

5 ‘TIME’S UP – RESISTING PRIVATE LIMITATIONS ON RIGHTS TO HOUSING AND PROTEST’

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5.1 INTRODUCTION

This paper seeks to discuss the intersection of property in the right to protest and the right to housing. Extant eviction resistances fighting marketisation of depleted social housing stock in London will be referred to, alongside examples of squatting, occupation protests, demonstrating the coming together of housing and protest, and the ever presence of individual property rights shaping the resistances of the movements. Where housing and protest come together is in both formal and informal conceptions of ‘home’, through the proprietary rights equated in law, and the respective non-proprietary adequations of ‘home-making’ that assert little rights at all.

The alternating nature of eviction resistances demonstrates this further encroachment of private property into the *homes* of those who then use their spaces to demonstrate. Some resistances concern tenants occupying their homes before being decanted to make way for further private housing developments, while others involve protestors occupying residences highlighting the plight of those losing or having lost their homes.

I argue that this pattern of homes being used for protest, as a result of accelerated commercial redevelopment projects and social housing buyouts, ends with a shifting liminal of private and public spheres, condoned by local authorities and encouraged through pro-development presumptions in planning preferences. Where capital is encroaching on already enclosed space, such as in the decanting of council housing residents and demolishing of run-down estates to make way for new ‘affordable’ housing, the result is the most private of acts becoming the most public – the home becomes a site of protest. Nowicki’s recent use of ‘domicide’ to describe deliberately and legislatively enforced dispossession is used to characterise the *privacy* of home meeting the unwelcome arrival of *private* commercial interests, and the very *public* effects of ‘home-unmaking’,¹ eviction and protest, as a result.

Human rights obligations under Article 8 (right to private and family life) and Articles 10 and 11 (freedom of expression and assembly respectively) of the European Convention

1 D. Neumark, ‘Drawn to beauty: the practice of house-beautification as homemaking amongst the forcibly displaced’, *Housing, Theory and Society*, Vol 30, No. 3, 2013, pp. 237-261.

on Human Rights (ECHR) will be discussed in relation to the shape-shifting nature of the public and private spheres, arguing that a right to housing and a right to protest can increasingly be used interchangeably in relation to understanding the category of home.

The discussion concludes by considering the temporal continuation of protest to home, from informal to formal, public to private, to home as pure commodity, back to public once more and what opportunities the enclosing of the already enclosed gives for resistance.

“Their eyes see rubble, former exiles see home”²

Given the precariousness of recent global economic times, Fox O’Mahoney contends, “[T]he crisis in the housing and mortgage markets has brought home to us our vulnerability to displacement and dispossession [...] perhaps more so than at any other time in recent years ...”³ In times when generations are experiencing the threat of eviction and dispossession as never before, the coming together of housing and protest is a revealing synergy, arguably less a meeting of two separate issues than an expression of an innate adequation of loss enmeshed in outrage, experienced as one.

Critical geographer Nowicki (2014) has recently been calling for a ‘resurrection and recasting’⁴ of Porteous and Smith’s (2001) *domicide*, as a fitting theoretical framework characterising the loss of homes as a result of the UK housing crisis. *Domicide* was originally defined by the Canadian geographers back in 2001 as “the planned, deliberate destruction of someone’s home, causing suffering to the dweller”.⁵ Agreeing with Nowicki, this piece seeks to discuss the usefulness of *domicide* in explaining the culpability of neo-liberal laws surrounding housing and more widely the heralding of individual private property over all moral, communal and informal proprietary claims, in affecting eviction and expropriation on a large scale.

The question here, however, is what do we refer to as a *home per se*, whether legally, politically or existentially, and do the two conceptions marry up? Why is there so much resistance and outrage to housing policy and jurisprudence if what we are told about all we need to survive and exist is being met politically and juridically by the government and the market? Or we may equally question why people are not protesting *more* about their own housing situation, given that if they do, they may *lose* their home.

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- 2 J.D. Porteous & S.E. Smith, *Domicide: The Global Destruction of Home*, McGill-Queens University Press, Montreal and Kingston, 2001.
 - 3 L. Fox O’Mahoney in L. Fox O’Mahoney & J. Sweeney (Eds.), *The Idea of Home in Law: Displacement and Dispossession*, Ashgate Publishing, Farnham, 2011, p. 1.
 - 4 M. Nowicki, ‘Rethinking *domicide*: towards an expanded critical geography of home’, *Geography Compass*, Vol. 8, No. 11, 2014, p. 786.
 - 5 Porteous & Smith *supra* note 2.

Using legal understanding of the home,⁶ in common law and human rights norms, as well as commentaries on belonging,⁷ and 'home-making'⁸ to understand the connections we create with place, for however brief or extended an amount of time, this piece seeks to assert the inextricable link of protest with housing, and, in fact, goes so far as to say that concepts of home and concepts of protest incite one and the same thing. Reasoning with the Schmittean idea of all law emanating from the land,⁹ all protest affects the same alluvial connection, claims to soil being the basis of law in a democratic society. The root of protest and housing is our relation with the earth beneath, and it is through the human emotions of fear and anger, loss and outrage, vulnerability and dispossession that we find them enmeshed as ethics towards ourselves, the community and the built or natural world around us. How can we conceptualise this in law, and what new ways are available of understanding the non-duality of the right to housing and the right to protest? One way to consider this is through the ambit of convention rights and the useful way rights to protest and private and family life become blurred, as a result of private commercial interests entering residential privacy, triggering the most public of acts of eviction and resistance.

Nowicki's understanding of *home-unmaking* is also a very useful way of thinking the connection between housing and protest and the congenital effect of private property on the private and public sphere. The presence of private restrictions on the right to protest and housing rights is specifically expressed in the example of squatting and eviction resistance, and the extent to which a right to housing is inimically linked to the squatting and eviction resistance cause and organically linked to protest, whether a home or house is involved or not. Nowicki's home-unmaking allows us to understand the temporal fluctuation between what at once can be housing, the next moment protest and back round again.

I argue that the neo-liberalisation of housing and the resultant effect on those who have become or are soon to become homeless demonstrates the returning home of property to a realm it had already excluded, expropriated and enclosed. It certifies a desperate, lustful urge of capital at the heart of its manoeuvre back to the home of law – the homes of people. Discussed shall be the shifting position of possession orders and forcible entry, how they bring short the time of the squatter or the resident at the behest of cash-strapped local authorities bedazzled by venture capital regenerating social housing stock, or the courts' preference to the primacy of private ownership. The discussion will conclude with

6 Such as L. Fox O'Mahoney's taxonomies of home, see L. Fox O'Mahoney, *Conceptualising Home: Theories, Laws and Policies*, Hart, Portland, 2007; L. Fox O'Mahoney, 'The meaning of home: from theory to practice', *International Journal of the Built Environment*, Vol. 5, No. 2, 2013, pp. 156-171; Fox O'Mahoney & Sweeney *supra* note 3.

7 See S. Keenan, *Law and the Production of Spaces of Belonging*, Routledge, London, 2013.

8 Neumark *supra* note 1.

9 See C. Schmitt, *The Nomos of the Earth*, Telos Press, New York, 1950.

a consideration of the temporal linkage between protest and home, as well as in planning and law through the accelerated push of time as money, property as commodity, expressed in practices and performances of eviction where a home, however temporary or otherwise, is dispossessed or demolished to make way for ‘progressive’ new housing developments.

5.2 HOME, IN LAW AND OTHERWISE

I have been seeking to find what this inimical linking of housing and protest actually is. Without being a family lawyer or concerned with the semantic category of *home* in my work thus far, this link is probably already obvious to those in such fields.

