that, under the Housing Act 1996, there was a group of people who were left with little or no support and that there was 'more to be done to ensure that those who are homeless or at risk of homelessness receive consistently high levels of service across the country' (Department for Communities and Local Government, 2017b, para. 6). Indeed, the statutory guidance (to which local authorities are to have regard when exercising their duties under the homelessness legislation) emphasised that the 2017 Act 'requires housing authorities to provide homelessness services to all those affected, not just those who have "priority need"' (Ministry of Housing, Communities & Local Government, 2018, para. 4). It was on this basis that the housing charity Shelter welcomed the legislation as representing an extension in entitlement provided to homeless people and that it placed a renewed focus on homelessness prevention, this support itself an indicator of the seeming progressive, maximalist ambitions of the Act (Shelter, 2018). The introduction of new duties to prevent homelessness, to refer the homelessness to housing departments and the newly broadened definition of 'threatened with homelessness' are surely measures that might be construed as maximalist in nature, premised on a more expansive conception politically and legally of homelessness and a recognition of the wider role that the state can play in reducing homelessness and, consequently, reducing the social exclusion experienced by those living through homeless.

[10]Section 1 of the 2017 Act amends s. 175 of the Housing Act 1996; s. 4 amends s. 195 of the 1996 Act; s. 5 inserts new ss. 189B and 199A; and s. 10 inserts new s. 213B into the 1996 Act. For a closer examination of how the provisions of the 2017 operate, see Bevan (2021), Cowan (2019) and Shelter (2018).

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However, beyond these 'headline' measures, when one probes into the operation of the new law, it is revealed as functioning, in key respects, according to a distinctly minimalist discourse of homelessness. The Local Government & Social Care Ombudsman Report, *Home Truths*, coming two years after enactment of the 2017 legislation, identified key deficiencies in the implementation of the Act including serious delays in offering support to homeless people, failures of communication with applicants already in crisis, evidence of poor practice around the issuing and reviewing of personalised housing plans and councils' 'gatekeeping' of housing services by delaying and, in many cases, actively refusing to consider homelessness applications (Local Government & Social Care Ombudsman, 2020, pp. 5–14). This report provides early and potent evidence of the new law's practical and real-world minimalist interpretation and implementation. Yet, the minimalist impulse can be located within the provisions of the legislation itself. How, then, does this minimalist discourse manifest?

Four key examples from the 2017 Act elucidate this minimalist approach: first, the limited scope of the new law. It is evident on any reading of the legislation that its focus is largely on responding to what might be termed the 'informational causes' of homelessness through the provision of information, advice and guidance to those who are homeless or threatened with homelessness in a bid to assist them to avoid or lift themselves out of housing deprivation. Thus, the approach is minimalist, limited and constrained in large part by a predominant emphasis on information provision. Laudable as this may be, the 2017 law is silent on measures that actively tackle the broader, structural, institutional and social causes of homelessness. While one could argue that this legislation was never intended to meet this purpose, it is notable that a law that was promoted as trailblazing in its preventive ambitions has nothing to say as to the lack of affordable housing, wider supply problems, regulation of the private and social sectors, the poor standard and quality of existing housing stock nor as to housing inequalities or the essential therapeutic interventions that we know are so vital to preventing homelessness. Put differently, the universe of the 2017 Act is inherently narrow in scope and, it is argued, consequently is necessarily thin and minimalist in mentality.

Second, the overarching ideology of the new law can be construed as minimalist. It can be argued that the essential ideology underpinning the 2017 Act is deeply advanced liberal in rationality under which the image of the all-powerful ideal of the social state has given way to the 'enabling state' under which the state is no longer required to provide all the answers but individuals are expected to take responsibility for their own well-being. Rose has explored this form of rationality and 'rule', noting that it rests on notions of the 'activization of the powers of the citizen' (Rose, 1999) as autonomous and responsibilised subjects – activated in their own self-government and self-realisation of their own destinies. Exemplifying this mentality, the 2017 Act reflects a representation, a reimagination of homeless applicants not as passive recipients of housing assistance, but as actively engaged in taking personal responsibility for, to positively participate in and co-operate with local authorities to resolve, their own housing crisis. If housing support is to be given, applicants are required, first, to self-identify as homeless or 'threatened with homelessness', apply for assistance and thereafter submit themselves to assessment and agree to a personalised housing plan that, as we will see, amounts in spirit to a compulsory, behavioural contract. Those experiencing homelessness are therefore constructed as a 'problem' population, warranting intervention, risk assessment and for whom self-work and adherence to defined behavioural norms determine the extent to which support of the state is offered and maintained. The focus of the law is not on maximalist notions of broad entitlement or the structural causes of homelessness, but rather on applicants' behaviour and how this can be re-shaped to allow homeless people to liberate themselves from their own housing precarity to rejoin the private-sector housing marking. This is not just deeply advanced liberal in mentality, but intensely minimalist in its conception of homelessness.

