

INTRODUCTION

Criminalisation is 'the process by which behaviours and individuals are transformed into crime and criminals'.¹ Criminalisation is an important issue because having a criminal record for an individual will limit the employment opportunities, create difficulty in obtaining a loan, limit travelling, **loss of ability** to immigrate to another country, loss of right to vote and so on. **There should be care taken when deciding whether to criminalise an act as it means a difficult future for the individual involved with issues of unemployment, poverty, etc.** During the criminalisation procedure, principles such as **the harm principle**, moral approach or autonomy, omission, **among others**, are checked for its existence.

The essay begins with discussing the impact of criminalisation of squatting and the necessity for legalising squatting by **looking at academic opinion** and also proving that the principles such as harm, moral approach, and omission are not satisfied in **criminalising** squatting. Moreover, the alternative approach **to criminalisation** is given to avoid squatting with reference to United States Law. **The second part of the essay considers** the impact of legalising the unpaid work scheme. It is proved in this essay that the unpaid work scheme satisfies **the harm principle**, moral approach and omission, **it** also violates Article 4 of European Convention on Human Rights (**reference ECHR**) **The essay then concludes that acts done under the unpaid work scheme should be criminalised.** This conclusion was derived after analysing the issue faced not only in United Kingdom but also in Australia.

¹ Michalowski R. J, *Order, Law and Crime: An Introduction to Criminology* (New York: Random House, 1985) 6.

SQUATTING

Squatting is a common response to homelessness by living in a deserted or vacant area of land or a building. **Squatters** are trespassers who do not own, rent or otherwise possess lawful authorization to make use of properties² but have major welfare needs as well as mental issues, physical health issues and other weaknesses.³ Section 144 of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) states that any person found squatting would be punished for up to six months in prison or charged a fine of £5,000 (\$7,427).⁴

Justice Minister Crispin Blunt stated that squatters have caused homeowners innumerable unhappiness and additional cost in eviction, repairs and clean-up (**reference where you got statement from**). From the 1st of September, 2012, squatting in residential buildings was made a criminal offence for the first time in England and Wales as the owners of those homes would be given better guidance.⁵ *Housing Minister Grant Shapps* also **stated** that industrious individuals are faced with legal challenges in getting their homes back from the possession of these squatters' and loads of bill expenses are put into repairs. *Chief Constable Phil Gormley*, said that these criminal law is put in place in order to eliminate the time used in regaining their properties in court which used to be expensive and stressful.

Criminalizing squatting is against the Regional and International obligations of British Government under various covenants. The State has a responsibility to assure adequate housing for fellow citizens mentioned in Article 25(1) of the Universal Declaration of Human Rights, Part 2 Article 10(f), and Declaration on Social Progress and Development Article 11(1) of the ICESCR. Due to the failure on the part of State these people are forced to squat

² Roberts Chris, *Heavy Words Lightly Thrown: The Reason Behind Rhyme*, (Thorndike Press, 2006)

³ Kesia Reeve, *Squatting: a homelessness issue* (Sheffield Hallam University, 2011)

⁴ Vyvian Raoul, 'Squatting law is cause of problem, not a cure' (New Internationalist, 12 March 2013) <<http://newint.org/blog/2013/03/12/squash-squatting-law-impact-report/>> accessed 22 March 2013

⁵ Ministry of Justice, 'Homeowners protected, squatters criminalised' (Press release, 31 August 2012) <<http://www.justice.gov.uk/news/press-releases/moj/homeowners-protected,-squatters-criminalised>> accessed 23 March 2013

illegally on private property. Therefore, it's not **right** to criminalize squatting in abandoned properties.

