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How the Law Fails Tenants (And not Just During a Pandemic)

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ABSTRACT

In the wake of the COVID-19 pandemic, all levels of government are considering how to protect public health by keeping people in their homes, even if they can no longer afford their monthly mortgage or rent payments. The protections that have emerged thus far have been far more protective of homeowners than renters. This essay exposes how the disparity in legal protections for these two groups is not unique to this pandemic. Rather, the crisis has merely uncovered longstanding, deep-rooted patterns within legal doctrines, governmental programs, and public policies that bestow favorable treatment upon homeowners at the expense of renters. This essay situates the current crisis within our existing research addressing the disparate treatment of renters and owners. It examines the historic distinctions between freeholds and leaseholds that have resulted in different treatment of the two groups, exposes the ways the existing legal doctrine primarily harms poor people and people of color, and proposes steps that can be taken to bring more parity to the legal treatment of renters and owners.

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INTRODUCTION

As states throughout the country have enacted orders to “shelter in place” and “stay healthy at home” in response to the COVID-19 pandemic, many people—both members of the general public and decisionmakers—have turned their attention to housing insecurity. Legislators on both sides of the aisle are contemplating how to protect public health by keeping people in their homes, even if they can no longer afford their monthly mortgage or rent payments.

Yet the legal approaches that have been implemented to achieve that goal differ wildly, both in structure and likely effectiveness. Homeowners have seen an easy-to-access and robust federal response, while renters have been largely left to rely on their landlord’s goodwill and limited protections in an ad hoc assortment of federal, state, and local laws. While this disparity is stark and disconcerting, it is unfortunately not unique to our current crisis. Our research suggests that the law has long bestowed favored treatment upon homeowners at the expense of renters. The response to this pandemic is just another example in a long line of laws and policies that treat tenants as less important, and less deserving of protections, than homeowners.

Part I of this Essay describes various legal protections that have emerged during the COVID-19 pandemic to address housing insecurity and unpacks how these measures offer unequal protections to renters as compared to property owners. Part II situates the current response within our broader framework, which recognizes that a wide variety of legal doctrines, governmental programs, and public policies favor property owners and disfavor tenants. Historic distinctions between freehold and leasehold estates, a central feature of the common law system, have resulted in modern laws and policies that not only lack a doctrinal justification, but which also result in harmful, disparate treatment for poor people and people of color. The Essay concludes by offering some suggestions for reframing the problem and bringing greater parity to the law’s treatment of renters and owners.

I. LEGAL PROTECTIONS FOR OWNERS AND RENTERS DURING THE COVID-19 PANDEMIC

In the context of the COVID-19 pandemic, legal protections for homeowners have emerged quickly. The federal Coronavirus Aid, Relief,

and Economic Security (CARES) Act requires most mortgage lenders to grant homeowners forbearance—a temporary suspension—on their mortgage payments for a minimum of six months.¹ It also entitles homeowners to a possible six-month extension of that forbearance, and prohibits late fees, additional interest, and most foreclosures on all federally-backed mortgages,² thereby ensuring no adverse impacts on a homeowner's credit. While mortgage lenders initially required borrowers to call and request forbearance—often leading to hours-long hold times—most large lenders have now transitioned to an online process that provides for a quick, automatic approval.³

Renters, on the other hand, have received no such direct, uniform protection under federal law. Instead, they have mostly been left to engage in individualized negotiations with their landlords. Unlike mortgage lenders, who, under the federal CARES Act, *shall* grant forbearance to any borrower who applies,⁴ most landlords are under no obligation to grant a tenant's request for rent relief.⁵ If a landlord refuses such a request, tenants must then attempt to assert legal protections under a confusing mix of laws that may or may not apply to them.⁶

