

“Housing should be a human right, everybody deserves a place to live to lay their head, that sense of security.”¹

American Quarantine

The Right to Housing in a Pandemic

Bonnie Honig

Abstract: In the US, quarantine requires we stay home, but many do not have homes to stay in or may lose theirs due to job or wage loss. For this reason, moratoria have been put on evictions. At the same time, after the latest police killings, and during ensuing protests against racist policing in June 2020, some were arrested for curfew violations, many pulled off the streets but others out of their homes or off their stoops. A real right to housing addresses both homelessness and uncurbed police powers that round up and break in. To address current emergencies and correct larger wrongs of American life, a rent jubilee would better protect tenants than a moratorium. It could be construed as a “taking,” allowed by the 5th Amendment, compensating landlords for their properties’ being taken to serve a “public use.” Popular takings, too, are rising up on behalf of a right to housing that goes beyond rent moratoria for some and the provision of low-grade “public housing” for others.

Keywords: coronavirus, covid, democracy, eviction, protest, quarantine

The Online Etymology Dictionary says the term “quarantine” dates back to 17th century Venice and refers to a health policy, first enforced in 1377, of “keeping ships from plague-stricken countries waiting off its port for 40 days to assure that no latent cases were aboard.” But the word “quarantine” also has another history, an English housing policy, from the 16th century, when quarantine meant the “period of 40 days in which a widow has the right to remain in her dead husband’s house.”² After that, presumably, out she goes. Quarantine confined many Americans to their houses in the spring of 2020. But, as in England in the 16th century, it still connotes eviction as well: those left without pay, without work, unable to pay rent or mortgage, unable to catch up, will lose their homes. Some landlords suspend rent now and let it be known we are all in this together.³ Others turn off the water and wait, hoping to make widows of us all.



The CARES Act passed by the US Congress in March “prohibits evictions for 120 days, but it only applies to renters in properties secured by federally-backed mortgages, which account for one in four rental properties, according to the Urban Institute. That leaves most tenants dependent on state or local laws to avoid illegal evictions,” which are also called *self-help evictions*, a rather positive-sounding term for what happens when the landlord helps him/herself to the property and casts out the tenants without going through the proper steps, which would allow tenants to respond or plan.⁴ As of June 2020, the courts were *not* processing evictions in most cities and states in the US and so some landlords were taking care of things on their own, conducting DIY evictions.

The very word “quarantine” has the power to remind us that as a democracy we should do better, by attending not just to the virus but to the disease of a polity in which, fifty years after the Fair Housing Act, we have yet to secure for everyone a right to housing and in which some of those who do have housing are not secure in their homes. An emergency like the current pandemic shines a light on both this urgency and more quotidian challenges. For example, the new pressure on renters and landlords that results from a shutdown can be a reason to revisit the idea of a right to housing. When the US pandemic’s quarantine was interrupted by protests against police killings, initially in response to the May 2020 murder of George Floyd, the often brutal policing of protesters that followed also highlighted the need for a real right to housing, especially since even the housed were targeted, some arrested in front of their homes and others flashbombed off their own front porches after newly imposed curfews. Indeed, there is a case to be made for seeing Hannah Arendt’s famous “right to have rights” as a right to housing.

Arendt never put it that way, but she was alive to the dehumanization that results when people are made homeless, whether denationalized and deprived of citizenship (no passport, no home country), or tossed out of their dwellings (made homeless, they are exposed to misery and even more subject to round-ups), rendered incapable of securing their homes against intrusion (no-knock warrants like the one that led to the killing of Breonna Taylor in March 2020), or denuded of their things (police often just confiscate the belongings of the unhoused). When your belongings go, your belonging to the species starts to go, too, and you learn that humanity, as a trait, is actually rather dependent on things: constitutions, yes, and laws that are respected by their enforcers, but also personal property like housing, clothing, books, jewelry, souvenirs, and photographs. Such things make a human more legible to others as a person, a bearer of rights possessed of dignity.

