

THE ROLE OF TAXES IN PROMOTING THE EXPERIENCE OF HOME FOR TENANTS

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ABSTRACT

Tenants and owner-occupiers experience housing differently both in terms of wealth and consumption. An owner-occupied property is typically a person's primary investment as well as a shelter, whereas a tenant also enjoys a roof over their head but does not share increases in value of the property they occupy. Furthermore, an owner-occupier typically enjoys non-financial benefits, including a sense of continuity and order in events (ontological security). In contrast, due to relatively weak legal protections in Australia and New Zealand, tenants often face ontological insecurity. These different experiences matter because owner-occupation is a normal aspiration, and has traditionally been privileged by government policies in property-owning democracies. Yet more than one-third of Australians and New Zealanders do not own the housing they occupy. Seeking to equalise housing experiences between tenants and owners is therefore an appropriate goal for government. In this article, the term 'synthetic owner-occupation' is used to describe a practicable, equalised housing experience for tenants relative to owner-occupiers, but 'home' has similar import.

Taxes can neutralise to some extent the different wealth experiences of tenants and owner-occupiers but, because these measures tend to level the circumstances of the majority downwards, they are politically implausible. While taxes cannot be effective alone, they may also contribute to closing the gap in consumption experiences of owner-occupiers and tenants. This article investigates, in particular, how taxes can supplement regulation in promoting an experience of home for tenants.

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I INTRODUCTION

Tenants and owner-occupiers typically experience housing differently both in terms of wealth and consumption. An owner-occupied property often constitutes the owner's principal investment as well as the place they live. While tenants have a roof over their heads, they do not share any increases in the value of the property they occupy. Owner-occupiers also enjoy non-financial benefits, including 'a sense of continuity and order in events' (ontological security),¹ but, due to relatively weak legal protections in Australia and New Zealand, tenants often experience ontological insecurity. The ability of landlords to increase rents at regular intervals exacerbates the uncertainty inherent in readily cancellable tenancies. Furthermore, the lack of affordable housing in the centres of major cities leads to a high proportion of renters facing high housing costs, and, not exceptionally, sub-standard accommodation. Finally, tenants may be denied features of home, such as having a pet or planting vegetables with confidence of harvesting them.

These different experiences particularly matter in countries where owner-occupation is a normal citizen aspiration and has traditionally been promoted through government policies, including tax concessions.² 'The "Great Australian Dream" and "The New Zealand Dream" are both centred on the acquisition of the family house.'³ Yet more than one-third of Australians and New Zealanders – over represented by young adults – do not own the property they occupy, and rates of owner-occupation are falling.⁴ If this significant minority of citizens cannot realistically become homeowners, equalising housing experiences between tenants and owner-occupiers should be a pressing concern for the governments of democracies in which real property ownership is a normal expectation, and is implicated in constructing perceptions of normality.⁵ In this article, the term 'synthetic owner-occupation' is used to describe a practicable, equalised housing experience for market rental tenants relative to owner-occupiers,⁶ but the term 'home' has similar import.

¹ Anthony Giddens, *Modernity and Self Identity: Self and Society in the Late Modern Age* (Stanford University Press, 1991) 243.

² See Ken Henry et al, *Australia's Future Tax System Report to the Treasurer* (AGPS, 2010) [6.2].

³ D Andrews and A Caldera Sánchez, 'Drivers of Homeownership Rates in Selected OECD Countries' (OECD Economics Department Working Papers, No. 849, 2011) 4 n 7 <<http://dx.doi.org/10.1787/5kgg9mcwc7jf-en>>.

⁴ See 'Table 1: Comparison of homeownership rates (%) for selected countries' below nn 79-88.

⁵ According to Lyn Richards, in Australia, 'the desire for single family home ownership is intricately bound up with the expectation that it is 'normal' to form a family, perhaps explaining the depth of the popularity of owning a home'. Lyn Richards, 'Family and Home Ownership in Australia: The Nexus of Ideologies' (1989) 14 *Marriage and Family Review* 173 cited by Sean Purdy, 'A Property-Owning Democracy?: Home Ownership and the Working Class in Canada' (1993) 31 *Labour/Le Travail* 341, 350.

⁶ Carolyn Whitzman and her co-authors construct a continuum of housing between emergency shelters and market home ownership. See Carolyn Whitzman, Clare Newton and Alexander Sheko, *Transforming Housing: Affordable Housing for All: Partnership options for policy, investment and demonstration projects* (University of Melbourne, 2015) 4. Government subsidy is very high at the emergency end of the continuum (supportive housing) but ostensibly non-existent at the other end (market housing). In Whitzman et al's model, market rental and market home ownership fall outside government subsidy, but may enjoy the benefits of tax concessions. This article is primarily concerned with equity between renters and owners in the market.

Taxes could neutralise the different wealth experiences of tenants and owner-occupiers but, because they tend to level the circumstances of the majority downwards,⁷ are politically implausible.⁸ However, while taxes cannot be effective alone, they may supplement regulatory measures in closing the experiential gap of housing consumption between owner-occupiers and tenants.

This study of tenancy is the third part of a triptych of articles on taxation and contemporary housing issues,⁹ which may be profitably read together. The Australasian jurisdictional context may be characterised as encompassing traditional property-owning democracies in which poorly protected tenancies are increasingly normal. In this context, it is pertinent to consider tax and other policies that might equalise experiences of housing between tenants and owner-occupiers.