Third, the minimalist underpinning of the new law is further evidenced through the duty on local authorities to conduct an initial assessment and to devise a personalised housing plan. The assessment can be interpreted as targeted at locating and redressing the threat, risk and 'riskiness' of the applicant's behaviour that led to or might lead to their homelessness. Thereafter, the authority will seek

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to agree a personalised plan setting out mandated steps as deemed appropriate in the eyes of the local authority, steps that the applicant must follow (to avoid penalty) and, if not followed, the local authority's obligations to the applicant come to an end and it can withdraw its support. While personalised plans are theoretically designed to respond to an applicant's particular context, in reality, the plan consists of measures of compliance – steps that, if not followed, result in the termination of the authority's duties to that individual. Thus, while the personalised plan details the support (and care) that the applicant can reasonably expect from the local authority, it comprises a veiled threat of retraction of support in the event of non-compliance. This is an acute example of a technology of care operating in parallel with a measure of control aimed at keeping homeless applicants activated, compliant and pliable.[11] Both this initial risk assessment and personalised plan are, therefore, chiefly centred on isolating an applicant's problematic behaviours and devising measures to shift and ameliorate these behaviours. These behaviour-focused exercises are the epitome of a minimalist approach that, whether expressly or tacitly, implicates homeless applicants as the cause of their homelessness through their own personal pathology, choices or (in)actions.

As the housing charity Shelter recently acknowledged, there is mounting evidence of authorities intending 'to give the applicant a long list of [obligatory] steps and end the [prevention/relief] duty if they are not happy with the progress made' (Shelter, 2017, p. 7). This exclusionary tactic is not prohibited in the legislation nor in the accompanying Code of Guidance. The consequence is that the 2017 Act reflects and espouses a redemptive quality that is so resonant of an advanced liberalist mentality of rule – specifically that homeless people can be cleansed, cured of their housing precarity by submitting to defined, obligatory patterns and norms of behaviour. We can usefully draw on the work of Burchell, Gordon and Miller (1991) on the notion of enterprise of the self here: a conception of the human actor as an entrepreneur of him or herself, making choices to further their own interests and self-government. As Gordon (1991, p. 44) explains:

> 'The idea of one's life as the enterprise of oneself implies that there is a sense in which one remains always continuously employed in (at least) that one enterprise, and that it is part of the continuous business of living to make adequate provision for the preservation, reproduction and reconstruction of one's own human capital. This is the "care of the self".'

In this way, homeless people are othered, constructed as marginalised, ethically incomplete, pathologised such that only adherence to mandated gatekeeping steps in the personalised plan can remedy their housing crisis. This has strong resonance with the minimalist instinct that promotes the view that support should be conditional on acceptance and 'buy-in' to defined behavioural standards and norms as a means of demonstrating commitment to self-improvement.

A fourth and final example is the sanctions provisions embedded within the 2017 Act. Section 7 of the 2017 Act provides that if, in the view of the local authority, there has been a 'deliberate and unreasonable failure to co-operate' with the local authority in its attempts to comply with the prevention or relief duties, including failure to follow any of the mandated 'steps' contained in a personalised housing plan, then the housing authority's duties are brought to an end. These are punitive provisions and are highly significant. Calls from housing charities for the sanction provisions to be designated 'an action of last resort' used only in 'an exceptional or extreme situation' such as wilful or sustained refusal to co-operate went unheeded (Shelter, 2017, p. 8). Indeed, in an earlier Draft Code of Guidance, it was even noted that 'prioritis[ing] attending a Jobcentre or medical appointment, or fulfilling a caring responsibility' was an example of an applicant's failure of co-operation (Department for Communities & Local Communities, 2017a, para. 14.51(d)). Crucially, in practice, these non-cooperation provisions promote 'category exclusion' in that those branded, defined (by the

[11]In a related context, Evans (2012) has conducted work into the government of homeless street drinkers in Canada and the 'dosing' and punitive 'probation' rules instigated under a therapeutic scheme known as 'Mountainview' to encourage the 'out of control' street homeless back into compliance with the programme.