What is home, and how is it thus far described in law? Is there an inextricable link between home and protest? Fox refers to four typologies of home in her ‘Conceptualising Home: Theories, Laws and Policies’¹⁰ as (a) financial investment; (b) as physical structure (as housing); (c) as territory; (d) as identity and self-identity and (e) as social and cultural signifier.¹¹ For something that is so embedded as part of the human experience, defining what home means is something much more complex than a series of indicators, so it seems. It is not merely a physical relation with a space or place, but one that incites a social and psychological connection that a person nurtures with a specific abode, and this has been acknowledged in European Court of Human Rights (ECtHR) jurisprudence such as *Connors v. UK* and *R (Countryside Alliance) v. AG* [2008] AC 713, where Baroness Hale referred to “the inviolability of a different kind of space, the personal and psychological space within which each individual develops his or her sense of self and relationships with other people”.¹²

According to feminist geographer Domosh, “the home is rich territory indeed for understanding the social and the spatial. It’s just that we’ve barely begun to open the door and look inside”.¹³ The literature on home and *home-making* crosses both territorial and psychological connotation where the catalytic linking of property has been the most familiar form of connection between the space and the individual, and less likely so, the collective. The idea of a personal connection to property can be found in the work of Hegel in his ‘Philosophy of Right’,¹⁴ where he claims property is an inimical part of our personality and our free will to realise one’s self, as Fox O’Mahoney discusses in her *magnum opus* on the home. The ‘progressive’ property doctrine of Radin, where property is expressed

10 Fox O’Mahoney (2007) *supra* note 6.

11 Fox O’Mahoney (2013) *supra* note 6, pp. 159-166.

12 *Connors v. UK*, ECHR, 27 May 2004, App. No. 66746/01 and *R (Countryside Alliance) v. AG* [2007] UKHL 52.

13 M. Domosh (1998) cited in A. Blunt, ‘Cultural geography: cultural geographies of home’, *Progress in Human Geography*, Vol. 29, No. 4, 2005, p. 504.

14 G.W.F. Hegel, *Hegel’s Philosophy of Right* (T.M. Knox, Trans. from German), Clarendon, London, 1952 (original work published in 1820).

as personhood, “serve[s] as an explicit source of values for making moral distinctions in property disputes”.¹⁵ Yet what kind of property are we talking about here? Is it one based on landed matter or material possessions,¹⁶ or more one concerned with a connection we feel to a place, person or thing?

Keenan’s recent eloquent work on property and *belonging*, ‘Law and the Production of Spaces of Belonging’¹⁷ deals with this relational and spatio-temporal dimension of what it means to be ‘at home’, drawing on the work of Ahmed,¹⁸ on the intimacy of bodies and their ‘dwelling’ places where the role of space and time is congenial to how we relate our bodies to the external and existential world around us. She claims: “[B]y analysing property spatially – instead of focusing on the subject of property – subject-object and part-whole belonging overlap to the extent that they become indistinguishable”.¹⁹ The relation between whole and part, subject and object, is one that is ‘held up’ in spaces, “that are conceptually, socially and physically shaped towards them: spaces of belonging”.²⁰ Work such as Keenan’s allows for a spatio-temporal understanding of our relation of the home in property, which can be a connection to a thing, person, race or creed, feelings of attachment to matter or mind oriented in time and space. By allowing for a conception of *dwelling* – a Heideggerian *dasein*²¹ – to be, to exist, to reside, a domain of commorancy, plots us in coordinates of not just elements of materiality and embodiment in terms of a house,²² but where *housed* does not solely have to be concerned with property, or at least an individual proprietorial right *per se*. It is further interesting to consider accounts of home-making where processes of trauma and dispossession indicate the integral performative quality of ‘practicing home’, for no matter how short a temporal duration. Neumark speaks of ‘beautification’ rituals of those who have no material and certainly no legal claim to a home,²³ with squatting and eviction resistances posing as examples of the integral role of the home within protest, as somewhere at the centre of one’s existence,²⁴ where one can be at peace and sleep.

15 She states “There is both a positive sense that people are bound up with their homes and a normative sense that this is not fetishistic” in M.J. Radin, *Reinterpreting Property*, University of Chicago Press, Chicago and London, 1993, p. 54; see also R. Radin, ‘Property and personhood’, *Stanford Law Review*, Vol. 34, No. 5, 1982, pp. 957-1015, 35.

16 Stern discusses how the psychology research illustrates the primacy of social relations, not possessions, to self and flourishing, see S.M. Stern, ‘Residential protectionism and the legal mythology of home’, *Michigan Law Review*, Vol. 107, No. 7, 2009, pp. 1093-1144.

17 Keenan *supra* note 7.

18 S. Ahmed, ‘A phenomenology of whiteness’, *Feminist Theory*, Vol. 8, 2007, pp. 149-168.

19 Keenan *supra* note 7, p. 6.

20 *Id.*, p. 7.

21 See M. Heidegger, *Being and Time* (J. Macquarrie & E. Robinson, Trans. from German), S.C.M. Press, London, 1962 (Original work published in 1927).

22 See D. Clapham, ‘The embodied use of the material home: an affordance approach’, *Housing Theory and Practice*, Vol. 28, No. 4, 2011, pp. 60-376.

23 “...Home is a particularly active site of the material, affective and ideological identity reconstruction necessary to the re-establishment of a sense of belonging”, see Neumark *supra* note 1.

24 A. Husni-Bey’s *Convention on the Use of Space*, 2015, available at: <www.useofspaceconvention.org/>.

Needless to say, Fox's 'x-factor' categories of the home, as Nield remarks, in her recent chronology of ECHR defences in human property rights,²⁵ have been chiselled and whetted so as to fit some fairly terse frameworks personifying the meaning of home in human existence. Are these frameworks of the home so easily classifiable as identity, to territory to physical structure and back again? In law the concept of the home is still in chrysalis formation, with Fox O'Mahoney construing, "The idea of home is both present and absent in law",²⁶ where to the extent that given the socio-economic presumption of housing as an onerous obligation on the state, home as a category is one that has been left deliberately vague within national and regional legal frameworks. Nield explains that there is a disjunction in law between home as construed in property rights and the understanding of the home in informal or transient non-proprietorial settings where there is no ownership link between the individual and place concerned. This is where human rights have created what Gray and Gray²⁷ have termed a "new equity" in property through which home without ownership has an opportunity to be considered in law. Article 8 of the ECHR, right to respect for private and family life,²⁸ is the closest thing we have to a right to housing at the national level (brought into our law through Section 1, schedule 1 of the Human Rights Act 1998 (HRA)). In the case law referring to Article 8 at the European and national levels, "a home is defined not by property rights but by the 'sufficient and continuing links' that a victim develops with a particular place in which they live or have lived".²⁹ Indeed, Nield and Hopkins both go so far as to say a home "right should be recognised as independent of any Article 8 right enjoyed by other occupiers, even those without a property interest in that home".³⁰

Article 8 and the human rights language has been pivotal in developing the legal conception of the home, and one that should be afforded to all, as having somewhere to live, outlined by Lord Bingham in *Harrow LBC v. Qazi* [2004] 1 AC 983 as one of the 'few things [...] more central to the enjoyment of human life'. Indeed, the Article 8 provision and the manner in which it has been interpreted at the national and regional levels reminds us of

25 S. Nield, 'Article 8 respect for the home: a human property right?', *King's Law Journal*, Vol. 24, No. 2, 2013, pp. 147-171.

26 L. Fox O'Mahoney in Fox O'Mahoney & Sweeney *supra* note 3.

27 See K. Gray & S.F. Gray, *Land Law*, Oxford University Press, Oxford, 2009.

28 Art. 8 of the ECHR states: "1. Everyone has the right to respect for his private and family life, his home and his correspondence; 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (ECHR, 1950).