The article is structured as follows: after this Introduction, the concept of a property-owning democracy is outlined. A distinction is drawn between ideologically-informed and pragmatic approaches.¹⁰ Claims for social and individual benefits of homeownership are considered. Returning to the different experiences of owner-occupiers and tenants, consideration is given to ways of converging those experiences. The proposal of a model of synthetic owner-occupation tenancy is made as a way of ensuring tenants experience *home* in ways similar to owner-occupiers. How taxes could close the gap in wealth experiences between homeowners and tenants is noted, but the principal research aim is to consider how taxes might contribute to achieving synthetic owner-occupation tenancies.

II HOMEOWNERSHIP IN A PROPERTY-OWNING DEMOCRACY

This part of the article outlines the concept of property-owning democracy and interrogates claims for the social benefits of owner-occupation. The aim here is to demonstrate that homeownership does not need to be the housing priority for government.

A. *Property-Owning Democracy*

⁷ Compare with the concept of ‘loss aversion’ in behavioural economics. See, for example, Nathan Novemsky and Daniel Kahneman, ‘The Boundaries of Loss Aversion’ (2005) 42(2) *Journal of Marketing Research* 119.

⁸ The interests of ‘mum and dad’ residential property investors also need to be taken account. Some 2 million Australian taxpayers own investment properties. See The Hon Scott Morrison, *Address to the Australian Housing and Urban Research Institute, Melbourne* (10 April 2017) <<http://sjm.ministers.treasury.gov.au/speech/005-2017/>>.

⁹ See also Jonathan Barrett, ‘Property Taxes as a Policy Response to Foreign Investment as a Perceived Cause of Housing Unaffordability’ (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 1, and Jonathan Barrett, ‘Taxation and the Human Right to Adequate Housing’ (2018) 20(1) *Journal of Australian Taxation* 123.

¹⁰ For a discussion of the development of different versions of property-owning democracy, see Ben Jackson, ‘Property-Owning Democracy: A short history’ in Martin O’Neill and Thad Williamson (eds) *Property-Owning Democracy; Rawls and Beyond* (Wiley-Blackwell, 2012) 33.

Conservative politicians, notably Anthony Eden and Margaret Thatcher in the United Kingdom,¹¹ have extolled the benefits of a property-owning democracy with the aim, in Eden's words, 'to spread the private ownership of property as widely as possible to enable every worker to become a capitalist'.¹² But the egalitarian liberal philosopher John Rawls also supported widescale property ownership as a means of promoting justice,¹³ and communitarians may support owner-occupation on the grounds that communities are strong when people are stable in their homes.¹⁴ From a contemporary progressive position, Marc Stears argues '[T]he stable patterns of social interaction that are associated with communities of ownership are preconditions for the kind of social reciprocity that the left champions'.¹⁵

For Rawls, property-owning democracy is one of five 'kinds of regime viewed as social systems, complete with their political, economic, and social institutions'.¹⁶ A property-owning democracy realises 'all the main political values expressed by the two principles of justice, whereas capitalist welfare does not'.¹⁷ These two principles of Rawlsian justice are:

...each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar scheme of liberties for others' and 'social and economic inequalities are to be arranged so that they are both: (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all'.¹⁸

In Rawls' view, 'the wide dispersal of property ... is a necessary condition, it seems, if the fair value of the equal liberties is to be maintained'.¹⁹ Rawlsians may therefore view homeownership as a matter of justice.²⁰

¹¹ The Thatcher government sold thousands of state houses to tenants, many of whom, overnight turned Tory. See Marc Stears, 'Why the Left Should Aspire to a "Property Owning Democracy"' *The New Statesman* (19 June 2012) <<https://www.newstatesman.com/blogs/politics/2012/06/why-left-should-aspire-property-owning-democracy>>. Conversely, people who receive United States Federal Housing Administration-backed mortgages often turn Democrat. See Andrew B Hall and Jesse Yoder, 'Does Homeownership Influence Political Behavior? Evidence from Administrative Data' Department of Political Science, Stanford University (7 August 2018) 25 <www.andrewbenjaminhall.com/homeowner.pdf>.

¹² Cited by David Howell, 'The property-owning democracy: Prospects and policies' (1984) 4(3) *Policy Studies* 14, 14.

¹³ See John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press, 2001) 135-38. Rawls attributes the phrase to James Meade. *Ibid.*, 135 n 1, but it was apparently coined by Noel Skelton, a Scottish Unionist, and friend of Eden in 1923: see Aaron Bastani, 'Property Owning Democracy' (4 April 2014) *LRB Blog* <<https://www.lrb.co.uk/blog/2014/04/04/aaron-bastani/property-owning-democracy/>>.

¹⁴ See, for example Thomas A Spragens Jr, 'The Limits of Libertarianism' in Amitai Etzioni (ed) *The Essential Communitarian Reader* (Rowman & Littlefield, 1998) 21, 36.

¹⁵ Stears, above n 11.

¹⁶ Rawls, above n 13, 136. The other regimes are laissez-faire capitalism, welfare-state capitalism, state socialism with command economy, and liberal (democratic) socialism.

¹⁷ *Ibid.* 135.