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1. *Guide to Coronavirus Mortgage Relief Options*, CONSUMER FIN. PROTECTION BUREAU (Apr. 24, 2020), <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/#relief-options> [https://perma.cc/5CT6-X9WT].
 2. *Id.*
 3. *See, e.g., We're Here to Help*, BANK AM., <https://homeloanhelp.bankofamerica.com/en/latest-home-loans-updates-from-bank-of-america-coronavirus.html> [https://perma.cc/W389-N2AU] (last visited May 29, 2020).
 4. CARES Act, Pub. L. No. 116-136, § 4022(b)(2), 134 Stat. 281 (2020) ("Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.").
 5. *See* Laurie Goodman, Karan Kaul & Michael Neal, *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*, URB. INST. BLOG (Apr. 2, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units> [https://perma.cc/M3KN-TBU5] ("We estimate that eviction moratoria covering federally financed properties will apply to roughly 12.3 million (28 percent) of the 43.8 million US rental units.").
 6. For example, tenants in certain properties qualify for limited tenant protections under the CARES Act, including those who live in properties financed by government-sponsored enterprises, properties that have participated in the Low-Income Housing Tax Credit program, certain public housing or tenant-based assistant programs, and those with certain landlords who have received forbearance. *See, e.g., NAT'L HOUS. LAW PROJECT, SUMMARY AND ANALYSIS OF FEDERAL CARES ACT EVICTION MORATORIUM* (2020), <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf> [https://perma.cc/XN5P-Q2RH].

In the wake of the economic and social disruptions wrought by the COVID-19 pandemic, some tenants have received protection from eviction pursuant to temporary eviction moratoria. These measures, however, only offer protection to tenants if they live in a city or state that has adopted such a moratorium,⁷ or if they qualify under indirect provisions of federal law because they rent from a qualifying landlord.⁸ Indeed, the applicability of these laws often depends upon the type of financing that a given landlord has obtained for their rental property.⁹ Of course, tenants typically lack this type of information about their landlord's financing, and thus are unlikely to know whether they qualify for these protections.¹⁰ And while mortgage forbearance protection for homeowners may last up to twelve months, new eviction moratoria often have shorter timeframes, with some lasting only one or two months.¹¹ Indeed, some of these moratoria have already expired.¹² This limited protection does little to aid tenants who have no sense of when they might be able to return to work.

Furthermore, even if a tenant is temporarily protected from being evicted due to local, state, or federal law, they will still eventually need to pay their rent. If they do not, their landlord likely has the power to evict them as soon as the eviction moratorium is lifted. A few large cities have created

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7. *Eviction Moratorium Maps: Eviction Moratorium Protections Vary Widely*, REGIONAL HOUSING LEGAL SERVS., <https://www.rhls.org/evictionmoratoriums> [https://perma.cc/L5DJ-TVN6] (last visited May 29, 2020).
 8. See CARES Act, § 4023 (requiring that any multifamily landlord who takes advantage of an optional forbearance period—by choosing to apply for one to three months forbearance on the mortgage payments for their rental property—not evict any tenants or charge late fees for the one to three months that they have been granted forbearance).
 9. *Id.*
 10. In fact, tenants—and anyone other than the property owner—are typically prohibited from accessing databases that indicate whether a property is subject to a federally backed mortgage, since obtaining such information requires the borrower's Social Security Number or Tax Identification Number. See Houston Volunteer Lawyers, *HVL - Evictions and COVID-19*, at 24:30–28:35 YOUTUBE (May 15, 2020), <https://www.youtube.com/watch?v=myIG7-xdz9A&feature=youtu.be>.
 11. See, e.g., Executive Order, No. 2020-09 (R.I. Apr. 8, 2020), <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-09.pdf> [https://perma.cc/EB4E-J8HR] (delaying eviction proceedings in Rhode Island until May 17, 2020); Ninth Emergency Order Regarding the COVID-19 State of Disaster at 1, 597 S.W.3d 845 (Tex. 2020) (No. 20-9052) (delaying eviction proceedings in Texas until April 30, 2020).
 12. See, e.g., Elizabeth Trovall, *Texas Lifts Moratorium on Evictions, Leaving Houston Renters Vulnerable*, HOUS. PUB. MEDIA (May 22, 2020, 2:40 PM), <https://www.houstonpublicmedia.org/articles/news/in-depth/2020/05/22/370378/texas-lifts-its-moratorium-on-evictions-leaving-houston-renters-vulnerable> [https://perma.cc/N3G4-5E9P].