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local authority) as uncooperative, are essentially 'excluded' from the protections of the 2017 Act. These disciplinary, 'tough love' (Bob Blackman MP, 2017) provisions can therefore be seen as further promoting the responsibilisation of homeless people and of advanced liberal and minimalist notions of exhorting those living with homeless to conform to norms of acceptable behaviour. There are equally strong echoes of the distinction between deserving and undeservingness so prevalent in the history of homelessness policy in England, consonant with a minimalist account, and which continue to sound today in the intentionality provisions under the 1996 Act. In short, under the new law, homeless applicants exhibiting behaviours of which the authority disapproves are regarded as masters of their own misfortune, responsible for their own homelessness and not deserving of help, with support reserved for those who are co-operative, genuinely needy and deserving.

5 The Homelessness Reduction Act 2017: furthering not fracturing marginalisation of those experiencing homelessness

Examining the 2017 Act through a maximalist/minimalist frame exposes the tension at the heart of the new law – a tension between the seemingly express and maximalist legislative ambitions and the distinctly minimalist rationality underpinning key provisions of the Act. On one view, this conflict between competing maximalist and minimalist impulses reflects a continuation of the long-standing contestation within homelessness law and policy in England (as explored in earlier sections of this paper in relation to the 1977 and 1996 Acts). On another view, this conclusion is indeed surprising given the general tenor surrounding the 2017 Act – namely that the new law was a clear break from the past and was pioneering, world-leading and novel in approach. What the analysis above has demonstrated is that such assertions are untenable and that the 2017 law plays out according to the traditional tussles between a focus on the behaviours and responsibilisation of homeless people for their own circumstances and genuine attempts to improve the lives of those in housing difficulty. This can be no better illustrated than by the 2017 Act's expansion in the definition of homelessness and 'threatened with homelessness' whilst concomitantly coupling this with deep conditionality around mandated housing plans and the exhortation of those experiencing homelessness to self-work, compliance and co-operation.

The result is that the 2017 Act is built upon and betrays an ideological bipolarity manifested through a vacillation between provisions and 'technologies' of care and control – an oscillation between support and sanction, between entitlement and exclusion. Some may seek to argue that the new law's 'gatekeeping' of housing support can be explained on resource grounds as an acknowledgement of the realities of financial constraint faced by local authorities. However, this would be to fail to set the new law in the specific context of the history of homelessness law and policy as this paper has argued. When this is done, the minimalist impulses of the 2017 legislation appear entirely consistent with and coherent to the trajectory of homelessness policy in England over the past fifty years. This has troubling consequences for an assessment of the ability of the 2017 Act to achieve its stated objectives, but also to combat social exclusion and marginalisation of homeless people. Whilst the extension of existing homelessness duties and the introduction of new duties on local authorities are, of course, to be welcomed, the 2017 Act maintains and promotes, in key respects, the minimalist instincts of the past. The preoccupation with applicants' behaviour, the implication of the homelessness as responsible and responsibilised for their own housing precarity and the much maligned and regressive distinction between deservingness and undeservingness, which the sanctions provisions foster, continue the work of previous legislation in this area – law that it is conceded has failed to adequately tackle the homelessness scourge. Only those willing to play the game, jump through the defined hoops and comply with the housing authority's prescription of normalised housing behaviours will qualify for assistance. We might say that the 2017 Act renders visible this advanced liberalist mentality by constructing an image of the compliant, acquiescent, submissive homeless applicant who is to be rewarded with help as juxtaposed with the non-compliant, excluded, resistant applicant for whom the stain of homelessness will remain. The 2017 legislation therefore advances a sharp opposition in its messaging of the

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'redeemable and compliant homeless' vs. the 'un-redeemable, resistant homeless'. This has powerful resonances with George Orwell's work *Down and Out in Paris and London* (1933), which explores presciently and prophetically how myths encircling the behaviours of homeless people are problematised and pathologised in the public realm. Orwell recounts, for example, how rough sleepers are moved on from the streets by police, how beggars are fined simply for being homeless and how the Sunday newspapers are filled with stories of 'beggars who die with two thousand pounds sewn into their trousers' (Orwell, 1933, p. 172) and other accounts of the so-called 'fake homeless'.