¹⁸ John Rawls, *A Theory of Justice* (rev ed, Belknap Press of Harvard University Press, 1999) 53.

¹⁹ *Ibid.* 245.

²⁰ Under the Clinton administration (1993-2001), which manifested some features of Rawlsian thinking, rates of homeownership, particularly among African-Americans, who had been historically excluded from proprietorship

In welfare-state capitalist systems, including those of Australia and New Zealand,²¹ homeownership is not a constitutive principle or a matter of justice. Despite government policies promoting owner-occupation, it is a pragmatic means of achieving other goals. Whether the goal is providing a property stake in society as a bulwark against socialism or developing stable communities, homeownership is an instrument for achieving those ends. If they can be achieved otherwise, a policy preference for homeownership becomes less important.

Georg Hegel, from whom Margaret Radin loosely derives her theory of property,²² persuasively argued that some property ownership is necessary for the realisation of autonomy,²³ but it is moot whether that necessity extends to owning the real property one occupies. For most people, it is reasonable to assume that the realisation of autonomy requires some degree of ontological security. Few would consider themselves fully autonomous if, say, they were subjected to the danger and insecurity of living on the streets. Having ‘a room of one’s own’ does not, however, necessarily mean owning that room.²⁴ The critical consideration is the security owner-occupation typically provides but tenancy often does not. People need spaces in which they feel sufficiently secure to engage in commonplace activities, such as planting a vegetable garden they are confident of harvesting, and developing local social connections. The concept of home is neither straightforward nor uncontested,²⁵ but it is generally thought to incorporate psychological features, notably ‘a sense of security, stability, privacy, safety, and the ability to control living space’.²⁶

through mechanisms such as redlining, increased significantly. Unfortunately, sub-prime mortgages contributed to the Global Financial Crisis (‘GFC’). For a discussion of causality between expansion of homeownership and the GFC, see Mervyn K Lewis, ‘The Origins of the Sub-prime Crisis: Inappropriate Policies, Regulations, or Both?’ 33 (2009) *Accounting Forum* 114.

21 On traditional Australasian socio-economic systems, see, generally, Francis G Castles, *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand 1890-1990* (Allen and Unwin, 1985); Gøsta Esping-Anderson, *The Three Worlds of Welfare Capitalism* (Polity Press, 1990).

22 See Margaret Jane Radin, *Reinterpreting Property* (University of Chicago Press, 1993). Radin’s thinking is relevant to this article because she provides some philosophical justification for restriction of rent increases, which is a component of synthetic owner-occupation tenancies. See IV A below.

23 G W F Hegel, *Philosophy of Mind* (W Wallace and AV Miller, Clarendon Press, 2007) [trans of: *Phänomenologie des Geistes* (first published 1807)].

24 For Virginia Woolf, ‘[i]ntellectual freedom depends upon material things. Poetry depends upon intellectual freedom. And women have always been poor, not for two hundred years merely, but from the beginning of time ... That is why I have laid so much stress on money and a room of one’s own.’ See Virginia Woolf, *A Room of One’s Own* (Hogarth Press, 1929) 90. Woolf did not argue that the autonomous woman needed to own her room. Many houses and flats in London have traditionally been held under very long leases, rather than freehold.

25 For a discussion of different conceptions of ‘home’, see Shelley Mallett, ‘Understanding Home: A Critical Review of the Literature’ (2004) 52(1) *Sociological Review* 62.

²⁶ Australian Bureau of Statistics (‘ABS’), *A Spotlight on ‘Severe’ Crowding* (2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Feature%20Article12011>>.

B. *Social Benefits of Homeownership*

Despite broad political support for homeownership, and its advantages for individual homeowners, the social benefits of owner-occupation are less certain.²⁷ OECD researchers Dan Andrews and Aida Caldera Sánchez argue that homeownership leads to greater community and political engagement.²⁸ But these assertions are debatable. For example, Switzerland, which has traditionally experienced relatively low rates of owner-occupation, is commonly considered to be the paragon of participative democracy.²⁹ Nevertheless, in a property-owning democracy, claims for greater democratic engagement on the part of homeowners, relative to tenants, is credible. Historically, proprietorship and the franchise were linked, especially at a local level.³⁰ Even today, people with low incomes are less likely to vote than those with high incomes.³¹ Homeownership appears to make people ‘pay attention and participate’ in the political process, often to protect their own property interests.³²

While homeowners are more likely to vote than tenants, they are not necessarily better citizens.³³ As Brian McCabe argues:

²⁷ See P Rossi and E Weber, ‘The social benefits of homeownership: Empirical evidence from national surveys’ (1996) 7 *Housing Policy Debate* 1; Daniel Aaronson, ‘A Note on the Benefits of Homeownership’ (2000) 47(3) *Journal of Urban Economics* 356.

²⁸ Dan Andrews and Aida Caldera Sánchez, ‘The Ownership of Homeownership Rates in Selected OECD Countries: Demographic and Policy Influence’ (2011) *OECD Journal: Economic Studies* 207, 210-11.

²⁹ See, for example, Kenrick Jones, *Swiss Democracy: A Model for Britain* (Arena Books, 2009). Swiss democracy, being markedly idiosyncratic, is difficult to compare with other voting systems. The country’s relatively low turnout in national and local elections may be attributable to direct voting on many issues of importance to voters. For a discussion of determinants of Swiss voter turnout, see Marc Bühlmann and Markus Freitag, ‘Individual and Contextual Determinants of Electoral Participation’ (2006) 12(4) *Swiss Political Science Review* 13.

