**Title:** Squatters’ rights: a case study in ‘legal movements’ theory

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In 2010 the Library House, a social centre in Camberwell, London, was evicted. Out of concern for the previous tenant (a single black mother) the centre’s collective used their knowledge of the law to ensure that she could return to her home (the council had illegally evicted her while she was in prison). The collective argued ‘you are not entitled to evict us because you evicted the previous tenant illegally, and she is the one who should take us to court’. The council dropped the case and took her back as a secure tenant. The squatters’ experience of the law’s interference in their daily lives had given them the ability to use the courts to pursue an outcome that was in line with their beliefs.

This is an analysis of the path that the law relating to squatting has taken in the UK over the last forty years. The aim is to highlight the experiences of squatting movements, looking in particular at the interplay between changes in the law and the actions of squatters on the ground. Is there what can be described as a ‘legal movement’ expressed through the actions of the squatting movements? What do the developments in the law reflect? Does the illegality of squatting affect squatting practices, and how do squatting practices affect the law?

The Law

On 1st September 2012 it became illegal in England and Wales to squat a residential building (section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012). Previously it was a civil matter, not a criminal offence, and traditionally the UK has had ‘squatters’ rights.’ Squatters first relied on the Forcible Entry Act 1381, although this was repealed by the Criminal Law Act in 1977 and the offence of ‘violent entry’ replaced that of entry alone. Section 12 of the Criminal Law Act 1977 (amended by the Criminal Justice and Public Order Act 1994) laid out a distinction between trespassers and squatters, defined by whether the person had knowledge of there being a resident living in the property. As long as there were no clear signs of the owner living there squatters could rely on section 6 of the Criminal Law Act 1977 (section 6 was printed out and pinned to the doors of squats). Avoiding damaging the property would ensure that entering the property was a civil, not a criminal matter. Occupants had to ensure there was someone in the building at all times as it was illegal for the owner (or anyone else) to enter a building while it was occupied. Squatters had to have sole access to the property, and thus had to replace the locks and fully secure the building. Eviction could only legally take place by way seeking of a possession order through the courts.

Squatting as a legal right has not always been controversial. Time limits on claims to land date back to as early as the Limitation Act 1623 and earlier, and possession based on effluxion is one of the foundational concepts of English land law. Under the Limitation Act 1980, if the squatter applied for possession after 12 years, the property could rightly become their own unless the owner objected prior to the twelfth year. The Land Registration Act 2002 changed this to ‘applications’ for adverse possession to the Register and notification of the paper owner. Adverse possession remains a central paradox: it mixes seizure of land (which is the basis of individual property rights), with labour and the curtailment of the true owner’s rights.

Legal movements

The concept of ‘legal movements’ concerns the relationship between changes in the law and societal or other non-legal developments. The critical issue is whether the law can be said to ‘mirror’ contemporary realities. A good example is the criminalisation of squatting: it is now illegal to squat in a residential building in England and Wales, and yet there is a very strong tradition of squatting in the UK’s major cities. Does it really matter that one cannot squat legitimately in the eyes of the state? And was that law really a reaction to squatting practices and attitudes towards them?

There are two ways of understanding ‘legal movements’ in relation to squatting:

— The way in which squatting movements – through their presence in political, social and sub-cultural occupations – affect legislative and policy changes emanating from Parliament and the courts; and

— Squatters’ practices and actions (or reactions) to changes in law: whether their legal awareness and organisational practices change depending on legal developments. This could be seen as an expression of ‘legal activism’.

Legal movement theory takes inspiration from social movement theory. Legal theorist Gary Minda analogises trends within jurisprudence that have been affected by theories from economics, sociology, philosophy, literary criticism, and anthropology. This is a helpful way of seeing how the movements within squatting law and squatters can be seen to operate. Speaking of the way in which legal movements have been changed by supposedly ‘outside’ events, Minda states: ‘Academic trends in legal scholarship do not occur in a vacuum, nor are law schools and legal scholars autonomous. To understand what has been going on in contemporary legal theory, one must look to what has been going on [elsewhere]’. There is a symbiotic relationship between legal and non-legal thought.

Throughout history legal movements have changed the way in which we deal with the social and political, through legislation and policy change. Without legal movements the law cannot accurately ‘mirror’ society. But is this mirror possible at all? And is it desirable? German constitutional theorist Carl Schmitt argued that a constitution must be constantly upheld; if it ceases to be it no longer has its constituents, or its ‘constituent power’. This is a very abstract understanding of legal movements, and it is widely acknowledged that law does not reflect, indeed cannot reflect, the will of everyone at the same time. And thus when there are legal movements, they are in effect, ‘keeping up’ with the social, political, and social machinations that have taken place outside the legislature and the courts.