direct cash assistance programs for income-qualified renters.¹³ This money could help those who have lost their jobs cover rent payments during the pandemic. Most local governments, however, do not have the budgetary reserves to make this type of rental assistance widely available, especially as the economic repercussions of the COVID-19 pandemic are likely to decimate the tax revenues that local governments depend on.¹⁴

In addition to the different types of aid being offered, renters and homeowners also face unequal scenarios with respect to the ease of accessing that aid. While homeowners are able to access an automated forbearance process without providing documentation of adverse financial impacts from the COVID-19 pandemic, tenants seeking rent relief must satisfy landlord demands regarding proof of their financial situation.¹⁵ In addition, most eviction moratoria do not protect tenants from being charged late fees or seeing their credit adversely affected.¹⁶ Furthermore, many eviction moratoria only temporarily prevent the filing of unlawful detainer actions, allowing landlords to continue to issue eviction notices to tenants. Those notices may, in turn, intimidate tenants into vacating their homes in the midst of the pandemic, even when they are not legally required to do so.¹⁷

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13. See, e.g., Neighborhood Development, *\$3 Million Fund to Help Bostonians Pay Their Rent During COVID-19 Pandemic*, CITY BOS. (Apr. 5, 2020), <https://www.boston.gov/news/3-million-fund-help-bostonians-pay-their-rent-during-covid-19-pandemic> [<https://perma.cc/TUV2-3Y2J>] (providing information about the City of Boston's direct rental payment program).
 14. Alan Greenblatt, *States and Cities Face the Prospect of Severe Budget Shortfalls*, GOVERNING (Mar. 19, 2020), <https://www.governing.com/finance/States-and-Cities-Face-the-Prospect-of-Severe-Budget-Shortfalls.html> [<https://perma.cc/E78S-CASW>].
 15. See, e.g., L.A. County's Temporary Eviction Moratorium and Rent Freeze, L.A. COUNTY CONSUMER & BUS. AFF. (June 10, 2020), <https://dcba.lacounty.gov/noevictions> [<https://perma.cc/49SQ-78CJ>] (providing that landlords cannot evict tenants "if the Tenant can show an inability to pay rent and/or related charges due to financial losses related to" COVID-19 related factors).
 16. See Juan Pablo Garnham, *Texas Halted Evictions, Giving Renters Some Relief. But What Happens When the Moratorium Ends?*, TEX. TRIB. (May 1, 2020, 6:00 AM), <https://www.texastribune.org/2020/05/01/texas-evictions-coronavirus-renters> [<https://perma.cc/988V-R94M>] (noting that the Texas moratorium does not suspend payment or late fees). But see James Drew, *Inslee Extends Eviction Moratorium and Bans Rent Hikes, Late Fees*, NEWS TRIB. (Apr. 20, 2020, 5:12 PM), <https://www.thenewstribune.com/news/coronavirus/article242078191.html> [<https://perma.cc/J8JS-E8CF>] (state order that retroactively prohibits landlords from charging late fees during while the eviction moratorium is in place).
 17. See *Legal Rights of Tenants During the COVID-19 Crisis*, SE. LA. LEGAL SERVS. BLOG (June 5, 2020), https://slls.org/tenants_rights_covid_19 [<https://perma.cc/8BZX-GND6>] ("Even though evictions are banned, your landlord can still give you a Notice to Vacate (an eviction notice)."); see also Jeff Ernsthause et al., *Despite Federal Ban, Landlords Are Still Moving to Evict People During the Coronavirus Pandemic*, PROPUBLICA

The disparity in legal protections for renters and owners during this pandemic is even more striking given that renters, as a group, are far more likely to be financially insecure than homeowners. Renters are likely to have lower incomes than owners.¹⁸ The majority of Black and Latinx households—groups who have been impacted by a long history of racist structural barriers to homeownership¹⁹—are renters.²⁰ Renters also have vastly less savings to fall back on: A 2018 Pew study found that the average owner household has \$7000 in savings, while the average non-rent burdened renter household has \$1000 in savings.²¹ For rent-burdened renter households—which make up a striking 38 percent of all renter households—the same study found that they had average savings of just \$10.²² Yet, as the COVID-19 pandemic responses have shown, the legal protections for these two groups are seemingly inverse to their financial vulnerability.