³⁰ See Ryan Goss, ‘Voting Rights and Australian Local Democracy’ (2017) 40(2) *University of New South Wales* 1008. While compulsory voting in local elections is normal in Australia, Western Australia uses voluntary postal votes in local elections. In 2015, the overall voting rate in Western Australia was 27.5 per cent. See Antony Green, *Participation rates at Australia Voluntary Postal Ballot Elections* (2017) <<http://www.abc.net.au/news/2017-08-09/participation-rates-australia-voluntary-postal-ballot-elections/9022070>>. Local government elections in Switzerland tend to attract low voter turnout – around 45%. See Andreas Ladner, ‘What explains electoral turnout in Swiss municipalities?’ Working paper de l’IDHEAP 2/2009 Chaire Administration suisse et politiques institutionnelles, 2009) <https://serval.unil.ch/resource/serval:BIB_3ACEFE6604FB.P001/REF>.

³¹ Of 25 countries surveyed by the University of Michigan, in all but three countries, high income earners were far more likely to vote than low income earners. New Zealand was one of the three countries surveyed in which higher income citizens were marginally less likely to vote than lower income citizens. See Marcus E Etheridge and Howard Handelman, *Politics in a Changing World* (Cengage Learning, 2004) 99. In New Zealand, older people are much more likely to vote than younger people. It is therefore possible that asset rich, income poor voters outweighed younger income rich, asset poor voters.

³² Hall and Yoder, above n 12.

³³ Gary V Engelhardt, Michael D Eriksen, William G Gale and Gregory B Mills, ‘What are the social benefits of homeownership? Experimental evidence for low-income households’ (2010) 67(3) *Journal of Urban Economics* 249; D DiPasquale and E Glaeser, ‘Incentives and social capital: Are homeowners better citizens?’ (1999) 45 *Journal of Urban Economics* 354.

...the impact of homeownership on community life is not as clear-cut – and often, not as positive – as proponents claim. Rather than transforming citizens into better neighbours and engaged citizens, owning a home often leads them to participate in the politics of exclusion. Concerned about the value of their homes, they elevate concerns about property values above other issues in their communities. As a result, when they do engage in civic activities or participate in local politics, they often do so as a way of protecting their financial interests. This type of civic involvement can lead to fractured, segregated neighbourhoods, with homeowners working to exclude particular practices and people from their communities.³⁴

Furthermore, homeownership may have negative social effects, including stigma being conferred on those excluded from ownership,³⁵ especially social housing tenants.³⁶ Generally, social divisions may develop between owners and non-owners.³⁷ In their study conducted in the United Kingdom, Chris Foye and his co-authors found:

(1) the subjective wellbeing of owners and renters depends on the homeownership values of relevant others, thus implying that in the UK, home-ownership is a social norm, and (2) the subjective wellbeing of owners is also negatively related to the home-ownership rates of relevant others, implying that for owners, home-ownership is also a positional good. Together, these findings suggest that homeowners enjoy relative benefits at the expense of renters: first, through being considered ‘normal’ by society versus renters who are considered ‘abnormal’, and second through being considered wealthier than renters.³⁸

High rates of owner-occupation do not necessarily indicate high levels of economic development. Richard Florida demonstrates a correlation between ‘relatively high levels of economic development with relatively low levels of homeownership’.³⁹ He does not claim a

Brian J McCabe, *No Place Like Home: Wealth, Community and the Politics of Homeownership* (Oxford University Press, 2016) 144.

Vienna’s model for housing provision has long involved the city government taking a leading role: see Hanns Abele and Andrea Höttl, ‘Housing in Vienna’ in Ake E Andersson, Lars Pettersson and Ulf Strömquist (eds), *European Metropolitan Housing Markets. Advances in Spatial Science* (Springer, 2007) 241. In that city, living in municipality-owned accommodation does not carry the social stigma often encountered in Anglophone countries: see *Vienna’s Unique Social Housing Program* PD&R Edge <https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_011314.html>.

Craig Gurney argues ‘the normalisation of one form of housing consumption has been instrumental in legitimising the residualisation of social rented housing ... if policies to encourage social balance and area based regeneration are to be successful then strategies to challenge the power relationships constituted by these discourses are crucial’. See Craig M Gurney, ‘Pride and Prejudice: Discourses of Normalisation in Public and Private Accounts of Home Ownership’ (1999) 14(2) *Housing Studies* 163. See also Kath Hulse, Alan Morris and Hal Pawson, ‘Private Renting in a Home-owning Society: Disaster, Diversity or Deviance?’ (2018) *Housing, Theory and Society* 1.

³⁷ See Thad Williamson, ‘Realizing Property-Owning Democracy: A 20-Year Strategy to Create an Egalitarian Distribution of Assets in the United States’ in Martin O’Neill and Thad Williamson (eds) *Property-Owning Democracy; Rawls and Beyond* (Wiley-Blackwell, 2012) 235.

³⁸ Chris Foye, David Clapham and Tommaso Gabriel, ‘Home-ownership as a Social Norm and Positional Good: Subjective Wellbeing Evidence from Panel Data (2018) 55(6) *Urban Studies* 1290.