Squatting is a controversial area of law, and adverse possession has developed as a result of the synchronous development of the regime of property rights overall. The task is to ascertain whether there is a cyclical motion of the development and recession of the regime of squatters’ rights in English law, and to look at the effects on the social and political (squatting itself). Do squatters themselves ‘practise’ the law on the ground, so to speak, and are there are legal movements within their practices and actions, which equate to a form of ‘legal activism’?

Legal movements are fuelled by the practices and actions of given sets of actors and participants. In order for squatters to gain access and produce their space, a squat must be sought within the realm of the law, thus they must have knowledge of the relevant law in order for the space to be ‘legitimate’. According to a recent opinion, ‘the new generation of squatters has a greater understanding of the law and how it can protect them, helped in part by sophisticated legal advice available on the internet’. In order to ensure that the regime of squatters’ rights is kept legal in the UK, squtters are aware of a need to respect the law, and therefore it is important to understand whether and how those involved in squatting movements (either for political reasons or out of need) have a sound or ‘professional’ knowledge of squatting-related law (or are aware of the need for good legal advice by the likes of the Advisory Service for Squatters (ASS) and Squatters’ Action for Secure Homes (SQUASH)).

Historical background

The squatting movement in the UK that began in 1945 was directly linked to the housing shortage after the Second World War. It began as more of a direct housing action movement for the homeless, the levels of which were heightened due to the effects of the war on the population and the lack of social housing for returning soldiers and their families. In the words of Ron Bailey, there was ‘enough to say that “homes for heroes” just did not exist; returning servicemen successfully seized empty properties to live in — to the astonishment and rage of the government of the day’. It was clear that houses were not going to be provided unless militant action was taken. According to political and moral theorist Gerald Dworkin, the ‘Ex-Servicemen’s Secret Committee’ (one of the many groups of ex-servicemen who installed homeless families into properties by night) had got so desperate they resorted to the adage: ‘If you see a house, take it and let the law do its damnedest’. As the movement spread it became an attack on speculation, ‘on the right of landlords to keep property unoccupied for any reason’. Old army camps started to be occupied, and squatters’ protection societies and federations were formed.

The post-war squatting movement was quashed in 1946 due, among other reasons, to political alignment with the Communist Party and lack of support from the trade unions. But in 1968 a new wave emerged. According to Steve Platt its main impetus ‘came from a loosely knit group of radicals, many of whom had been involved with the Committee of 100 [British anti-war group] and the Vietnam Solidarity Campaign’. Squatting became ‘a harbinger of a new style of social and political activity that changes demoralised and helpless people from being the objects of social policy to becoming active fighters in their own cause’. The ‘London Squatters Campaign’ was set up in November 1968 with the aim of ‘the re-housing of families from hostels or slums by means of squatting’, in the hope of sparking off a ‘movement’ in radical re-housing. This was a response to the continuing shortage of housing and the dire work of councils in re-housing the homeless. Direct housing action became a viable – perhaps the only viable – option.

After the 1960s and 1970s, there was a move away from families to individual and group squatters. During the 1970s, the Family Squatters Advisory Service (FSAS) was set up. And as well as squatting in response to the social needs and deprivation of the time, there was the prevalence of punk squats and autonomist movements within London.

Legal movements in the 1970s

The legal movements surrounding the squatting reforms under the Criminal Law Act 1977 Act (which included a Law Commission report and a working paper by the Lord Chancellor) were a reaction to the housing actions on the ground, and the London Squatters Campaign (among others) taking the housing shortage into their own hands. According to barrister David Watkinson, until the end of the 1970s, there was no duty on local housing authorities to secure accommodation for the homeless until the Housing (Homeless Persons) Act 1977. There was no security of tenure for local authority tenants until 1980 nor of tenure for tenants in the private property sector until 1974. Continuing homelessness and substantial numbers of empty properties played a role. The housing crisis and changes in the law were further propelled by the delayed compulsory purchase schemes that had been ambitiously started in the 1960s, together with landlord profiteering (forcing out established tenants in order to sell) and the housing boom of the early 1970s.

The legal moves included changes to the procedure for obtaining a possession order, making it quicker. The courts had not been able grant possession orders against persons whose names were unknown (the owner had to take ‘reasonable steps’ to discover the names) but in 1975, in *Burston Finance v. Wilkins* the High Court ruled that even if names were unknown, if squatters knew of the proceedings they were impelled to come to court whether or not ‘reasonable steps’ had been taken. By 1977 the procedure were shortened once again and the ‘reasonable steps’ requirement entirely removed. On top of this, possession orders against squatters were made to take effect immediately: *McPhail v. Persons Unknown* established that there was no power to suspend a court order once it had been made without the landowner’s express agreement. The Criminal Law Act 1977 made evictions easier because a squatter who resisted a request to leave on behalf of a ‘displaced residential occupier’ (DRO) or a ‘protected intending occupier’ (PIO) could be arrested and removed without a court order. Resisting a court bailiff was also defined as ‘obstruction’, but squatting as an act still remained a civil and not a criminal offence. .