When Arendt, recently arrived to the US from war-torn Europe in 1941, wrote an essay titled “We Refugees” (1943) she was extending to others the shelter of her own new, still fragile belonging. And one example she gave of the humanizing traits of property was the simple act of paying the rent: “Once we were somebodies about whom people cared, we were loved by friends, and even known by landlords as paying our rent regularly.” Arendt’s bitter implication is that inability to pay rent is the beginning of the end of human status. The relationship between tenant and landlord, power-laden and often exploitative, is also humanizing, in her view. Paying rent, she is saying, is part of the normalcy of life.⁵ Doing so routinely and on time is a marker of the respectability she risks here.

In a quarantine that asks us to stay home, we do well to recall *both* of the term’s original meanings. Perversely perhaps, both actually connect to policies that kept people *out* of their homes: one confined sailors to a ship for the sake of protocols of public health and the other provided warning to a widow that she would soon be evicted, for the sake of a regime of patriarchal private property. These are not arcane legalities; we live in their afterlife as many people now face the threat of eviction and others the difficulties of mandated confinement. The US this year prevented navy and cruise ship sailors as well as cruise passengers for weeks from going ashore and going home. The desire to prevent or contain contagion was a legitimate public concern. But that was not the motivation. They would add to the number of cases on US soil, Trump said and he didn’t want that.⁶

Meantime, widows and widowers – and many others – will be evicted from their homes as casualties of the virus continue to mount. Evictions are, for the moment, disallowed by America’s Federal CARES Act and by a patchwork of measures at the state and local levels. But some landlords are going ahead anyway with their evictions, unmonitored by law and ungoverned by proper procedure. In New Orleans a man working as a sanitation worker for the city was tossed from his dwelling when he was four days late on his rent. News coverage of his story raised the outcry that finally made his landlord give him a key to the new locks she had installed to prevent him from re-entering.⁷ He is back home, for now.

Some might see the current federal, state, and local holds on eviction in the US as a violation of landlords’ private property rights but in fact we can see them as part of a broader practice of property entrenched in the “Takings Clause” of the 5th Amendment of the US Constitution.⁸ The clause is not invoked now in the context of eviction moratoria but, in the background, it arguably provides the principle, while also inviting us to go much further than the deferments that such moratoria offer: the Takings clause allows private land or property to be taken by the government

for “public use” as long as the government pays “just compensation” to the owner. Thus, we might say, “Takings” is a mechanism of redistribution and democratization. Were the US to use it for renters during the pandemic, rent would be paid by the government and renters would not face an impossibly large rent bill when the moratoria are finally lifted. Landlords would be paid now, on the condition that they do not file suit and do continue to perform, as they should, property upkeep and repairs for their tenants.⁹ This would take us one step further than the mere suspension of evictions, which will otherwise return with a vengeance once we return to “normal.” For many, that normal will be a new normal; for others a rather familiar old one.

Mere *stays* on eviction do help those thrown out of work, but they repeat and do not unsettle the logic that gave English widows forty days rather than forty minutes to move out. A “Takings” approach goes further. It acknowledges a right to housing, and undertakes a real public commitment to provide public, decent, free, or affordable housing for people. Keeping people in their homes, or finding homes for the unhoused, during a pandemic might be part of a broader public policy of Takings that would outlast the current emergency. It would mean starting not with an eviction moratorium but with a rent jubilee, for tenants, with landlords compensated by government, in keeping with the 5th Amendment. If we did this, then when we applaud the “courage” of frontline workers, the high notes of sacrifice would not obscure the real needs of human bodies and persons and our real debts to them. It may be that they “knew what they signed up for” (as Trump loves to say about soldiers in the military), but healthcare workers did not sign up for health crisis work without proper protections and support. And they certainly did not sign up for their families, friends, neighbors, and former patients to be evicted from their homes during the pandemic – and not after it, either.

We could go further. In the name of viral disinfection, persons who are homeless are now chased out of the shelter some found in New York City’s public transportation system. Cars and stations have to be thoroughly and regularly cleaned during a pandemic or essential workers will not be able to get safely to work, says Governor Cuomo. He is not wrong but government has room to act otherwise and can choose a different orientation. Rather than herd homeless persons out of the subways and into shabby shelters that are dens of contagion, why not provide actual housing? There are several empty units in Trump Tower and vacancies in all of Trump’s properties throughout the country. Now *that* would be “New York tough” as Cuomo likes to say at his daily briefings – to invoke the “Takings” clause to repurpose empty elite space for “public use.” It might even be cheaper than the roustings and the lawsuits, the costs of which add up.