Four major principles influence the decisions on the criminalization of an act; they are the *harm principle, moral approaches, omission and procedure.*

The harm principle is the major reason for criminalising any unlawful acts. J.S. Mill, in his classic formulation, justified that 'serious harm to others' is the *only* valid reason for criminalization: "...the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant. ... The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." (This is a very long quote, try to paraphrase to make it shorter? Also reference after end of quote) *Dennis Baker and Joel Feinberg* have argued that behaviours should only be criminalized when it is reasonable to do so. They also **argue** that criminal law should be invoked when it causes harm to others and public at large. I strongly believe that squatters do not constitute any form of harm to people or properties because they only live in abandoned homes as a last resort to resolve their homeless situation. They do not displace owners from their properties or invade houses in which people live in to cause any form of harm or destruction. These people have no proper homes or financial capacity to cater for themselves or to acquire mortgage for a property. **The** Majority of these squatters are not interested in destroying properties or cause troubles with the individuals involved (mental state of squatters), they are vulnerable people in **dire** need of help with mental or social issues.

The principles of moral approach and autonomy in criminalization is controversial based on the degree to which the public considers it to be morally wrong. Joseph Raz defends the fact that the state cannot and should not implement morality; rather, any effort to limit a persons' autonomy should be done only to limit harm. Hence, if the immoral behaviour of others intrudes on someone else's autonomy, then that can be legislated against⁶ squatters do not morally **defy** the laws of the society, this is because, most of these people are from abusive homes with little or no means of catering for themselves and resort to living in houses which have been abandoned or deserted by the owners for a period of time. It is therefore not morally wrong because sending these squatters away back to the streets would only increase the already existing large number of homeless people in the country which can also lead to immoral acts or crimes. This is as opposed to previous years, **as** the number of houses being built now continues to reduce whilst the number of homeless people in the society increases rapidly excluding the number of squatters currently.

Omission, or failure to act, will constitute an actus reus (Latin for "guilty act") and give **rise** to legal responsibility only when the law obliges a duty to an act and the defendant is in **violation** of that duty. In my understanding, when people squat, they do so at their will; not jeopardising their safety or that of the property owner. A person who squats in people's abandoned homes does so in order to get shelter or a place of rest. This would help prevent the undue exposure to danger which could be caused as a result of individual homelessness. Some of these dangers could include rapping, robbery, attack and so on. Individuals are given the right to live their life the ways they wish i.e. human rights are of more importance than property right. In most cases, these squatters do not create danger but rather make this deserted buildings/ homes better for one to comfortably live in.⁷ This usually starts off as a

⁶Ashworth (1999).p. 45.

⁷http://www.crisis.org.uk/data/files/publications/Crisis_SquattingReport_SEPT2011.pdf

temporary habitation but gradually turns into a permanent home pending the duration of the individual's home unavailability.

When a state debates whether to respond to a source of injury by criminalising the behaviour that produces it, there are no pre-set criteria to apply in formulating social policy. In my opinion, the act of squatting does not produce significant hardship to individual citizens but rather helps them in surviving through these difficult situations. However it should have certain limitations. One cannot enter into someone else's private property in all circumstances. It should be in an absolute necessity and as the last resort failing all other legal avenues. It should be an abandoned property for a certain duration and not using for a economic purpose. Once the situation of the squatter improves he should move out of property. In addition to all this, the English law should introduce the concept of reallocate the unsettled land for a long period. This concept is available in Homestead Act of 1862 in United States.

To conclude, criminalizing the act of squatting is highly unnecessary as explained above; these vulnerable people involved don't do it in order to cause harm or break societal laws but rather to seek shelter, comfort and peace outside their previous residence. Also, most of the homes occupied by squatters are in bad conditions or abandoned. These squatters through daily struggle try to put these homes in a manageable condition.

UNPAID WORK SCHEME

The rate of unemployment in the UK has risen according to official figures by a total of 7000 to 2.52 million within a space of two months, which represent 7.8% of the population. Youth unemployment (ages 16 to 24) is also on the increase and now stands at a total of

993,000 within three months which represents a rate of 21.2% The Office of the National Statistics (ONS) shows that the number of people claiming jobseeker's allowance as at February 2013 was 1.54m⁸ with a 7.6% increase from the previous year. The **unpaid work scheme** which is known as the sector-based work academy is a system whereby individuals under the job allowance benefit scheme have to work for a period of time without getting paid.