29 See *Gillow v. UK* (1986) 11 EHRR 335; *Blecic v. Croatia* (2005) 41 EHRR 13; *Zehentner v. Austria* (2011) 52 EHRR 22, listed in Nield *supra* note 25, p. 149.

30 S. Nield & N. Hopkins, 'Human rights and mortgage repossession: beyond property law using Article 8', *Legal Studies*, Vol. 33, No. 3, 2013, pp. 431 and 149.

the human connection with land, where the development of a 'right to housing' *per se* has over the years been a cause of controversy, its vague character affecting a benign protection for those who cannot rely on a specific proprietary claim to the land they call home, and are suffering its loss or imminent loss.

Encouragingly, Kenna asserts, "the recent case-law of international monitoring bodies and courts is building on earlier precedents and decisions, leading to more efficient and coordinated protection of housing rights".³¹ Under international law, a developing recognition of a right to housing is found within the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976) pursuant to Article 11(1), where states parties recognise the right of everyone to a standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".³² It can also be found nestled in other treaties such as Article 25(1) of the Universal Declaration on Human Rights (1948), Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, and the 1976 (Report of Habitat: United Nations Conference on Human Settlements [United Nations publication, Sales No. E.76.IV.7 and corrigendum], chapter I).³³ It is also included at the EU (European Union) level as an autonomous right at Article 31 and housing assistance at Article 16 of the European Social Charter (1966).³⁴ We all know, however, that international law is subject to the mood of its signatory sovereign states, and thus the qualified, derogable and reservable position of the soft norms and aspirations of housing are not those that are enforceable on states unless they are willing to accede to them through domestic law or the legal requirements of regional treaty obligations.

The norms of international law underscore what it means to have one's understanding of home brought to an abrupt end, to suffer its interruption where the right *not* to be subjected to arbitrary or unlawful interference with one's 'privacy, family, home, or correspondence', is a congenital part of the right to private and family life. Forced eviction is "*prima facie* incompatible" with the requirements of the ICESCR, for instance, and can

31 P. Kenna & D. Gailiute, 'Growing coordination in housing rights jurisprudence in Europe?', *European Human Rights Law Review*, Vol. 18, No. 6, 2013, pp. 606-614.

32 International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976), contained in document E/1992/23.

33 As well as other treaties with interpretable right of housing provisions Art. 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, Art. 27 (3) of the Convention on the Rights of the Child, Art. 10 of the Declaration on Social Progress and Development, Sec. III (8) of the Vancouver Declaration on Human Settlements, Art. 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115), see UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, Retrieved on 26 September 2015 from <www.refworld.org/docid/47a7079a1.html>.

34 Kenna & Gailiute *supra* note 31.

only be “justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.³⁵

Nevertheless, how do these aspirations for the home connected to the economic and social rights of housing, whether on a proprietary basis or otherwise, become enforceable at the national level? As Nield highlighted, there is less worry over the legal protection afforded to home-owners,³⁶ where the rights of paper title holders seem to reign over all others. It is the striation of the home by the economic and political actions of the marketised state, and its trickle-down effect on the legislators and jurisprudence governing individual property that leaves those who have a purely *de facto* kindred with their surroundings out in the cold. The disjunct of the gritty reality of cash-strapped councils succumbing to solicitation by big business’ ‘planning gain’, the neo-liberalisation of housing associations and the development of new *affordable*³⁷ housing at the cost of decanting extant residents from aging social housing stock comes up as a stark reminder of the neglect of *informalised* rights to the home at the national level, *against* the pursuit to protect rights to housing at the international level. This question of commercialisation and affordability³⁸ is likely to become a key point of contention when urban housing strategies, deprivation and homelessness are the key focus of UN Special Rapporteur on Housing in the mandate 2014-2017 and the implementation of Habitat III from October 2016.³⁹

Despite this, Kenna asserts that there is evidence to suggest the semantics of the home and housing is loosening across European jurisprudence through accounting for Articles 31 and 16 of the European Charter as well as rulings coming out of the Court of Justice of the European Union (CJEU), somewhat at the ECtHR level through the recognition of

35 Para. 18 states: “depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.”

36 Given the subprime mortgage crisis at least there have been some protections put in place as per the Financial Regulations Authority (‘FSA’) and Financial Services Act (2012).

37 An example of the UK’s ignorance of international housing norms can be seen in the dismissed legal challenge from nine London boroughs against Boris Johnson’s plan to allow affordable rents to be set up to eighty per cent of the market rate; see L. Robertson, ‘Boroughs lose fight against Boris’ affordable rent plan’, *Islington Gazette*, 25 March 2014, Retrieved on 20 September 2015 from <www.islingtongazette.co.uk/news/islington_family_roars_housing_is_our_right_we_ll_never_stop_our_fight_1_4217676>.

38 ‘Adequacy’ has been the subject of recent UN General Assembly proceedings, UN General Assembly, Adequate housing as a component of the right to an adequate standard of living, Seventieth session Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, 4 August 2015, A/70/270, Retrieved on 27 September 2015 from <www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>.

39 UN General Assembly *supra* note 38.

alternative forms of housing as 'dwellings', and the guarantee of the right to shelter, even for illegally residing persons through recent *Yordanova and Others v. Bulgaria* 25446/06 2012 and *Winterstein and Others v. France* 27013/07 2013 cases.⁴⁰

5.3 PUBLIC VERSUS PRIVATE VERSUS PRIVACY – RIGHT TO PROTEST AND HOUSING

A conundrum of special interest to this paper is how the right to protest and housing is expressed specifically when a building is occupied or squatted as a result of neo-liberalisation of housing stock, or through the tangible 'closing in' of the doctrine of adverse possession in England and Wales, registration and criminalisation as characteristic of the encroachment of private property in land. I am intrigued how this movement of enclosure of individual property reveals a not always distinct division between a right to housing and the right to protest and whether the protections for those claiming such rights in the UK and countries signatory to the ECHR are satisfactory or whether they need a total rethinking. To what extent and how far can we go with Article 8 of the ECHR in terms of not just foreseeing a right to housing, but allowing a space in which one can dissent, and how can Articles 10⁴¹ and 11⁴² protect those protesting the loss or potential loss of their and others' homes?

Considering the developing area of supranational law around housing rights, the provisions give a clear illustration of the intersecting connections with not just protest as to what it means to be at home, but also the enmeshedness with a number of other rights in order for housing to be 'adequately'⁴³ assured. In the European Committee on Economic and Social Rights (ECSCR) *General Comment No. 4: The Right to Adequate Housing*, it is stated that housing rights rely on the fulfilment of rights to health, to education, to employment, as well as to non-discrimination and equality, to freedom of association or

40 Kenna & Gailiute *supra* note 31.

41 This is the right to freedom of expression, a qualified right by way of law in the interests of national security, among other considerations under 10 (2): "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".

42 Another qualified right 11 (2) of freedom of assembly and association: "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

43 It goes further to delineate what 'adequacy' actually means, listing the determinates as (a) Legal security of tenure; (b) Availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; (g) cultural adequacy. The Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost", *see* General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para. 8, Retrieved on 26 September 2015 from <www.refworld.org/docid/47a7079a1.html>.

freedom from violence, and ultimately to the right to life, “... the inherent dignity of the human person ... from which the rights in the Covenant are said to derive requires that the term ‘housing’ be interpreted so as to take account of a variety of other considerations”.⁴⁴

Under paragraph 9 of the ECESR comments on the right to housing, the inimical role of the right to protest in home-making comes through in the integral necessity of states to accommodate freedom of expression and association for “tenants and other community-based groups, the right to freedom of residence and the right to participate in public decision-making”.⁴⁵ This recognition of the protection of the home in countenance and gathering is prescient given the eviction resistance and squatting examples burgeoning in recent years.