How did squatters respond? There was widespread discontent and worry about the proposals to criminalise squatting. The Campaign Against a Criminal Trespass Law (CACTL) emerged from an All London Squatters (ALS) meeting in 1974. CACTL framed the proposals as an attack on workers’ occupations and attracted a great deal of support from workers and students. CACTL used a combination legal knowledge and political support to oppose criminalisation. There were those who — due to the visibility of CACTL and the unclear nature of the Criminal Law Act 1977 — were not sure whether squatting remained legal. Therefore, in 1978, the ASS launched the Squatting Is Still Legal campaign.

It was also as a result of big actions, such as Redbridge in February 1969 (where homes were occupied and barricaded in response to the council deliberately leaving them empty) that changes were achieved on the ground. Redbridge and other occupations paved the way for a degree of protection through the court process: according to Steve Platt, ‘the London Squatters Campaign’s adroit legal defence established precedents which benefitted squatters for many years and many people involved in Ilford went on to promote squatting in other areas’.

Organised squatting declined more as a result of landlords’ concessions than costly repression tactics: during 1977 five thousand squats in London were formalised when landlords or councils granted them licences (this has been described as a ‘repressive-integration-cooptation’ model of relations between states and social movements’). In response, some pushed for unlicensed squatting as licensing contradicted the philosophy of self-management .

The GLC faced the choice of either evicting 7,000 squatters or granting amnesty. They decided to offer tenancies to every squatter living in GLC dwellings, as long as they registered within a month. Otherwise ‘all measures which the law allows’ were to be used against future squatters and those who chose not to take up their tenancies. This was an electoral policy by the Conservatives. According to Platt, ‘The GLC adopted imaginative and flexible policies at [that] stage merely to facilitate implementing totally rigid and reactionary policies at a later date’.

The Legal Movement of 1980: the ASS

By 1980, the government was dealing with the effects of the legal changes of the 1970s. The ASS was born out of splits between (and within) the two major squatting organisations in London (the FSAS and ALS). The ASS supports both licensed and unlicensed squatting, and still gives legal and general advice on squatting. They have just released the 14th edition of their *Squatters Handbook*. The ASS’ advisory work was extremely useful, and arguably exemplified a professional and legalistic understanding of adverse possession, court procedures and in-depth knowledge. Many cases were won and many squatters successfully resisted attempts by police to con them out of their homes. The ASS’ tactics suggest an acknowledgement that legal knowledge is necessary for squatting, and therefore could be seen as a manifestation of a ‘legal activism’ (and the same could be said for CACTL’s impact on the legal changes of the 1970s).

Squatting was on the increase again in 1980. The cost of living was increasing and it was difficult to find housing after the recession of the 1970s. The ASS was overwhelmed. One member of the ASS stated that the changes in the law made very little difference to the existence of squatting, and this is something that resounds today as the laws on squatting have been altered once again. The ASS was dealing with laws that dealt with ‘non-existent’ situations: the law had been altered due to fear and miscommunication.

As well as the ASS, there were other legal movements in operation during 1980, such as Release and the prison movement, who also sought an understanding of law in order to affect resistance. 1980 can be seen as a year in which the effects of the direct action of the previous years, in synchrony with the legal movements in the courts and parliament, were felt, but had reached a plateau.

What does this lack of coincidence between the structures of squatting movements, and the remit of law speak to in regard to the supposed ‘mirror’ of the law?

Legal Movements in 2011–12

After 1980 there was an encroaching shift towards the repeal of squatters’ rights. The Criminal Justice Act 1994 made substantial changes, introducing interim possession orders (which considerably reduced the amount of time that squatters could remain). Measures to deter squatters were devised. Towards the end of the 1980s the Law Commission once again considered reforms in land, and again the changes tabled were seen to limit security. The Land Registration Act 2002 fundamentally altered the law of adverse possession: after ten years of physical possession a squatter has to apply to the Land Registry to have their title recognised. The Registry notifies the original owner, who can defeat the application, simply by raising an objection. Adverse possession will become a thing of the past.

In May 2011 the government launched a consultation on the criminalisation of squatting. Their plans were set out in a number of alternative proposals including creating a new offence, amending the scope of the 1977 Act, improving enforcement measures, or doing nothing. Despite 96 per cent of those who responded to the consultation in favour of doing nothing, the government fast-tracked the criminalisation of squatting and its amendment passed by 283 votes to 13.