Used now, such “Takings” would offer a welcome rebuke to the demand for “sacrifice” during the pandemic directed at America’s frontline workers in hospitals, meat packing plants, and grocery stores. Without full and proper personal protection equipment, and without the needed power to test and trace for the virus, many of these workers are pressured into dying for an economy whose massive wealth is not leveraged for them. This too just casts in sharper light a situation that is actually quotidian in the US where thousands die annually on the job.¹⁰

The issue is this: unusual measures adopted to get us through an emergency are usually merely remediative, in which case they help preserve the status quo and return us to it when the emergency passes. But emergencies can be occasions to surface new emergent possibilities.¹¹ What if we took a remediative measure like, say, eviction moratoria, and thought about what life might be like if those moratoria were permanent? Or if proper housing was supplied for everyone who needed it? Here the remediative becomes the utopian and then, one day perhaps, policy. Instead of forever plugging the holes on the ship, which always returns to leaking, can we build a new ship? What would we want it to look like?

Such thoughts are almost always stopped in the US with a single question: But where will we find the money for *that*? Here, too, the emergency of the current pandemic has been instructive, if we can dare say that of something that has wiped out over 100,000 lives in the US in barely three months. Trillions of dollars have been spent in the last month to prop up the economy in response to the shutdowns necessitated by public health concerns. On the issue of finding the money to pay for public things, Alexandria Ocasio-Cortez nods to “the speed with which the House and Senate have been working to pass spending bills to get cash into the hands of desperate workers, struggling businesses, and major industries,” during the pandemic, and she notes: Suddenly no one was asking “how are you going to pay for it?” So now we know: “It’s never been about whether we have the capacity to do these things . . . All of these excuses that we have been given as to why we cannot treat people humanely have suddenly gone up in smoke and what has been revealed is that all of these issues were really about a lack of political will and who you deemed worthy to be in an emergency or not.” And what was deemed to count as “public use.”¹² Why not housing? And clean water? Community policing?

The Trump administration is not unfamiliar with the Takings clause of the US Constitution’s 5th Amendment. In December 2019, just as the virus was starting to make its presence known in China, the US Department of Justice was busily filing three lawsuits “seeking to take property

from landowners” in order to advance the building of the much-promised and so far unbuilt border wall. And in one case, lawyers moved to seize land . . . immediately,” though it was months “before a scheduled court hearing in February.”¹³ While they were busily protecting us from the wrong (fake) emergency (immigrants! caravans!), a different one snuck in and took hold. The virus. And then another: police brutality. Rehearsed on migrants at the border, that chicken came home to roost in June when border policing troops were called up to quell the mostly peaceful protests in Washington, D.C. and Lafayette Park was brutally cleared of protestors by police using tear gas, batons, and shields as weapons.

When public officials stop cruise ship crews from going home or allow evictions of the newly destitute to proceed, or arrest and brutalize peaceful protesters on public streets, are those public officials guided by democratic criteria like the 5th Amendment’s “public use” or by some other considerations? Notably, two of the key personnel in executive branch decision-making right now, have earned notorious nicknames that suggest “public use” is not uppermost in their minds. Jared Kushner’s is “Slumlord Millionaire” (the name of a Netflix documentary about him) and Steve Mnuchin’s is “the Foreclosure King.” Kushner-owned properties have been filing lawsuits, during the pandemic, against tenants since March in states whose governors have put a moratorium on evictions (but that does not mean lawsuits cannot be filed). And Mnuchin is famous for how, during the last economic emergency in 2007–8, his OneWest Bank aggressively foreclosed on 36,000 home loans and initiated 45,000 more at a time when “OneWest was getting taxpayer bailouts in the form of payments from the Federal Deposit Insurance Corporation to the tune of \$1 billion.”¹⁴ Aggressive mortgage foreclosure in this case included the illegal practice of backdating foreclosure filings so as to speed the process up. I imagine that took residents by surprise. One wonders if English landlords in the 16th century might have used some of the same tricks on those inconvenient widows.