The coming together of housing rights and a right to protest has become resoundingly clearer through a two-stage process: *first*, there is less and less *public* space in which to protest, to express and gather freely in places that do not have a state guarantee of protection of rights due to the accelerated privatisation of space. The underlying encroachment of private property into previously public spaces where freedom of expression and assembly had been under the protection of the state leaves less and less room in which to dissent, unless in your home – but we know from recent eviction resistances that even that is not sacrosanct. This is the manifestation of the closing in of rights to protest through the role of property and the preponderance of now private and *quasi-public* spaces. The consistent upholding of the right to peaceful possession of a landowner whose land is being used to facilitate protest in its variant forms over that of the rights to freedom of assembly and freedom of expression of protestors leads to the question, how can the right to protest ever be considered viable in light of the rights of paper title owners? Similarly, how can Article 8 ever protect you from losing your home if you are facing the force of Article 1 Protocol 1⁴⁶ of the landowner whose land you are on?

There have been a number of cases relaying the increased privatisation of space and the equal demise of protest protections such as protestors being banned from privately owned shopping malls in *Appleby* 2003 37 E.H.R.R. 38 or where climate change activists have come up against heavy civil lawsuits by energy giants on whose land demonstrations have taken place (*West Burton* climate change activists being threatened with a civil lawsuit from energy conglomerate EDF being a prime example) and the well-documented use of private law mechanisms to remove UK students during university occupations (*University of Sussex v. Protestors* [2010] 16 E.G. 106 (C.S.) (Ch D); *School of Oriental and African*

44 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4 *supra* note 43.

45 *Id.*

46 Protection of property is a qualified right under Art. 1 (1, 2): “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

Studies v. Persons Unknown [2010] 49 EG 78). There have been some interesting questions in relation to protests around anti-fracking demonstrations and how the police responded on the one hand, and the judiciary on the other, with the courts seemingly more in favour of allowing the protestors some scope for a 'climate change defence' first mentioned in *Kingsnorth*. Charges here, however, were made under public order interventions, not private law, and predominantly concern the obstruction of the highway and thus not privately owned property.

It may seem as though the highway is one of the last bastions of remaining legally defined public space, and yet we see little protest movements these days with the heart and soul of the likes of 'Reclaim the Streets' (RTS), where roads are occupied, trees planted in upturned tarmac, flowers cheekily strewn across abandoned burnt out cars and mischievously snuck into the rim of a police officer's hat. The politics of individual property pervades all to the extent that protest itself is seemingly confined to those radically engaged and not the import of the everyday *private* person, and yet the exaggerated drive of private accumulation has now meant the divisions between private and public are skewed even further, where protest increasingly is taking place within the *privacy* of the home (whether that of the protestor or not). The 2015 Manchester's St Anne's Square and Castlefield 'Homeless Rights for Justice' tent occupations succumbed to an injunction to remove them from a ten-week-old encampment in the city, in a similar move to the City of London Corporation's removal of Occupy St Paul's in *City of London Corp v. Samede* [2012] EWCA Civ 160, where a combination of Article 8 (right to private and family life of the homeless residing at the encampments) and Articles 10 and 11 claims were rebuffed in light of the paper title owner, and a recourse to private law mechanisms of dealing with protest camps.⁴⁷

Second, there is less and less *privacy* in which to live, to be at home, nowhere sacrosanct from private market interests, the results being the commodification of shelter and the

47 The Occupy encampment of St Paul's also brought to light the unassumed nature of what appeared to be public space, with the proprietary rights of the City of London and the proportional rights of the Church and its supporters, outweighing the rights of those protesting (*Samede* [2012], following the decision to move them [2012] EWHC 34 (QB)). The rulings were inevitably in favour of the landowners, once again remedied through the use of private law mechanisms. In *Samede*, claims of members of the camp's rights under Art. 8 being infringed were dismissed, the distinction between occupation of land for protest and those as a home being clearly delineated. On 22 February, the Occupy St Paul's were given their opportunity to appeal. The Occupy St Paul's protest, like the other Occupy protests, was illustrative of the quasi-public nature of the occupying law of not just the state, but capital, when it comes to the division of proprietors, the crossing over to trespass and the use of the rights of the highway to protect the land that had been occupied. The City of London Corporation and the Church were the concerned proprietors, and the Stock Exchange too. According to Stuart Fraser, the City of London Corporation's Chairman of Policy and Resources: "Protest is an essential right in a democracy – but camping on the highway is not and we believe we will have a strong highways case because an encampment on a busy thoroughfare clearly impacts the rights of others" (*Samede*). Paternoster Square, where the St Paul's encampment had been situated, is now technically a city walkway, allowing police to remove future encampments straightaway, without a court order.

removal of people from their homes. The neo-liberalisation of social housing is one such example of the encroachment of commercial rights into the privacy of the home. In the ECESR's view, any right to housing should not be interpreted in a narrow or restrictive sense such as "the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity",⁴⁸ something that sadly echoes as sentiment and not action where state and market are coming together in the commodification of not just housing, but the commodification of the homeless. The liberalising of grant funding in housing associations characterises shelter being viewed increasingly as a commodity by state and market forces, opening up a previously charitable-run sector to private investors, the people it housed and their connection to their *place of being*, who can be bought and sold just as in any other marketplace.⁴⁹ The housing association-dominated sector, which had unique access to grant funding to provide new 'social housing', has now been infiltrated by the private sector where competition for grants were first introduced through the Housing Act 2004 and the Housing and Regeneration Act 2008. Similarly, the Localism Act 2011 replaced the 'Tenant Services Authority', the auditing body that regulated social housing, with the less independent statutory regulatory committee Homes and Communities Agency (HCA).⁵⁰ According to Handy, "This liberalisation of access to grant has brought with it some regulatory challenges [...] where there is a powerful argument that due to liberalisation of the development of affordable homes is far from a 'public' function".⁵¹

In an example local to my home and work, the coming together of right-to-protest and right-to-housing arguments were clear in the case of the now evicted collective of 'Radical Bank of Brighton and Hove',⁵² in defence of impending possession order proceedings. 'RadBank', as it is better known, was an occupation of an empty Barclays bank building in the London Road area of Brighton, by activists, locals, students and, undoubtedly, the homeless too who set up Brighton's first squatted social centre for many years. As the building was of a commercial nature, it fell under the old regime of squatting law under 6, 7, 12 of the Criminal Law Act 1977 that allows for squatters to remain in occupation until a court order removes them, and not forcible removal as Section 144 of the Legal Aid Sentencing and Punishment of Offenders Act ('LASPO') 2012 allows in deemed 'residential'

48 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4 *supra* note 43.

49 The majority of Housing Associations in England and Wales have now been or will be reclassified as public bodies, M. Tran, 'Majority of housing associations in England to be reclassified as public bodies', *The Guardian*, 30 October 2015, Retrieved on 26 September from <www.theguardian.com/society/2015/oct/30/majority-of-housing-associations-in-england-to-be-reclassified-as-public-bodies>.

50 C. Handy, 'The governance and regulation of housing associations: latest developments', *Journal of Housing Law*, Vol. 17, No. 31, 2014.