II. DISPARATE TREATMENT OF RENTERS AND OWNERS: NOT JUST DURING A PANDEMIC

The unequal treatment of renters and owners during the COVID-19 pandemic is troubling. It places extra burdens on those least able to bear them during these already difficult times and poses problems for the longterm

(Apr. 16, 2020, 5:00 AM), <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic> [<https://perma.cc/65DG-3AQN>] (finding that scores of landlords in Texas, Oklahoma, Florida, and Georgia had filed to evict tenants in violation of federal law, which “underscore[s] Congress’ failure to include an enforcement mechanism in the law”).

18. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA’S RENTAL HOUSING: MEETING CHALLENGES, BUILDING ON OPPORTUNITIES* 15 (2011), <https://www.jchs.harvard.edu/sites/default/files/americasrentalhousing-2011.pdf> [<https://perma.cc/C6CT-ENE7>].
19. Audrey G. McFarlane, *The Properties of Instability: Markets, Predation, Racialized Geography, and Property Law*, 2011 WIS. L. REV. 855 (discussing the disproportionate impact of the 2008 foreclosure and subprime housing crisis on Black and Latinx homeowners as the most recent example in a “long and striking list of episodes of involuntary divestment from ownership of minority property owners”); *see also* RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (discussing de jure public policies at the federal, state, and local levels throughout the twentieth century that resulted in systematic housing segregation and fewer opportunities for Black homeownership).
20. U.S. CENSUS BUREAU, *QUARTERLY RESIDENTIAL VACANCIES AND HOMEOWNERSHIP, FIRST QUARTER 2020*, at 9 tbl.7 (2020), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf> [<https://perma.cc/F3PK-FDMU>].
21. THE PEW CHARITABLE TR., *AMERICAN FAMILIES FACE A GROWING RENT BURDEN* 14 fig.5 (2018), https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden_report_v2.pdf [<https://perma.cc/PPK5-58L4>] (citing data from 2015). Rent-burdened households are defined as those spending more than 30 percent of pretax income on rent. *Id.* at 4.
22. *Id.* at 4, 14 fig.5.

economic recovery of the country. This disparate treatment, however, is not surprising. Our research has documented the second-class status of tenants across a wide range of legal contexts. Some of these imbalances are well known, such as the federal mortgage interest deduction for homeowners²³ or the disproportionate amount of land zoned for single-family residential use (which is mostly owner-occupied) as compared to multifamily residential use (which is mostly tenant-occupied).²⁴

But there are many lesser-known, undertheorized ways in which the law treats similarly situated owners and renters differently. For example, when a residence is damaged by a natural disaster, disaster aid is disproportionately made available to homeowners, not renters.²⁵ Local land use laws typically require that owners be given notice of proposed new construction or zoning changes, but not tenants—even when the proposed changes are to the very property the tenants reside in²⁶—despite the fact that both groups may be similarly impacted by the harms associated with new development. And in eminent domain proceedings, when the government condemns property, a homeowner will be entitled to compensation, but a renter—absent unusual circumstances—will receive nothing.²⁷