6 Conclusion

Why does this analysis matter? Examining the socially exclusionary and marginalising impacts of previous and current homelessness legislation through an application of Jacobs, Kemeny and Manzi's minimalist/maximalist frame has offered a fresh way of seeing homelessness legislation in this legal and policy arena. Cognizant, of course, that as Nelken (1982; 1983) has instructively explored, legislation is a 'managed activity' and rarely univocal and operating according to a single ideology, this paper has demonstrated how this minimalist/maximalist analysis renders visible the competing and often messy compromises that can exist within the history of our homelessness law but, most pressingly, that can even exist within the same piece of legislation. The 2017 Act has been offered as both a contemporary exemplar but also as emblematic of the lively tension that plays out between minimalist and maximalist homelessness discourses. In deploying Jacobs, Kemeny and Manzi's frame, the 2017 Act is revealed as a modern incarnation of a long-standing tussle between divergent ideologies and impulses: of a renewed and laudable aim to reduce homelessness but set within the traditional conditionality and ideologies of the 2017 Act's forerunner, the 1996 Act.

What has been shown is how the 2017 Act, as a piece of legislation and instrument of the state, constructs images of homeless people as threat; as risk that can be seen in a deeply advanced liberal conception; as autonomised, self-responsibilised citizens responsible for their own housing precarity. Even under this apparent 'ground-breaking' and overtly progressive statute (homeless reduction in its very nomenclature), maximalist, structuralist accounts are largely eschewed in favour of an enabling state, facilitating citizens to deliver their own ethical completeness. In short, legislation that one might reasonably expect to be thoroughly inclusionary can be construed and 'read' as marginalising rather than preventing homelessness. The paper has argued that Jacobs, Kemeny and Manzi's minimalist/maximalist lens can be understood through the prism of the allocation of responsibility for the incidence of homelessness. Operationalised here, this interpretation exposes the long-standing contestation inherent in the history of homelessness law and policy in England and Wales as to where responsibility and moral blameworthiness for homelessness should fall: on individual homeless applicants or on the state implicated in the perpetration of the broader structural, social and institutional problems that form the key causes of housing deprivation. This paper therefore serves as a reminder of how competing interests, agendas and discourses contend for primacy often within a single instrument of legislation and, additionally, that legislation serves as a deeply political and ideological statement that can operate both to challenge as well as to reinforce ideological objectives. This paper therefore argues that, in order to fully understand the relationship between social exclusion, marginalisation and homelessness, it is critical that focus is placed on grappling with the competing accounts and impulses rooted in the social, political and legal construction of homelessness itself (Powell, 2015).

The problems of homelessness are various and complex (Preece et al., 2020), yet there is widespread recognition that the principal causes are structural. Thus, the minimalist/maximalist framework allows us to assess the effectiveness and, in short, prospects for success, of law in preventing homelessness and responding to these structural challenges. In exposing the 2017 Act as a contested amalgam of minimalist and maximalist impulses of uneasy dualities through technologies of care and control, support and sanction, this paper contributes to the catalyst voices for reform and, in particular, those advocating for a dynamic, person-centred, homelessness law. It makes the argument for a genuinely maximalist approach to legislating in this area as the only way to seriously tackle social exclusion

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and marginalisation of those experiencing homelessness. The essential aims of the 2017 Act will only ever be undermined if attention is not paid to the wider, structural barriers to homelessness reduction. Without such a focus, the broader, social causes of homelessness will continue to go unaddressed with the associated damaging (if unintended) consequences continuing to endure such as 'gatekeeping' of services, rationing of vital resources, continued out-of-area moves and repeat homelessness, with damaging impacts for children, other vulnerable applicants and single adults. This paper contributes to the wider debates in legal and sociological research, probing the precise shape and form that effective responses to homelessness should take. It adds weight to those who argue that, if policy-makers are serious about reducing social exclusion and marginalisation of those experiencing homelessness, it is vital to recognise the deleterious impacts of the messaging, representation and construction of homeless people in our law. The identified and long-standing tension between minimalist and maximalist discourses at the heart of existing homelessness legislation that this paper has exposed must be recognised and robustly challenged if the mistakes of the past and repetition of the well-worn path of failure in homelessness law and policy to tackle meaningfully homelessness and prevent marginalisation of homeless people is to be avoided moving forward.

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