Fair and democratic considerations of “public use” will not come naturally or easily to such men. But that is the perspective we need now, from which to see what Arendt meant when she charted the material conditions of the most basic of human rights: the right to have rights. As Arendt herself understood, many such rights need to be civically taken, not given by the state.

There are now reports of what we might think of as people’s takings from LA and elsewhere. Keeanga-Yamahtta Taylor reports on several, one in Oakland, California, where “thousands of units of housing sit empty as owners wait for property values to rise before cashing out.” Over 100 are owned by CALTRANS, the California Dept. of Transportation. “A group of

Latino families who call themselves the Reclaimers have called upon ‘the city and state to immediately use all vacant properties to house people.’ These families already faced eviction; some were living in cars because of the unchecked rise in rents. With the immediate threat of COVID-19 and state orders to shelter in place, they decided to occupy eleven vacant houses that had been purchased by a state agency in anticipation of expanding the freeway system. As Ruby Gordillo, a mother of three who is occupying one such house, contends, ‘This is public land. This is a taxpayer house. You paid for it. I paid for it. We all paid for it. All of these vacant houses on public land should be used for public good, to create real affordable housing.’¹⁵ Such insurgent claims are a kind of popular reckoning that highlights the negligence, ineptitude, and utter lack of civic concern for the dispossessed in the domain of formal, mainstream politics.

For those who serve in public office, what they signed up for is a job that comes with a different but not unrelated kind of public reckoning: accountability. There will sooner or later, perhaps later, be congressional hearings and journalistic exposés and even Inspector General reports. Fittingly, this kind of reckoning is a kind of right to housing, too: the right to house our democracy in institutions and practices, mainstream and insurgent, that sustain democratic forms of life and accountability. When Congressional oversight is neutralized, journalists endlessly castigated as partisan or treasonous, then brutalized by police enforcing unnecessary curfews, and Inspectors General fired willy-nilly, we are witnessing a real time eviction – of democracy from the housing that shelters it. Unhoused, it will falter. Such reckonings are all that stand between us and the recklessness that squanders money, lives, and institutions without regard for their worth, as if anti-racist protesters in the streets today, those rendered precarious by the virus, and those practicing “reclamation,” are, like England’s 16th century widows, simply disposable.

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NOTES

1. https://www.thenation.com/article/society/police-eviction-housing/tnamp/?_twitter_impression=true
2. <https://www.etymonline.com/word/quarantine>
3. <https://www.nytimes.com/2020/04/03/nyregion/coronavirus-nyc-landlord-mario-salerno.html>