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23. *New Report Shows That the Mortgage Interest Deduction Is One of the Drivers of the U.S. Racial Wealth Gap*, NAT'L LOW INCOME HOUSING COALITION (Oct. 17, 2017), <https://nlihc.org/news/new-report-shows-mortgage-interest-deduction-one-drivers-us-racial-wealth-gap> [<https://perma.cc/DK8X-LK6L>].
 24. Emily Badger & Quoc Trung Bui, *Cities Start to Question An American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES: UPSHOT (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> [<https://perma.cc/8UE9-D3T4>].
 25. Manny Fernandez, *Two Years After Hurricane Harvey, One Group Says It Has Been Overlooked: Renters*, N.Y. TIMES, Oct. 11, 2019, at A12.
 26. See, e.g., VASAVI PILLA, DALL. CITY PLANNING COMM'N, ZONING PROPERTY OWNER NOTIFICATION: CITY PLANNING COMMISSION (CPC) BRIEFING 10 (2019), https://dallascityhall.com/departments/sustainabledevelopment/planning/DCH%20Documents/code%20amendments/Property%20Owner%20Notification/Presentation_10172019.pdf [<https://perma.cc/E55E-PUCS>] (city deciding not to provide notice to occupants in addition to property owners, and instead adding a line to notice mailings to owners stating: "The City encourages the property owners to inform tenants of potential zoning changes."); Jordan Bailey, *Redevelopment Plan Opens Old Wounds in Bayside*, PORTLAND PHX. (Dec. 11, 2019), <https://portlandphoenix.me/redevelopment-plan-opens-old-wounds-in-bayside> [<https://perma.cc/NKT6-UPRQ>] ("Only property owners within 500 feet of the building were notified of the application and public comment opportunities; tenants did not learn of the change of use until after the approval.").
 27. Victor P. Goldberg, Thomas W. Merrill & Daniel Unumb, *Bargaining in the Shadow of Eminent Domain: Valuing and Apportioning Condemnation Awards Between Landlord and Tenant*, 34 UCLA L. REV. 1083, 1087–89 (1987).

In other cases, relevant underlying legal doctrines may be facially neutral as to renters and owners, but nonetheless exacerbate the disparate treatment of the two groups. For example, many states ban local governments from passing rent control and inclusionary zoning.²⁸ Thus, municipalities in those states that seek to provide affordable housing options to residents may turn to more traditional legal tools, such as using deed restrictions to ensure that owner-occupied housing is only conveyed to low-income buyers. While we applaud all efforts to provide affordable housing—whether renter- or owner-occupied—the reality is that many low-income residents in these communities are unlikely to be able to afford the down payment or qualify for a mortgage, even for deed-restricted housing.²⁹ Thus, reliance on deed-restrictions—a traditional property law tool—results in an outcome that benefits homeowners, or those who are able to become homeowners, and leaves behind many low-income individuals who can only afford to rent.

Similarly, tenancies in common (TICs) are a traditional, common law form of property ownership separate and distinct from leasehold estates. In recent years, TICs have emerged as a tool for landlords who want to convert their rental properties into condominiums and evict their tenants, but are barred from doing so by condo conversion statutes.³⁰ Instead, these landlords sell the property to a group of cotenants, who then enter into a contract governing which owner will use which unit. The result is a loss of rental units at a time when many cities need to provide more affordable rental housing for their residents.³¹ But municipalities would be hard-

28. See, e.g., Sophie Kasakove, *Red State Governments Ban Blue Cities From Passing Bills to Make Housing Affordable*, PAC. STANDARD (July 23, 2019), <https://psmag.com/social-justice/red-state-governments-ban-blue-cities-from-passing-bills-to-make-housing-affordable> [<https://perma.cc/HNT3-F52L>] (“As of 2017, at least 11 states had adopted laws that prevent localities from enacting mandatory inclusionary zoning or limit their ability to develop voluntary inclusionary zoning policies.”).

29. See THE PEW CHARITABLE TR., *supra* note 21, at 17–18 (discussing data indicating that rent-burdened households are less likely to attain homeownership); see also ROTHSTEIN, *supra* note 19, at 172–75 (describing the systemic impacts of decades of government policies perpetuating segregation, noting that “segregation itself has had a high cost for African Americans, exacerbating their inability to save to purchase suburban homes”).

30. Andrew Khouri, *You Can Buy ‘Cheap’ in L.A. But You Won’t Own Your Home and May Oust a Renter*, L.A. TIMES (Dec. 30, 2019, 6:00 AM), <https://www.latimes.com/business/story/2019-12-30/tenancy-in-common> [<https://perma.cc/UR7T-FYBY>].

31. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA’S RENTAL HOUSING 2020*, at 19 (2020), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf [<https://perma.cc/5VNW-92DD>] (noting the combination of low vacancy rates, increased numbers of rent-burdened households and dwindling supply of low-cost

pressed to legislatively limit the conversion from rental units to TICs, because the U.S. Supreme Court has suggested that regulations are more likely to be takings if they infringe on “established property rights,” which TICs are.³² Again, traditional property law doctrine winds up protecting the rights of an owner, selling to a group of new owners, at the expense of existing tenants.