³⁹ Richard Florida, ‘Why the US Needs to Fall Out of Love With Homeownership’ *Citylab* (17 September 2013) <www.citylab.com/equity/2013/09/why-us-needs-fall-out-love-homeownership/6517/>.

causative connection between the two phenomena but suggests that greater urbanisation and broader investment opportunities may help to explain differences in homeownership rates between, say, urbanised Switzerland and relatively rural Romania.⁴⁰ Furthermore, just as individuals' preferences for purchasing real property lead to non-diversified investment portfolios, so 'numerous studies have found that excessive homeownership significantly distorts the economy, diverting investment away from much more needed areas like technology and knowledge'.⁴¹

This article is, in principle, agnostic about homeownership. However, the context of the neoliberal state's withdrawing from housing provision cannot be ignored.⁴² A principal feature of welfare-state capitalism in the decades after World War II was the provision of high quality state housing for working class people, effectively on a lifetime lease basis.⁴³ But 'the role of social housing in Australia is changing from a home for working class families to a place of last resort for only the most vulnerable households'.⁴⁴ If the state no longer recognises an obligation to provide decent social housing for everyone who needs and wants it, homeownership becomes more socially relevant, unless other providers step in to satisfy the need that social housing used to meet.

III INDIVIDUAL BENEFITS OF HOMEOWNERSHIP

Individual welfare benefits arise from the owner-occupied home representing a shelter from the market.⁴⁵ Furthermore, Andrews and Sánchez identify wealth accumulation and better outcomes for children as key individual benefits of homeownership.⁴⁶ These putative benefits warrant unpacking because they infer a link between homeownership and the capacity to live a full life.⁴⁷ Even if the social benefits of homeownership are moot, aggregate individual

⁴⁰ Ibid.

⁴¹ Ibid. Although it may be noted that the homeownership rate in Switzerland has increased in recent decades. Differences in international homeownership rates defy neat explanations.

⁴² Because the overall supply of social housing has been stable for the past 25 years, and so has fallen from six to four per cent of the Australian housing stock. Within the stock of social housing, community housing rentals doubled between 2006 and 2016. See *Report on Government Services 2016 Volume G: Housing and homelessness* (Productivity Commission for the Steering Committee for the Review of Government Service Provision, 2016) ch 17.

⁴³ See David Hayward, 'The Reluctant Landlords? A History of Public Housing in Australia' (1996) 14(1) *Urban Policy and Research* 5.

⁴⁴ Katrina Raynor, Matthew Palm and Melanie O'Neil, *The Barnett Model: Evaluating the outcome and scalability of an affordable homeownership model* (University of Melbourne, 2018) 9.

⁴⁵ See Tony Fahey and Michelle Norris, 'Housing' in Herbert Obinger et al (eds), *The Oxford Handbook of the Welfare State* (Oxford University Press, 2010) 479, 491.

⁴⁶ Andrews and Sánchez, above 28, 210-11.

⁴⁷ Consideration of living a full life lies beyond the scope of this article. The concept of human development, as adopted by the United Nations Development Programme ('UNDP'), is used as shorthand for a flourishing human existence. See *Human Development Index (HDI)* <<http://hdr.undp.org/en/content/human-development-index-hdi>>.

benefits might justify pro-ownership policies. Such a policy focus might divert attention away from the need for home-like tenancies.

A. *Housing and Individual Wealth Accumulation*

At certain times, an owner-occupied home can be a lucrative investment: for example, between 2014 and 2017, the average Auckland house price increased by 46 per cent.⁴⁸ But, using United States data, Robert Shiller demonstrates that the inflation-adjusted return on housing between 1890-2005 was less than one per cent a year. That return does not take into account transaction and maintenance costs.⁴⁹ Shiller observes:

...homeownership is actually not a great idea from an investment standpoint. A better strategy would be to diversify as much as possible – put your money into stocks, bonds, many different geographies – and then use the income to rent whatever you like, which allows for greater flexibility and efficiencies.⁵⁰

Notwithstanding the apparent irrationality of homeownership for all, from a perspective of classical economics, Shiller notes that ‘behavioral economics tells us that the emotional lure of homeownership is strong and would be difficult to break completely, even if that were desirable’.⁵¹ Furthermore, simply because a renter has disposable income to invest, there is no guarantee they will in fact save. Conversely, the typical owner-occupier, who has been obliged to save for a deposit and then to make periodic mortgage payments, is forced to save.⁵² Over decades, even with only modest compounding returns, the homeowner is likely to accumulate a significant pool of capital.

Tenants cannot practicably share directly in the wealth experience of housing.⁵³ Indeed, they may suffer the disadvantage of rent increases when house prices increase. Overall

⁴⁸ See Auckland Council, *Updated Auckland property values available* (2017) <<http://ourauckland.aucklandcouncil.govt.nz/articles/news/2017/11/45-per-cent-average-increase-for-auckland-properties/>>.

⁴⁹ See Robert J Shiller, *Irrational Exuberance* (Princeton University Press, 3rd ed, 2015) 37.

⁵⁰ See Robert Shiller, ‘The Trouble With Homeownership’ *Newsweek* (20 October 2008) 40. According to Jordan Rappaport, ‘[F]or many households in many years, renting and investing the saved cash flow has built more wealth than homeownership. On the other hand, about half of the time, homeownership has built more wealth than renting.’ See Jordan Rappaport, ‘The Effectiveness of Homeownership in Building Household Wealth’ (2010) Q IV *Economic Review, Federal Reserve Bank of Kansas City* 35, 36.