51 Id.

52 See <www.radicalbank.wordpress.com/> [accessed 19 June 2015].

properties. RadBank were given as little as two days' notice to find legal representation and prepare themselves for the court hearing,⁵³ and, as a result, had to stand in court as litigants-in-person. The cuts to legal aid specifically put squatting cases outside the scope of civil legal aid under Schedule 1 Part 1 of LASPO. It is interesting that despite the collective arguing the infringement of their Article 8, the judge dismissed their arguments declaring 'rights cut both ways', inferring the predominance of Article 1 Protocol 1 of Barclays Bank, in this particular instance. Had RadBank had the legal representation and notice to prepare that would have allowed a fair hearing, a lawyer would have quickly corrected the judge with a reminder that despite its apparent unhindrance in possession claims, the right to peaceful enjoyment of possessions remains a qualified right.⁵⁴

Radbank is one of just many cases where informal Article 8 or Articles 10 and 11 rights will fail when they come up against the rights of peaceful enjoyment of possessions of the absent landowner. Most interesting has been the development of precedent around the application of Article 8 in protests in the *Manchester Ship Canal Developments Ltd v. Persons Unknown* [2014] EWHC 645 (Ch) case, where Article 8 as a defence in protests on private land can be engaged and have the potential to trump the Article 1 Protocol 1 right of peaceful possession of property by the landowner in 'exceptional circumstances'. The horizontal use of the HRA 1998 was possible following the decision in the 'Grow Heathrow' case *Malik v. Fassenfelt* [2013] EWCA Civ 798, [2013] 3 E.G.L.R. 99, where the court itself must comply with human rights obligations under Section 6 of the act, thus allowing for human rights protections against actions of private bodies. Looking at the usefulness of the right to protest in protecting the right to a home, Articles 10 and 11 of the Convention did not provide the defendants with a defence to the possession claim, this following the decision in *Sun Street Property Ltd v. Persons Unknown* [2011] EWHC 3432 (Ch), Times, January 16, 2012 ('Bank of Ideas' protest occupation of an empty USB Bank property during the Occupy protests in 2011), where there was no authority to suggest Article 11 had any basis for overriding property rights. Despite this, what is of import is the fact that freedom of expression and assembly were even being considered in relation to possession claims by private landowners in *Manchester Ship Canal* consequently indicates Article 8 can also be engaged in protest cases. The anti-frackers, as part of a protest camp, had to show they had been using the occupied private land as a home, as per the sufficient and continuous links test of *Buckley v. UK* (1996) 23 EHRR 101, which even if they had met the requirements of the test, a possession order would still be deemed proportionate to

53 Brighton County Court, 16 June 2015.

54 The old regime of squatters' rights, reliant on state-sanctioned time limitations to possession of property under the Limitations Act 1980 and controlled by the Criminal Law Act 1977, satisfies this qualification of peaceful enjoyment of property, in balancing the public interest to access property with that of any sanctity of private property guarantee, see *JA Pye (Oxford) Ltd v. The United Kingdom*, ECHR, 30 August 2007, App. No. 44302/02.

remove them from the paper title owner's land. It is worth considering whether dispossession really is as fair a solution as it is deemed to be in law, and as seen by the domestic courts of England and Wales, particularly in light of recent eviction resistances that highlight the pain and trauma connected with expropriation.

With the development of case law around the protections afforded in housing and protest rights, it is demonstrable that we have a situation where there is less public space in which to dissent, with the result that privacy itself becomes invaded by private capital, where peoples' homes are either becoming the site of protest or are the focus of such. We end up with the most discrete of acts, that of the home-making, becoming subsumed into the most public of spectacles – that of demonstration, resistance and eviction.

5.4 HOUSING PROTEST

The coming together of housing and protest rights reminds us of the commodification of not just public space, but also social housing stock, at the same time as the street is becoming increasingly viable as a *home* by many as a result of the very same commodifying processes. The Manchester protestors, and those of the St Paul's Occupy camp, were a mixture of the homeless, activists or protestors resisting expropriation, a prevalence in instances whereby the actions are not only symbolic resistances where supporters and campaigners are raising awareness around housing issues, but the activists themselves have directly lost or are threatened with removal from their place of residence as a result of the interweaving of law and venture capital targeting the most basic of all human and animal practices, that of being at home.

The connection with land and home rings true again as rights to protest and rights to housing come together in direct action, both symbolically contesting the enclosure of private property while at the same time halting the extraction from one's place of existence as is happening in the eviction resistances against the neo-liberalisation of housing stock in the UK. The police holding and questioning of Jasmin from the 'Focus E-15'⁵⁵ resistance in East London, specifically highlighted the draconian measures brought against individuals contesting dispossession of their homes, the criminalisation of protesting for housing specifically, reasserting this convergence of resistance and habitat all over.

There is a certain type of protesting that takes place at the same time *within* someone's home, and *about* someone's home. This kind of protest can be *squatting* or eviction resistance, with the variant legislative frameworks in place across both common and civil law jurisdictions, from state to federal, determining how squatting is regulated. Squatting and

55 R. Booth, 'Focus E15 housing activist arrested on suspicion of squatting', *The Guardian*, 14 April 2015, Retrieved on 26 June 2015 from <www.theguardian.com/society/2015/apr/14/focus-e15-housing-activist-arrested-on-suspicion-of-squatting>.

eviction resistance bring up a whole host of paradoxes within the law that remind us of the landed nature of property, followed logically by the functioning of state law in general, on to the characteristic of protest itself. To claim an outrage in protest, to assert an opinion, demands the apportionment of time, a moment in which to be heard, the space in which this detraction resides, to stake a claim that ultimately relies on our association with the environment around us. This association is always the earth, the land, our placement at a given time within a sovereignty, where, arguably, all protest seeks to assert the protection of each of our conceptions of home.

Squatting and recent examples of eviction resistance have varying degrees of distinction of legal protection or lack thereof, dependent upon the permission to occupy granted by the landowner. Eviction resistance can include those symbolically squatting empty council houses in protest of decanted residents to make way for new 'affordable' housing developments, where they had never had any permission to occupy in order to protest; those who had been subject to tenancy agreements and licences that had ended or been terminated prematurely, thus their right to remain on the premises subject to contestation; or those whose proprietary rights to remain within a building are intact but they are preparing for and opposing their imminent removal. The latter two varieties would not constitute squatting in the traditional sense of the taking of land by wrong as the residents had permission and an existing right to be there, albeit not for long. Squatting normally involves the occupation of someone else's land without their permission, and the removal from the land with a court order.

Those staying in occupation beyond the end of a licence or lease are not committing an offence under Section 144(2) of LASPO⁵⁶; however, recent cases have demonstrated the lack of protection afforded in statute and interpretation of common law for those whose tenancies or licences that are temporary, that have been brought short or are under review. It seems as though there is more protection afforded in the old regime of squatters' rights, where you are removed only once a court order has been issued, which you would think would be more precarious than being given permission to occupy by an authority concerned. However, in *R. (of on the application of N) v. Lewisham LBC* [2014] UKSC 62, it has been demonstrated that statutory duties of authorities to continue to provide Section 188 accommodation under Housing Act 1996 can be terminated without a court order with

56 s.144 (2) – "The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building)".

no obligation to protect those with licences under Sections 3(1),⁵⁷ 3(2B)⁵⁸ and 5(1A)⁵⁹ of the Protection from Eviction Act 1977.⁶⁰ *Lewisham LBC* highlighted the reluctance of the courts to extend an understanding of home to anything beyond very narrow margins, with a majority Supreme Court ruling of five to two that Section 188 ‘dwellings’ under the Housing Act 1996 are not tantamount to ‘residences’ under Sections 3 and 5 of Protection from Eviction Act 1977, and their far from progressive majority stance on what it means to be forcibly removed from a *space of belonging*,⁶¹ to use Keenan’s language, however temporary that might be. In light of this, it is a concern that tenants, in general, are less likely to protest about their living situation and proprietorial agreements with councils, housing associations or private landlords, for fear of eviction and forcible removal from the very outset.⁶² Nevertheless, as we have seen, a home can be both formalised and informalised in law, squatting highlighting instances where the occupier’s understanding of home and protest go together and are enmeshed as one, not fazed by the threat of eviction in order to defend where one resides. It is the violent striation of space of belonging by forcible entry that brings us closer to an understanding of not just home, but the elemental role of protest in attachment, to a space, for however abrupt a temporality, and the culpable role of state law in its permissiveness.