In September 2011 legal academics and practitioners had written a joint letter expressing concern that a significant number of recent media reports had been exaggerating and misrepresenting squatting in the UK, which, they said ‘has created fear for homeowners, confusion for the police and ill-informed debate among both the public and politicians on reforming the law’. This triumph of misinformation arguably led to the assumption that all squatting (including non-residential squatting) was criminal. According to the ASS ‘It will be difficult for those squatters who are using commercial properties to remain where they are despite the fact that they are still perfectly in their rights to do so, as the public will assume that squatters’ rights have been outlawed entirely’. The social utility of squatting was removed by swift, undemocratic changes to the law and misrepresentations of squatting on the ground.

2011 Legal Movement: SQUASH

SQUASH was originally formed out of a network of squatters, named Squattastic, in London in December 2010 to counter government and media condemnation. It is made up of squatters, activists, researchers, charity workers, lawyers, and academics, and has a legal and research group. In November 2011 they tabled urgent recommendations to amend the proposed changes to the (then) clause 26 of the LASPO bill. Labour MP John McDonnell worked with SQUASH to get their recommendations through the parliamentary processes and put forward the amendment to clause 26, which proposed that there be no offence if a building has been empty for six months or more.

SQUASH represents a clear awareness of the necessity of a legal understanding and knowledge, but does this say anything about the law they are reacting to? Only that the legislators’ response is the slow encroachment on squatters’ rights, and they return to the issue cyclically in times of economic difficulty.

In comparison to SQUASH, CACTL had the workers’ movement behind them. Just as it was in 1980, there were national protests in the form of student occupations during 2010–11, riots in 2011, and the Occupy movement. The anti-criminalisation movement perhaps did mot make the most of the support that they could have gathered. SQUASH did work meticulously with MPs and the Lords to try and put forward the legal argument for not changing the law.

Legal Activism

In Ron Bailey’s account of the squatting movement in London, the squatters had to make sure that they were not breaking the law in order to involve families in the movement: ‘We thought that if we could say to families that squatting was only civil trespass and not an offence for which they could be prosecuted, then we were far more likely to be able to involve them in squatting activities’. In fact, there was one instance during the Redbridge occupation in 1974 where the squatters used the law in their favour, tricking the police by moving a family out of a building (in compliance with a possession order) and replacing them with another family. When the bailiffs attended there was not a great deal that they could do.

ASS’ *Squatters Handbook* advises on how to comply with the law in order to secure and occupy a building correctly. There are also ‘practical squatters evenings’ around London. By acknowledging the legality of squatting, and through an awareness of the law (and sometimes through an admiration of the law), squatters have discovered loopholes and practised legal activism.

The courts have sometimes been sympathetic towards squatters, showing an admiration in turn. In a recent freedom of information case brought against Camden Council Judge Fiona Henderson stated, ‘the public interest lies in putting empty properties back into use’ and argued that publication of the data in question would ‘bring buildings back into use sooner and the housing needs of additional people would be met.’ Indeed, legal academic Robin Hickey has argued that the common law almost always upholds the rights of the squatter.

Conclusion

Squatters have always had a close relationship with the law. Many squatters have regarded the law as a source of protection, but the law has only fulfilled this role sporadically and to a diminishing extent. However, squatters have certainly had an impact on the law, and their adroit use of the law has frequently delayed evictions and provided time for organisation and negotiation.

So is there interaction in the form of legal movement between the law on squatting and the actions of squatters on the ground? And does the direction of the politics in the background make any difference at all? There is certainly at least one cyclical motion in that squatters learn the law in response to the threat of draconian changes, but it seems that the law does not learn from the squatters. This one-sidedness is, of course, embedded in a global system of property transfer and appropriation.

Social movements have been recognised for their potential to reorder order. To be part of a squatting movement is to be part of ‘a network of small groups submerged in everyday life which require a personal involvement in experiencing and practising cultural innovation’. It also comes from a desire to take hold of law itself, to be autonomous, create law, to self-legislate, which is characteristic of the drive of the ASS and SQUASH.

As in any other movement, there is always the role of violence, and none is more powerful than that wielded by the state through the use of law. Any squatter will understand the violent force of property rights. Landlords deter squatters by destroying basic amenities. Land ownership, according to Andrew Corr’s summary of the anarchist-tinged literature on property, ‘exists when an individual has the violent forces necessary to evict or subdue the inhabitants of a given piece of land and claims “ownership”’.

According Jeremy Bentham, ‘Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases’. The role of law and violence, and the force of property rights, saturates all accounts of squatting.

Perhaps this analysis has provided an insight into how one can utilise law in order to counter law. It is hoped that by going beyond national law and making use of European Court of Human Rights decisions on adverse possession (despite the fact they are nearly always in favour of the proprietor), the development of the right to housing could create a viable obstacle to the encroachment of anti-squatting laws.

It will be interesting to see the effect of section 144. In the words of the All Lambeth Squatters: ‘Remember—trying to stop squatting is like stamping on a greasy golf ball’.