⁵¹ Shiller, above n 49, 40.

⁵² Christopher E Herbert, Daniel T McCue, and Rocio Sanchez-Moyano, ‘Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households? (Was it Ever?)’ (Joint Center for Housing Studies, HBTL-06, Harvard University, September 2013) 3.

⁵³ Some kind of capital profit sharing scheme, such as a national trust for the benefit of tenants funded by the tax gains of homeowners, is not unimaginable but seems politically implausible. If capital gains on disposals of principal residences were taxed, some redistribution would occur.

homeownership rates were steady in Australia at around 70 per cent for almost half a century,⁵⁴ but have fallen sharply more recently.⁵⁵ More than one-third of the population is now excluded from the wealth benefits of homeownership.⁵⁶ Since that one-third is increasingly and disproportionately represented by the young, who will be expected to fund the retirement and health costs of their preceding, propertied generations, government needs to give deep consideration to the housing experiences of younger people.

B. *Ontological Security*

Following Anthony Giddens, ‘ontological security comprises a deep, internal and personal sense of self’.⁵⁷ Tenants typically experience diminished ontological security relative to homeowners, but occupational security for owner-occupiers is not absolute.⁵⁸ They typically borrow from a bank to purchase a property with the loan being secured by a mortgage. In the event of default, the bank can seize and sell the property. Mortgagors are vulnerable in the event of interest rates increases or a fall in the housing market leading them into negative equity. Unlikely as it may be in practice, a local authority may apply to court to take possession of a property to satisfy unpaid rates. Furthermore, compulsory purchase orders may be imposed on individual property owners to enable public infrastructure projects.⁵⁹ Nevertheless, under settled conditions, owner-occupiers generally enjoy a degree of occupational certainty that few tenants experience.⁶⁰ But Kath Hulse and Vivienne Milligan observe:

⁵⁴ Parliament of Australia, *Trends in home ownership in Australia: a quick guide* (28 June 2017) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/TrendsHomeOwnership>.

⁵⁵ Ibid.

⁵⁶ The 2016 Australian census showed that overall homeownership had fallen significantly below 70 per cent. Not only does owner-occupancy vary considerably by age group but also by region. While only 26.7 per cent of people rented in Perth, 44.4 per cent of the population of Darwin were tenants. See Michael Janda, ‘Home ownership rates continue to plunge, housing stress widespread: Census’ *ABC* (27 June 2017) <<http://www.abc.net.au/news/2017-06-27/home-ownership-rates-continue-to-plunge-census/8654534>>.

In New Zealand, the overall homeownership rate fell from a peak of 73.8 per cent in 1991 to 63.2 per cent in 2017. See Stats NZ, *Dwelling and Household Estimates: June 2017 Quarter – Tables* (2017) <http://m.stats.govt.nz/browse_for_stats/population/estimates_and_projections/DwellingHouseholdEstimates_HOTPJun17qtr.aspx>.

⁵⁷ Rosemary Hiscock, Ade Kearns, Sally MacIntyre and Anne Ellaway, ‘Ontological Security and Psycho-Social Benefits from the Home: Qualitative Evidence on Issues of Tenure’ (2001) 18(1-2) *Housing, Theory and Society* 50, 57.

⁵⁸ Moving from tenancy (especially in state housing) to market ownership can present considerable financial risks for renters. See Kath Hulse, Terry Burke, Lisa Ralston and Wendy Stone, *The benefits and risks of home ownership for low-moderate income households* (AHURI, 2010).

⁵⁹ While this would be unlikely in Australia or New Zealand, in the United States, notwithstanding an allodial land ownership system, the doctrine of eminent domain may permit a local authority to transfer land from one private owner to another for public benefit, including increased property tax yield. See *Kelo v City of New London* 545 US 469 (2005).

⁶⁰ See, for example, Hiscock et al, above n 57, 64.

...although *de jure* security of tenure from a property rights perspective is clearly important, this is too narrow a focus to understand to what extent tenants experience security, and feel secure, in their housing ... a variety of legal, market, policy and cultural factors ... shape aspects of security – *de jure*, *de facto* and perceptual – for tenants.⁶¹

A simple ownership/tenancy binomial is not therefore plausible. Rather, policy focus should lie with promoting a lived experience of ontological security. That outcome is more likely to be delivered by owner-occupation, but enhanced tenancy rights and benefits might provide similar outcomes.