As a prescient gauge of the severity of the housing situation in the UK, at the moment there has been a wave of *eviction resistance* and squatting occurring across London and other urban centres around the country. Eviction resistances, social centres, whether squatted or otherwise, are not new tactics of protest; there is a long tradition of ‘direct housing’ actions, going back to the post-World War era countering the shortage of housing in the aftermath of destroyed stock, with a second wave of squatting for homes then following from the late sixties, where families were rehoused in empty homes by the likes of ‘London Squatters Campaign’ and the ‘Family Squatters Advisory Service’. A third wave of squatting has been seen in recent years since the seventies, shaped by the legal fiction

57 s.3 (1) Where any premises have been let as a dwelling under a tenancy which is [neither a statutorily protected tenancy nor an excluded tenancy] and (a) the tenancy (in this section referred to as the former tenancy) has come to an end, but (b) the occupier continues to reside in the premises or part of them, it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

58 s.3 (2B) in relation to any premises occupied as a dwelling under a licence, other than an excluded licence.

59 s.5 (1A) provides that no less than four weeks’ written notice must be given to end “a periodic licence to occupy premises as a dwelling”.

60 The two appellants of the case were children of families who had been given temporary accommodation by the London Boroughs of Newham and Lewisham under s.188 of Housing Act 1996 while their housing applications were considered. Unfortunately, their applications were refused, at which point the statutory duty under s.188 ceased, where the appellants T. Baldwin, ‘Temporary accommodation – eviction without court order’, see *R. (on the application of on the application of N) v. Lewisham LBC* [2014] UKSC 62; [2014] 3 W.L.R. 1548, *Landlord & Tenant Review*, Vol. 31, 2015.

61 Keenan *supra* note 7.

62 See recent tenants’ rights group ‘Generation Rent’.

of *squatters' rights* and the influence of punks, artists, alternative, autonomist, anarchist and anti-capitalist politics of all shapes and sizes. There is, arguably, a fourth wave of squatting happening through eviction resistance where squatting and occupation protests have returned to contesting space for shelter itself, in light of an era of what Porteous and Smith would refer to as an era of unabated *domicide*.

Eviction resistances have emanated across London constituencies of both the Left and the Right – Newham ('Focus E-15'), Barnet ('Sweets Way Resists'), Camden ('Camden Resists'), Lambeth (Guinness), Southwark (Aylesbury) – and are combined with the new confidence of squatted social centres (RadBank and 'Elephant and Castle Social Centre' in South London), despite the criminalisation of residential squatting. They have displayed the contesting of private reappropriation of homes in powerful expressions of collective strength, and are an emergent movement that demonstrates an ever co-dependent dance between law and protest. Focus E-15, for instance, has become somewhat of an institution now, but it began back in September 2013 with twenty-nine young mothers of a homeless hostel who, according to their blog, were served eviction notices from East Newham Housing Association as it was selling off the property as a result of local authority cuts to social housing subsidies.⁶³ They were offered to be rehoused in Manchester, Birmingham – hundreds of miles away from where they had lived all their lives, their families, their heritage, their belonging. The young mothers started a stall each Saturday in Stratford High Street, raising awareness of their plight and the eviction notices they were served, their slogan 'social housing not social cleansing' becoming the byword for a developing movement. The campaign caught the hearts and minds of many – and since then there have been marches, celebrity endorsements, appearances of the collective in 2015 at Glastonbury and Brighton Fringe – and is an integral part of a wider mobilisation against expropriation across London. In a similar move to the Aylesbury occupation in Southwark, the young mothers highlighted the abandonment and laying to waste of empty social housing stock by occupying huge swathes of abandoned council housing ready to be demolished. Similar resistances to housing association and council sell-off prompted evictions have happened throughout London with extant actions against 'Annington Homes' and 'Barnet Homes' happening in Sweets Way Estate,⁶⁴ Camden Resists and 'Islington Park Street' halting their evictions from 'One Housing Group' properties.

The Aylesbury estate in Walworth, Southwark, was, similarly, the coming together of direct housing action through protest and protecting people's homes through the use of occupation. This huge action rang similar to protests and squatting going back to the sixties and seventies where on 31 January 2015, a 500-strong 'March for Homes' took place uniting activists and communities from across London. Part of the march broke away and

63 See <www.focuse15.org/about> [accessed 20 June 2015].

64 See <<https://sweetswayresists.wordpress.com/>> [accessed 20 June 2015].

formed a 150 occupation of Chartridge House on the Aylesbury Estate and one of the main blocks being emptied for demolition and private housing development by Southwark Council in south-east London. After two weeks of occupation, on 16 February the authorities accorded a possession order to evict the occupiers. The occupiers remained until April, while fencing (aptly named 'Aylesbury Alcatraz') and heavy security closed in the remaining residents who were yet to be 'decanted', still living in the enclosure of Aylesbury while set for demolition as a 'First Development Site' under the National Planning Policy Framework (NPPF) on the redevelopment of brownfield land.

5.5 DOMICIDE: THE FORCIBLE ENTRY OF THE MARKETISED STATE

With an era of strife and austerity, what is important to us is painfully revealed; we feel the possibility and reality of loss of home, loss of rights, forfeiture all around. We may not always know what justice is, but we certainly identify when a wrong has been done, when we come face-to-face with a happenstance of *injustice*. It is this sense of encroachment that reminds us of our vulnerability, intrusion into our lifeworlds and our sense of propriety, the importance of our privacy. Arguably, protest and housing are so earthbound and alluvial, their connection asserts that violations of *any* rights are always vicariously and ultimately a violation of one's home. Whenever we protest we are always claiming an outrage that emanates from our being, the soul of where and who we come from. We are housed, either metaphorically or materially, for whatever period of time, in a connection between land, body, the other, and it has become law's role as mediator that decides the limits of one person's house from another.

But what happens when the law that mediates and divides returns full circle to cross the barriers it had already set itself to protect, to move the goalposts and come to plunder on settlements it had previously encroached, uninvited – forcibly entered. What happens when the *raison d'être* of law becomes the expropriation of the home itself. To return home, for capital, means the recrudescence to expropriate what it has already expropriated.

The explosion of eviction resistances demonstrates communities have been simultaneously marginalised and radicalised to take direct action by a specifically market-infused body of law and policy that effects removal, exclusion, eviction, extinguishment of homes and ways of life of those already existing on the edges of law and agency.

Directly prompting the eviction resistances we have seen in London are the cuts to public funding of social housing and manipulation of planning procedures, which have allowed for local authority social housing quotas to be ignored, resulting in housing association sell-offs of hostels, supported homes, shelters for the homeless and vulnerable; the impending and actual eviction of its residents, to make way for new development schemes. Section 106 of the Town and Country Planning Act 1990 allows for formalised 'planning

gain', whereby property developers seeking planning approval for projects from local councils can offer additional benefits to the community in the form of financial support in order to make their planning applications appear more attractive. Thus, given the economically malnourished state councils are in as a result of austerity measures, the bigger the private property project, the more money offset to them; examples such as 'Lend Lease' and its controversial combined demolition and development strategy of the Heygate Estate in Elephant and Castle and the transformation into the sickly 'Elephant Park' stand out. In the words of writer Oliver Wainwright: "The impact of a hundred new homes might be mitigated by money for extra school places, or traffic calming measures. In practice, since council budgets have been so viciously slashed, Section 106 has become a primary means of funding essential public services, from social housing to public parks, health centres to highways, schools to play areas."⁶⁵ As Wainwright reminds us, the market seduction of planning is not new, as is quite clearly the case of the clever rhetoric of the NPPF that proclaimed the presumption in favour of sustainable development, meeting the demands of commerce through encouraging brownfield development in examples such as Aylesbury.⁶⁶

Additionally, the proposed 'right to acquire' legislation, which would allow housing association residents to buy their homes, will further reduce social housing stock and, according to a piece by blogger Amy Ling, is questionable in terms of its legality through forcing housing associations to sell their property in terms of Article 1 Protocol 1 protections under the ECHR. She explains that the right to peaceful enjoyment of possessions is a qualified right that following landmark *Pye* concerning adverse possession and state limitations on the extent to which property rights can be qualified, such interference with individual's rights must be deemed proportionate. Aside from possibly contravening charity covenants and duties, legislating compulsory sale of housing association property without rightful compensation from the state would support the argument that the Tory party's proposals compelling housing associations to sell off their stock to their occupants would be a disproportionate measure in the eyes of *Pye*.⁶⁷ The 'Right to Buy and Right to Acquire Schemes (Research) Bill 2014-2015' had its First Reading in the House Of Commons 4 February 2015.