Caitlin Reilly and Jamieson Wilson v Secretary of State for Work and Pensions [2012]⁹ is a high court case which forces unemployed citizens to work for private sectors without pay in order to have their government benefits (job allowance benefit) maintained through the workfare policy. Critics disagreed with this policy saying that it reduces the number of waged jobs. In February 2013, the court of appeal rejected the Jobseeker's Allowance Regulations 2011 but accepted the workfare programme.

Unpaid work scheme under the Human Rights Act 1998 violates the Article 4 of the European Convention on Human Rights ('the ECHR') in that it mandated the performance of "forced or compulsory labour". In Van der Musselle v Belgium (1983) 6 EHRR 163, Bar Association (Ordre des avocats) in Belgium introduced the scheme for trainee advocates to mandatory requirement to take cases for free for those in need of legal aid constituted as violation of Article 4 of the European Convention on Human Rights.

The harm principle plays a major role in criminalising an act which comes under a specific scheme which will lead to many criminal offences and destroy the social order.

John Gardner says that "It is adequate to meet the demand of the harm principle that, if the action were not criminalized, that would be harmful to public order.". This scheme in the

⁸<http://www.guardian.co.uk/news/datablog/2010/nov/17/unemployment-and-employment-statistics-economics>

⁹http://en.wikipedia.org/wiki/Caitlin_Reilly_and_Jamieson_Wilson_v_Secretary_of_State_for_Work_and_Pensions

long run would cause harm to the society rather than achieving the goal for which it was established by the government. This is because when people are working more than they are paid by the government, they tend to consume more and have more expenses which could lead them into other means of obtaining the finances such burglary, theft and so on. This workfare warrants unemployed individuals to work in private companies just like every other employee without payment. There is a danger, that profit based companies can start using unpaid work schemes as a substitute to employing paid staff. Another reason is that this scheme also does not groom them in their respective fields with relevant knowledge to help them in achieving their desired dream jobs afterwards. People who cannot meet up with this standard of living in order not to have their allowances taken away from them would seek other easy sources or ways of getting more money. This could be of great harm to individuals in the society **and** will lead to a threat to social welfare.

Behaviours regarded as morally wrong should be criminalised. Patrick Devlin stated that moral behaviour was necessary in maintaining the consistency of the country, so law makers should be **able** to criminalise immoral behaviours. **reference.** There is violation done morally or autonomously in legalising this scheme because the amount paid by the government does not in any way justify the amount of work done by the individual which may lead the individual into criminal acts. Also, when an individual works, he/she is paid based on the amount of work carried out; which should also include certain benefits but with this scheme, it is free labour for the company, from the individual's point of view, he/she is stressed like **any** other employee at no extra cost and there is also a feeling of dissatisfaction. The individuals who this scheme is being implemented for do not see the importance but rather feel that this would lead to more expenditure (for instance lunch breaks, transportation) from the same amount being given by the government. Forced labour will lead to mental illness and also spoil the orders in the society.

With regard to the omission principle, the law restrains your actions and chances of opportunities such that a person is stuck in an unpaid labour even when the doors of a paid opportunity comes in order not to breach the contract which he/she has entered. This further explains that whenever an individual enters this workfare scheme, there is a contract of completion in order to maintain the allowance fee but if **during this period**, the person finds another job which would pay for the services rendered, there **is a** restriction not to leave as a result of honouring the contract signed between the company and the individual.

In conclusion, **the** unpaid work scheme is **a** threatening concept which is going on not only in United Kingdom but also in other parts of the world. This scheme can break the social order. **Consequently**, private companies or government organizations introducing work schemes **which are unpaid** should be criminalised.

CONCLUSION AND RECOMMENDATION

Criminalisation is **a** very important and also sensational concept. There should be more care taken during criminalising an issue or act. Therefore, this essay concludes that squatting should not be criminalised and acts comes under unpaid work scheme should be criminalised for social order. Moreover, the suggestions such as reallocation the unsettled land for a long time will reduce the **problems associated with** squatting as well as fulfil the duty of the government to provide adequate housing for every citizens under Article 25(1) of the Universal Declaration of Human Rights.