C. Benefits for Children

The United Nations Human Development Index ('HDI') is a 'composite measure of development of a country introduced by the ... a combination of the indicators of health ... education ... and living standards'.⁶² While the HDI lacks moral or spiritual nuance, it aggregates objective factors that indicate a flourishing human existence, for children, in particular. If high levels of owner-occupation are shown to be associated with high levels of human development, then claims for children's benefits from parental owner-occupation should be taken seriously. Indeed, Richard White and Michelle Green argue that the benefits for children of parental homeownership are sufficiently significant to justify 'government policies to encourage low-income households to become homeowners'.⁶³

Australia and Switzerland are joint second in the HDI ranking,⁶⁴ but Australia's owner-occupation rate of 65.5 per cent⁶⁵ is significantly higher than Switzerland's rate of 44.5 per cent.⁶⁶ We cannot, therefore, draw reliable conclusions about human development in countries with different levels of owner-occupation. Indeed, Romania has the highest level of owner-occupation in Europe (96.4 per cent)⁶⁷ but is ranked 50th in the HDI.⁶⁸ However, worse outcomes for children living in rented accommodation are likely in traditionally high homeownership countries. Donald Haurin and his co-authors conclude:

⁶¹ Kath Hulse and Vivienne Milligan, 'Secure Occupancy: A New Framework for Analysing Security in Rental Housing' (2014) 29(5) *Housing Studies* 638. See also Kath Hulse and Marietta Haffner, 'Security and Rental Housing: New Perspectives' (2014) 29(5) *Housing Studies* 573.

⁶² John Black, Nigar Hashimzade, and Gareth Myles, *A Dictionary of Economics* (Oxford University Press, online ed, 2017).

⁶³ Richard K Green and Michelle J White, 'Measuring the Benefits of Homeownership: Effects on Children' (1997) 41 *Journal of Urban Economics* 441, 460.

⁶⁴ See United Nations Development Program, *International Human Development Indicators* (2017) <<http://hdr.undp.org/en/countries>>.

⁶⁵ ABS, *2016 Census QuickStats* (2018) <http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/036>

⁶⁶ Eurostat, *Distribution of population by tenure status, type of household and income group - EU-SILC survey* (2018) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvho02&lang=en>.

⁶⁷ *Ibid.*

⁶⁸ United Nations Development Program, above n 64.

... owning a home leads the resident household to invest in their property and to produce a higher quality home environment ... in a well-controlled study, accounting for unobserved child characteristics, and accounting for unobserved parental characteristics that might lead to a spurious correlation between homeownership and child outcomes, we find substantial support for the hypothesis that homeownership increases child cognition and reduces behavior problems.⁶⁹

Insecure rented accommodation is one of a cluster of social disadvantages. ‘Doing well or poorly in one domain is likely to affect performance in other domains. For example, poor educational outcomes are associated with higher levels of unemployment and lower incomes, which in turn are linked to housing affordability problems, poorer health and lower levels of life satisfaction.’⁷⁰ ‘Losing a home can be devastating to health, education and other outcomes.’⁷¹ Johanna Lundberg and her co-authors observe:

...negative rental churn is a problem with financial and social implications for individuals as well as communities. We also know that very few people are not signing up for long-term leases – on average, people in Auckland rent their homes for 15 months.⁷²

A parent, who does not face the ‘work mobility barrier’ of homeownership,⁷³ may move from place-to-place searching for better wages and cheaper accommodation. And, of course, their children shift from school-to-school with the predictable educational consequences of serial transience.⁷⁴ Megan Sandel observes ‘housing instability, including chronically late rent payment, can affect the mental and physical health of family members of all ages’.⁷⁵ Indeed, despite having a roof over their heads, people with insecure tenure are recognised by

⁶⁹ Donald R Haurin, Toby L Parcel and R Jean Haurin, ‘Does Homeownership Affect Child Outcomes?’ (2002) 30(4) *Real Estate Economics* 635, 660.

⁷⁰ Ministry of Social Development, *The Social Report 2016* (2016) 15 <<http://socialreport.msd.govt.nz/documents/2016/msd-the-social-report-2016.pdf>>.

⁷¹ Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub, *A Stocktake of New Zealand’s Housing* (New Zealand Government, 2018) 38. Experience in the United States indicates that evictions are associated with suicide. See Katherine A Fowler, R Matthew Gladden, Kevin J Vagi, Jamar Barnes and Leroy Frazier, ‘Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005–2010’ (2015) 105(2) *American Journal of Public Health* 311.

⁷² Johanna Lundberg and other authors, *Exploring Security of Tenure through Co-design* (2018) 7 <<http://www.mbie.govt.nz/publications-research/research/housing-and-property/Rental%20Tenure%20-%20Talkbook.pdf>>.

⁷³ Andrews and Sánchez, above n 3, 8 consider homeownership to be a barrier to job mobility. It is submitted that the ontological uncertainty that attends insecure tenure is a more significant economic and social concern than job mobility.

⁷⁴ See Marika Hill, ‘Schools lose half their students as poverty forces families to move’, *Sunday Star Times* (online), 29 May 2016 <<http://www.stuff.co.nz/national/education/80210599/Schools-lose-half-their-students-as-poverty-forces-families-to-move>>.

⁷⁵ See Megan Sandel and other authors, ‘Unstable Housing and Caregiver and Child Health in Renter Families’ (2018) 141(2) *Pediatrics* e20172199.

Australasian statistics agencies as being homeless.⁷⁶ Insecurity, it is submitted, is the critical issue for tenants, not lack of title.

D. Homeownership Comparisons

Conventional wisdom holds that Anglophone property-owning democracies have high rates of homeownership, while continental European countries have high rates of settled tenancies.⁷⁷ In 2004, Australia and New Zealand, as well as the United Kingdom, had overall homeownership rates of around 70 per cent, whereas Denmark (51.6 per cent), Germany (41.0 per cent) and Switzerland (38.4 per cent) had much lower rates.⁷⁸ A decade later, the rates in the Anglophone countries had fallen, whereas the rates in the continental European countries had increased. (See table 1 below.)