As this paper goes to publication, the Housing and Planning Bill 2016 is going through both houses. The bill is set to consign social housing to the annals of the twentieth century, eradicating what any reasonable person may understand as 'affordable housing' by

65 O. Wainwright, 'The truth about property developers and how they are exploiting planning authorities and wrecking our cities', *The Guardian*, 17 September 2014, Retrieved on 29 June 2015 <www.theguardian.com/cities/2014/sep/17/truth-property-developers-builders-exploit-planning-cities>.

66 Id.

67 A. Ling, 'How vulnerable? Re-assessing homelessness', *Keep Calm and Talk Law*, Retrieved on 26 June 2015 from <www.keepcalmtalklaw.co.uk/how-vulnerable-re-assessing-homelessness/>.

replacing the duty to build social housing (schedule 4) with the development of ‘starter homes’ (part 1, chapter 1, clauses 1-7), the forcing of local housing authorities to sell off ‘high value vacant local authority housing’ (chapter 2, clauses 61-74), the extension of the right to buy to housing associations (part 4, chapter 1, clauses 56-61), and the phasing out of secure tenancies for council housing dwellers (part 4, chapter 6, clauses 113-114) effectively eradicating any existing council housing and the prospect of social housing in the near future. Additionally, the proposed opening up of brownfield sites to ‘permission in principle’ planning (chapter 4, clauses 102-106; schedule 12) will render local communities with no say in planning applications (such as licences sought for shale gas exploration and fracking, and, of course, the knocking down of social housing in order to re-commodify the land), all decisions being thus made centrally and not locally, automatically by making already disproportionately high-value land even more unfit for habitation by most of the population. The effects that this bill will have once given force will be beyond the reach of discussion in this paper, but will surely be felt by all.

All of the above would constitute what Porteous and Smith have referred to as *domicide*, the intentional destruction of home, a concept coined back in 2001 and now brought back to life by insightful critical geographer Nowicki on her work on eviction resistance in the UK. Their work on *domicide* has been described as “... crucial because of its emphasis on the destruction of ‘*domus*’—home, which in itself elevates and makes clear the importance of home. The coining of the word makes it possible to give a voice to all the feelings and understanding that victims of the process have been unable to articulate, as happened when the concept of child sexual abuse was named and described”.⁶⁸ The Canadian Geographers’ original work on *domicide* refers to both ‘extreme’ and ‘everyday’ exemplified by occurrences of intentional expropriation highlighted by Nowicki “...from mass displacement through the Syrian civil war to controversial UK housing policy”.⁶⁹ Because of the way that identity is nourished and enmeshed within the psychological and material confines of the legal and social home, Hohmann highlights how a totalising appropriation of the home as an ideological construct can similarly be reinforced through housing policies as “tools of social reorganisation, even social engineering”⁷⁰. Thus, Nowicki reinforces how examples of housing policy and law that result in the wholesale dispossession of peoples from what they consider to be their space of uninterrupted existence are “where the impact of these domicidal policies lie in their disruption of the homespaces of particular societal

68 J.D. Porteous & S.E. Smith [Review], ‘Domicide: the global destruction of home’, *Housing Studies*, Vol. 18, No. 2, 2003, pp. 269-272.

69 Nowicki *supra* note 4, p. 786.

70 J. Hohmann in M. Young, ‘Charter eviction: litigating out of house and home’, *Journal of Law and Social Policy*, Vol. 24, No. 1, 2015, pp. 46-67, available at: <<http://digitalcommons.osgoode.yorku.ca/jlsp/vol24/iss1/3/>> [accessed 26 June 2015].

groups, namely those deemed unwilling to identify with the home ownership-as-aspirational rhetoric heralded by current and prior governments in the UK since the 1970s".⁷¹

We have seen the domicidal interventions of the marketised state into the lives of those who can least afford its intrusion through the both glacial and rapid encroachment of the commodified sphere into the front rooms of the precarious, the doorsteps of those with no shelter. The uninvited nature of eviction reminds me of the Derridean right to hospitality, "to be hospitable is to let oneself be overtaken, to be ready to not be ready..."⁷² where the state is the unsolicited visitor. Derrida heralds the arrival of the spontaneous guest as an extension "toward the other, extend to the other the gifts, the site, the shelter and the cover; it must be ready to welcome, to host and shelter, to give shelter and cover..."⁷³ and yet in the instance of domicile and eviction resistance, the law is not welcome. Unlike in the case of adverse possession, squatting for use or for title, this neo-liberalisation of home is the sovereign compromise of its very own right to exclude. Squatting, or at least the legal fiction of squatters' rights, recognises the necessity for state protection of violent entry into the *domus*, primarily through the Forcible Entry Acts, in existence since the thirteenth and fourteenth centuries following into the modern day possession order to intercede self-help⁷⁴ and aggressive entry. Even a proprietorial right created by wrong can commence a right to exclude, and yet it seems as though the state and capital have forgotten their beatification of the right to exclude, and reworked the boundaries of the public and private, with no space left for the subject. This is made clear by returning to *Lewisham LBC* the Supreme Court held that Newham and Lewisham could evict the appellants from Section 188 accommodation without first obtaining a court order. The same case brought into question the narrow definition of housing in relation to Article 8 protections, whereby the word 'dwelling' of settled occupation had more of a technical forbearance than 'residence', and a licence to occupy Section 188 accommodation was not granted for the purpose of using the premises 'as a dwelling'. Lord Neuberger and Lady Hale both dissented, stating dwelling within the Rent Act 1977 should not be read with such a narrow effect "as they reflected a policy that people who have been lawfully living in premises should not be summarily evicted".⁷⁵

As Van der Walt explains, at common law, eviction cannot be prevented or postponed by considerations emanating from the socio-economic context or the parties' personal circumstances,⁷⁶ supported and epitomised in the *McPhail* ruling where contextuality is

71 Nowicki *supra* note 4, p. 786.

72 J. Derrida, *The Gift of Death*, University of Chicago Press, Chicago, 1992, p. 361.

73 *Id.*, p. 361.