4. Alana Semuels, “Renters Are Being Forced From Their Homes Despite Eviction Moratoriums Meant to Protect Them,” (Time Magazine, April 15, 2020 at <https://time.com/5820634/evictions-coronavirus/>). See also the important work of Keeanga-Yahmatta Taylor: “In California, Governor Gavin Newsom, who is often applauded for exhibiting competence in his handling of the coronavirus, did not impose a moratorium on evictions, opting to leave this up to each locality. (He later signed an executive order that gives tenants statewide more time to respond to eviction proceedings, a move that *critics have panned* as “entirely useless.”) Some municipalities have allowed for a pause in rental payments, but only if tenants can prove that their hardship is specifically tied to COVID-19. This is plainly a ridiculous requirement in the midst of a pandemic, especially since it is quite possible to become ill but not secure the still-elusive COVID-19 test” (<https://www.newyorker.com/news/our-columnists/cancel-the-rent>).
5. “We Refugees, “ in *The Jewish Writings*, Schocken., 2008 (164-175). On the relative success of one approach, by ABODE, to enabling the unhoused to transition successfully to rent paying or fully subsidized tenancies, see Nathan Heller, “A Window Onto an American Nightmare” (<https://www.newyorker.com/magazine/2020/06/01/a-window-onto-an-american-nightmare>).
6. <https://www.businessinsider.com/trump-keep-passengers-on-grand-princess-cruise-ship-coronavirus-2020-3>. Keeping the numbers down (except when he wants them up, see: crowd size), is a recurrent theme of Trump’s presidency. As Alexandria Ocasio-Cortez said in a January 2020 interview with *Rolling Stone*, about her grandfather, a casualty of hurricane Maria: “He was in a hospital in the storm, on the Western half of the island. And these are the kinds of casualties that are not counted. Power went out across the entire island, and roads and bridges, infrastructure was so compromised. Medicines couldn’t be transported. And my grandfather passed away while he was in the hospital. And the thing is, I can’t say, “Oh, the hurricane killed my grandfather.” Right? But we don’t know. Did he not get medicine in time? There was little to no power, or communication to my family. This was also a time when the government was saying that only 64 people died. We know that the number is actually in the thousands” (<https://www.rollingstone.com/politics/politics-features/alexandria-ocasio-cortez-on-how-to-build-a-green-new-deal-965807/>).
7. <https://shelterforce.org/2020/04/09/high-risk-essential-and-illegally-evicted/>
8. On rights, themselves, as a practice, see Richard E Flathman, *The Practice of Rights*, and on property as a practice see Davina Cooper who explores “a broader conception of property organized around relations of belonging rather than control, where rights are fragmented and institutional authority dispersed” and property plays a role “in creating, managing, and sustaining what I will call a “variegated” social” (Cooper, “Opening Up Ownership: Community Belonging, Belongings, and the Productive Life of Property,” Kent Academic Repository – <http://kar.kent.ac.uk>). Published version available in ‘Law and Social Inquiry, 32 (3): 625 – 664. On Takings or Eminent Domain, see D. Zachary Hudson, “Eminent Domain Due Process,” *The Yale Law Journal* Vol. 119, No. 6 (APRIL 2010): 1280-1327. For a critique of “Takings” as too

conservative a measure, see Margaret Kohn's persuasive arguments in *The Death and Life of the Urban Commonwealth* (OUP, 2016).

9. For mortgage holders, another proposal makes sense: suspension of payments now, with all missing payments tacked on to the end of the mortgage and monthly payments resumed when the crisis ends. Here no government "taking" is required, since it is simply a mortgage holiday, and the debt will be paid by the debtor, just later, and not piled up to an impossible level.
10. In 2015, according to the annual AFL-CIO report: "4,836 workers were killed on the job in the United States. The fatal injury rate – 3.4 per 100,000 workers – remained the same as the rate in 2014. An estimated 50,000 to 60,000 workers died from occupational diseases. 150 workers died each day from hazardous working conditions. Nearly 3.7 million work-related injuries and illnesses were reported. Underreporting is widespread – the true toll is 7.4 million to 11.1 million injuries each year" (Death on the Job: The Toll of Neglect, April 26, 2017 (WORKPLACE HEALTH AND SAFETY REPORT at <https://aflcio.org/reports/death-job-toll-neglect-2017>).
11. On this point see my *Emergency Politics: Paradox, Law, Democracy* (Princeton, 2009)
12. As the *Intercept* notes in the context of AOC's comments: "Congress has ignored millions of people who have existed in a state of crisis for decades. The people of Flint, Michigan, (and *elsewhere*) still do not have *safe drinking water*. Millions of kids go *hungry* each day. Half a million people, before the pandemic, were *homeless* on any given night. And on it goes. There has been no multitrillion-dollar spending bill to combat these and other domestic emergencies. Instead, lawmakers have deprived communities of critical investments that could have attenuated their emergencies, often hiding behind the excuse that there isn't enough money in the budget to deal with problems like these" (Stephanie Kelton, "As Congress Pushes a \$2 Trillion Stimulus Package, the 'How Will You Pay For It?' Question Is Tossed in the Trash", <https://theintercept.com/2020/03/27/coronavirus-stimulus-package-spending/>).
13. <https://www.marketwatch.com/story/trump-justice-department-sues-to-seize-private-property-for-border-wall-construction-2019-12-27>
14. <https://www.businessinsider.com/mnuchins-oldest-bank-has-long-record-of-mortgage-foreclosures-2017-8>.
15. <https://www.newyorker.com/news/our-columnists/cancel-the-rent>.