This is not to criticize every legal doctrine or public policy that treats owners and renters differently: in some cases, disparate approaches may reflect salient differences between the two groups, or a public policy tradeoff. But more often than not, the unequal status of tenants and owners is not the result of any supportable distinction between the two groups. Rather, these differences are in large part a holdover from our common law property system, and the historic distinctions between freehold and leasehold estates.³³ This system has its basis in feudal English law, a time in history not associated with equity or concern for those living in poverty.³⁴ And though courts and legislatures have modernized property law, these changes have been made piecemeal over time, with reforms often coming first to those who have more voice and power. For example, the federal CARES Act is able to provide uniform protections for homeowners because mortgage law

rental units is producing a “rental affordability crisis” that local and state governments are struggling to address).

32. See *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 722 (2010) (“[I]t is not true that the new ‘common-law tradition . . . allows for incremental modifications to property law,’ . . . so that ‘owners may reasonably expect or anticipate courts to make certain changes in property law’ . . .” (citations omitted)); *id.* at 736 (Kennedy, J., concurring in part) (“It is thus natural to read the Due Process Clause as limiting the power of courts to eliminate or change established property rights.”). But see Joseph William Singer, *Justifying Regulatory Takings*, 41 OHIO N.U. L. REV. 601, 604 (2015) (“The idea that ‘established property rights’ are *completely* immune from deprivation, limitation, revision, or even regulation (with or without compensation) has alarmed many scholars as well as some of the Justices.”); see also Kenneth Stahl (@kookie13), TWITTER (Dec. 31, 2019, 9:08 AM), <https://twitter.com/kookie13/status/1212058011260178432> [<https://perma.cc/QSE4-QWQU>] (discussing the use of TICs to avoid condo conversion ordinances and the legal implications of that approach).
33. See JOSEPH WILLIAM SINGER, *PROPERTY* 304 (5th ed., 2017) (explaining that the fee simple, defeasible fees, and life estates are “traditionally classified as freehold estates that were created by ‘livery of seisen’ and protected by the royal courts in England,” and that “[l]easeholds are nonfreehold estates that were not created through the process of livery of seisen and were not granted common law protection until much later and were thus regulated by different rules”).
34. See, e.g., Helen M. Cam, *The Decline and Fall of English Feudalism*, 25 HIST. (n.s.) 216, 216 (1940) (“The essence of feudalism, for [social historians], is the consecration of inequality, the insistence on subordination, . . . [which] differentiates the vassal’s side of the relationship from the lord’s.”).

is highly uniform and federalized as a result of earlier crises, like the Great Depression.³⁵ In contrast, landlord-tenant law remains largely a matter of state contract and property law, with fewer direct levers for the federal government to activate to protect tenants.

It is also crucial to acknowledge that the disparate treatment of renters and owners under the law has the most dramatic impact on low-income people and people of color. These groups are more likely to be renters, not by choice, but because of deep-rooted structural barriers to ownership.³⁶ Like so much else in the history of U.S. housing law³⁷—racial zoning, racially restrictive covenants, exclusionary zoning, redlining, and other legal and financial barriers to obtaining mortgages—the unequal status of renters and owners is another example communities of color being harmed by facially neutral laws and policies.

To be clear, this Essay is not arguing that homeowners do not deserve the various protections described above, whether mortgage payment forbearance during this pandemic or disaster aid after a natural disaster. Indeed, homeowners could use more protections right now: Under the CARES Act, once the forbearance period is over, homeowners may be

35. Judith Fox, *The Future of Foreclosure Law in the Wake of the Great Housing Crisis of 2007–2014*, 54 WASHBURN L.J. 489, 496 (2015) (“When the laws governing mortgage foreclosure were developing, mortgage lending was largely a local issue. It is a completely different issue now. Things began to change during the Great Depression and exploded in the 1970s.”).