74 Under Civil Procedure Rules 55.5.

75 Baldwin *supra* note 60.

76 A.J. van der Walt, 'Housing rights in the intersection between expropriation and eviction law' in L. Fox O'Mahoney & J. Sweeney (Eds.), *The Idea of Home in Law: Displacement and Dispossession*, Ashgate Publishing, Farnham, 2011.

denied, self-help on the part of the removed landowner is viable, and once a possession order is commenced by a court it cannot be stopped. Yet the new equity of proportionality in possession claims, both at vertical and horizontal reach between state and private parties, may allow for auditing the systematic spread of domicile in the case of those with no proprietary claim to their home. As Nield reminds us, *Manchester CC v. Pinnock*, *Hounslow LBC v. Powell and Leeds CC v. Hall and Birmingham CC v. Frisby (Powell)* “finally acknowledges the reality of a protection for home occupiers derived from the right to respect for the home found in Article 8 where any person at risk of being dispossessed of his home at the suit of a local authority should in principle have the right to raise the question of proportionality of the measure”⁷⁷ in light of Article 8 protections. Further horizontal interpretation of Article 8 has been afforded beyond *Malik* in recent *Manchester Ship Canal* as well as *McDonald v. McDonald* (albeit distinguished from *Malik*). If legislators can shape shift in and around the right to exclude, then so too can informal home rights develop in a similarly liminal manner. According to Baldwin, “It is clear that English law has moved away from the absolutist rhetoric, and rule-based, acontextual enforcement of exclusion rights [...] and space has been created for argumentation and adjudication in possession disputes taking account of Article 8 rights, at least in exceptional cases. That development suggests the need for changes to legal rules that provide for automatic enforcement of owners’ exclusion rights without scope for proportionality review, such as that established in *McPhail*”.⁷⁸

Helen Carr and David Cowan refer to the neo-liberalisation of social housing as its ‘residualisation’.⁷⁹ The violent effects of residualisation mean that not just homes but also people disappear. If it is not enough to remove all housing safety nets, wholesale cuts to housing legal aid and housing welfare, the notorious bedroom tax, the removal of security of tenure, then there are Public Space Protection Orders (PSPO) once you are finally on the street, helpless, distraught and categorically anti-social.

Further confusing the public and private, it is not easy to clearly distinguish between government acquisition and commercial acquisition. In the Aylesbury case and the Heygate estate acquired to be transformed into the Elephant Park example, state compulsory purchase can be confused with state-sanctioned commercial development acquisitions allowed through malleable planning procedures. This lack of distinction between state and commerce is, of course, what we understand as neo-liberalism, but it feels as though that term is tired and no longer does justice to the violent biopolitics exemplified in resistances spoken of in this piece.

77 Nield & Hopkins *supra* note 30.

78 Baldwin *supra* note 60.

79 H. Carr & D. Cowan, ‘The social tenant, the law and the UK’s politics of austerity’, *Oñati Socio-legal Series* [online], Vol. 5, No. 1, 2015, pp. 73-89, Retrieved on 29 June 2015 from <www.ssrn.com/abstract=2565733>.

After coming into contact with the inspiring work of 'ecosopher' Aetzel Griffieon as a result of an engagement with the squatting scene in the Netherlands through the recent 'White Paper: The Law' art,⁸⁰ law and resistance project of artist Adelita Husni-Bey, I can see Griffieon's Guattarian-infused assertion from 'The Three Ecologies' (1989) that we are living in an age of 'integrated world capitalism' (IWC) as so clear in the law that affects domicile.⁸¹ IWC is, as explained by Griffieon as he introduces his 'speculative' suggestions to counter IWC, an integration of market and state where the government and market have become as one through the 'pincer and scissor' of IWC as it 'valorises' human activity, ostensibly the reduction of the characteristically separate values of life and what it is to be human, into interchangeable economic value. Griffieon relates this to Naomi Klein's understanding of 'extractivism' from her 'This Changes Everything: Capitalism v Climate' (2014), being, "... the wider mentality of making profit without caring much for the consequences".⁸²

Griffieon asserts the Guattarian claim that to counter IWC is "to revive forms of solidarity it is therefore necessary to work directly on the subjectivities of people inside and outside of the market-state".⁸³ It is arguable that this bifurcatory, paradigmatic shift in thinking and practice is produced in the performances of resistances that we are seeing in RadBank, Sweets Way Resists, Focus E-15 and so on. An emergent network of alternative organisation that exists on the actuality and potentiality of creating new commons out of commodified others; an explosive and revolutionary metabolism that demands our attention.

5.6 PROTEST TO HOME FROM ONE MOMENT TO THE NEXT

Despite the preponderance of domicidal measures, Nowicki refers to the work of Baxter and Brickell in their conception of home-unmaking,⁸⁴ which considers "the temporal, material and geographic fluidity of the homespace" whereby a home at once can be under threat and yet not long after can become safe and revitalised again:

Home and the destroyed home are not static, unchanging sites of comfort and consolation as traditional assumptions of home would suggest. Rather, home is made, unmade and remade across the lifecourse, subject to a seemingly

80 Husni-Bey *supra* note 24.

81 See F. Guattari, 'The three ecologies', in A. Griffieon (Ed.), *Short Remarks on an Ecosophical Pedagogy*, Le Merle, Montreal, 1989.

82 See N. Klein, *This Changes Everything: Capitalism v Climate*, Simon and Schuster, New York, 2014.

83 Guattari *supra* note 81.

84 K. Brickell & R. Baxter, 'For home unmaking', *Home Cultures*, Vol. 11, No. 2, 2014, pp. 133-143.

unending variety of factors: financial, conjugal, sociopolitical and so on. Home can shift from a site of safety to a site of violence, and back again.⁸⁵

In this sense Nowicki asserts a link between the right to housing and the right to protest through the unworking and reworking of the home from the site of resistance to the domain of the domestic and back again. She has cited the impact of Section 144 on the criminalisation of squatting in residential buildings, which has in turn led to an increased squatting of commercial buildings whereby “home-unmaking has the potential to be simultaneously liberating and disempowering in different ways”,⁸⁶ and thus, squatters have adapted to the changes and “rema[de] their homespaces in response to domicide being imposed upon them”. This tactic of eviction resistance and social centres is a politics of procrastination where a bidding for time and stalling a possession order allow for a Hakim Beyian,⁸⁷ now ‘TAZ’, a ‘temporary autonomous zone’ of property for use or even a ‘temporary autonomous home’. The temporal non-linearity between protest and home brings us to an understanding that they are one and the same, just a matter of adaptation, survival and existence, despite all else. It is through the human emotions of fear and anger, loss and outrage, vulnerability and dispossession that we find them enmeshed as ethics towards ourselves, the community and the capability of compromising exclusion no matter what.

So what does this piece on domicide, resistance and the home tell us about the private limitations on the right to protest and the right to housing? It seems as though, on the one hand, the encroachment of private property rights is creating these zones both spatially and temporally where a new conception of use-based property can come to life, through resistance itself, while at the same time questioning of what ultimately the home means in relation to protest, what private and public mean, and any integral understanding of human privation. The eviction resistances demonstrate this further encroachment of private property into *homes* through law’s disregard of its own rules on due process and forcible entry, ending in the most *public* carnival of dispossession, the threat of dispossession – the occupation of homes, about homes.

Through discussing the coming together of housing and protest in squatting and eviction resistance, we can see the integral link between the two. It is also very clear how the destruction and violence of expropriation is played out and implemented in a systematic manner through statute and common law as it shape-shifts the liminal of the public and private domains. Narrow national legal categorisations of home as *dwelling*, the benignity of the right to housing and right to private and family life arguments against paper title owner claims, and recent changes to squatting and planning laws in favour of private

85 Id.

86 Nowicki *supra* note 4.

87 See H. Bey, (*T.A.Z.*), *The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*, Autonomedia, London, 1991.

property and commercial interests, the neo-liberalisation of social housing, the gaining encroachment of commodification to the point of forcible entry, *deliberately* stop short of the existential and material reality of our social, cultural and economic needs for *habitus*. By denying what we need in law to feel at home, civil and political crises occur, creating a social cleansing tantamount to domicide (following the inspiring work on domicide and eviction resistance of Nowicki) where vulnerability to eviction and expropriation is ubiquity. It will be interesting to question the extent to which the temporal effluxion of possession and occupation gives rise to an evolving conception of home within protests in future, whether using human rights obligations or otherwise, and how protest can epitomise a transient habitat, a place to be, if only for a moment.

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