36. There is a significant body of literature on structural barriers to ownership for people of color and poor people, which speaks to the longstanding and largely unremedied nature of the problem. See generally ROTHSTEIN, *supra* note 19; see also WILLIAM C. APGAR JR. ET AL., U.S. DEP’T OF HOUS. & URBAN DEV., RISK OR RACE: AN ASSESSMENT OF SUBPRIME LENDING PATTERNS IN NINE METROPOLITAN AREAS (2009), https://www.huduser.gov/portal/publications/pdf/risk_race_2011.pdf [[https:// perma.cc/UZ8M-PWGU](https://perma.cc/UZ8M-PWGU)] (“The study finds that overall, the inclusion of neighborhood credit measures did not explain away the troubling finding that race and ethnicity remain an important determinant of the allocation of mortgage credit.” (foreword by Raphael W. Bostic, Assistant Secretary for Policy and Development Research)); Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 818–25 (addressing suburban and urban reform); Jeannine Bell, *The Fair Housing Act and Extralegal Terror*, 41 IND. L. REV. 537, 537 (2008) (discussing anti-integrationist violence experienced by “those integrating racial and ethnic minorities whose presences are rejected by their white neighbors” and the implications under the FHA); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1848–49 (1994) (discussing the “cycle of poverty,” *id.* at 1848, and “construction of racially identified space,” *id.* at 1849, created by a wide range of local, state, and federal government policies and programs).

37. See generally ROTHSTEIN, *supra* note 19 (making the argument that racial segregation in housing is the result of de jure public policies at the federal, state, and local levels, and not merely the de facto result of private prejudice or individual choices).

required to pay back mortgage payments in a lump sum, an unrealistic financial burden for many. Nor are we arguing simply for a longer, more broadly applicable rent and eviction moratorium: Landlords have their own bills to pay, and widespread landlord bankruptcies and foreclosures would be hugely problematic. Rather, we argue that equal—or at least proportional—protections must be provided to renters, especially given the fact that renters are often more financially vulnerable than homeowners.

CONCLUSION: PARITY FOR RENTERS AND OWNERS

For too long, the cumulative, systemic effects of legal doctrines that treat tenants as having second-class status have gone unexamined. Yet the impacts have been profound: The disparate treatment of renters under the law has widened the wealth gap, worsened the affordable housing crisis, and subsidized homeownership by shifting costs to renters. The COVID-19 pandemic has amplified these disparities even further, just as it is amplifying preexisting disparities along familiar fault lines in other contexts, from education to health to food insecurity.

But by exposing these disparities, this pandemic also gives us the opportunity to reexamine our assumptions and consider how the law could be reformed so that renters are treated more equitably. Short-term fixes like a single \$1200 check may help some renters with this month's rent, but what about next month? We must seriously consider making significant investments in safety net infrastructure: universal basic income; expanding the federal housing voucher program to all renters who need housing; and thinking about housing as a fundamental human right, rather than an investment vehicle or for-profit enterprise.

It also means reassessing the role of federal law: Unlike most other developed countries, the United States has very little in the way of a nationwide land law or housing policies. While states and local governments often can serve as valuable laboratories of democracy, during a nationwide crisis, a nationwide response is needed. For example, Representative Ilhan Omar's proposed Rent and Mortgage Cancellation Act would cancel both rent and mortgage payments for the duration of the pandemic and provide landlords and mortgage lenders access to an emergency fund.³⁸ There is also

38. See Press Release, Ilhan Omar, U.S. Representative (D-Minn.), Rep. Ilhan Omar Introduces Bill to Cancel All Rent and Mortgage Payments During the COVID-19 Pandemic (Apr. 17, 2020), <https://omar.house.gov/media/press-releases/rep-ilhan->

potential for even greater federal leadership on land use policy and landlord-tenant law—through federal zoning guidelines, rent control, or a restructuring of the legal conception of housing more broadly.

Although the COVID-19 pandemic continues to be a time of pain and uncertainty for many, we are also learning to appreciate the value of all types of work, and the need for all people to have a secure place in which to shelter. Now that the current crisis is illuminating the large number of people who are directly affected by the deep systemic inequities in housing and landlord-tenant relationships, it is time for the law to respond and evolve.