Country	Circa 1990s	2004	2014-16
Australia ⁸⁰	71.4	69.5	65.5 ⁸¹
New Zealand	73.8 ⁸²	67.8 ⁸³	64.8 ⁸⁴
United Kingdom	67.5	70.7	64.4 ⁸⁵

⁷⁶ See ABS, above n 26; New Zealand Parliament, *Homelessness in New Zealand* (2014) <<https://www.parliament.nz/en/pb/research-papers/document/00PLEcoRP14021/homelessness-in-new-zealand>>.

⁷⁷ C Martin, K Hulse and H Pawson, *The Changing Institutions of Private Rental Housing: an International Review*, AHURI Final Report No. 292 (2018) 5 <<http://www.ahuri.edu.au/research/final-reports/292>>.

⁷⁸ Andrews and Sánchez, above n 3, 9.

⁷⁹ *Ibid.* This study did not include New Zealand, and only provided figures for 1990 and 2004.

⁸⁰ Other sources indicate similar but different rates for Australia, i.e. 68.9 per cent (1991), 69.8 per cent (2006) and 67.1 per cent (2016), according to Parliament of Australia, above n 54. ABS recorded a total for owned of 67 per cent for the 2011 census. See ABS, *Housing tenure data in the Census (2016)* <<http://www.abs.gov.au/websitedbs/censushome.nsf/home/factsheetshtdc>>.

⁸¹ ABS, above n 65.

⁸² Stats NZ, *Owner-Occupied Households* <http://archive.stats.govt.nz/browse_for_stats/people_and_communities/Households/housing-profiles-owner-occupied.aspx>.

⁸³ The homeownership rate was 67.8 per cent in 2001 and 66.9 per cent in 2006. See William Cochrane and Jacques Poot, 'Homeownership and the New Zealand Labour Market' (2006) *Labour, Employment and Work* 416, 416 <<https://ojs.victoria.ac.nz/LEW/article/download/1607/1450>>.

⁸⁴ Stats NZ, *2013 Census QuickStats about housing* (2014) <<http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-housing/home-ownership-households.aspx>>.

⁸⁵ Eurostat, above n 66.

Denmark	51.0	51.6	63.3 ⁸⁶
Germany	36.3	41.0	52.5 ⁸⁷
Switzerland	33.1	38.4	44.5 ⁸⁸

With the exception of Australia (joint 2nd), the Norse-Germanic countries (Switzerland joint 2nd, Germany 4th, Denmark 5th) ranked higher in the 2016 *Human Development Report* than the Anglo countries (New Zealand 13th and the United Kingdom 16th). No conclusion can plausibly be drawn beyond this: *between*, rather than *within*, OECD countries, higher rates of homeownership do not generally correspond with high levels of human development. In traditional property owning democracies, in which owner-occupation is falling, government should seek to close the overall experiential gap between ownership and tenancy.

IV TOWARDS SYNTHETIC OWNER-OCCUPATION TENANCIES

Owner-occupation provides considerable individual benefits, but not everyone who wants to a homeowner can become one under current conditions. Recognition of these facts leads to the proposal of synthetic owner-occupation, and the realisable possibility of synthetic owner-occupation tenancies ('SOO tenancies'). Tenants are practically excluded from sharing the wealth benefits of owner-occupation. They also forego the tax benefits of homeownership.⁸⁹ Government should, therefore, be alert to preferential tax treatment of home-owners which may unduly amplify the benefits of homeownership. However, a more practicable goal in the short to medium-terms lies with reducing the differences between the ways owner-occupiers and tenants experience housing. This can be done by promoting SOO tenancies; in other words, ensuring tenants experience home in a way similar to owner-occupiers.

Since Switzerland has been used in this article as a comparator for Anglophone property-owning democracies, it is pertinent to ask why, unlike most Australasians, have most Swiss traditionally rented?⁹⁰ Steven Bourassa and Martin Hoesli suggest that, in Switzerland, despite high incomes, houses are very expensive due to a lack of exploitable land.⁹¹ But this

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ For a discussion, see J Daley, B Coates and T Wiltshire, *Housing Affordability: Re-imagining the Australian dream* (Grattan Institute, 2018) 79.

⁹⁰ For a discussion of the traditionally low rates of homeownership, despite high incomes, in Switzerland see Elia Werczberger, 'Home Ownership and Rent Control in Switzerland' (1997) 12(3) *Housing Studies* 337.

⁹¹ Steven C Bourassa and Martin Hoesli, 'Why Do the Swiss Rent?' (Cahier de Reserches, Faculté des Sciences Économiques et Sociales, Université de Genève, 2009) 32.

explanation is not wholly plausible.⁹² Germany also has relatively low homeownership rates but no obvious shortage of land. Andrews and Sánchez observe, ‘rental market regulations impact homeownership by making renting more attractive’.⁹³ In other words, rented properties can be made more home-like. In Germany and Switzerland, on the one hand, stable tenancies are created by secure tenure and long leases,⁹⁴ and, on the other hand, tenants’ assume personal responsibility to maintain the interior of the place.⁹⁵ SOO tenancies could be structured similarly.

Many superannuitants are prepared to forego freehold in their own homes to take up licences to occupy specific units in retirement villages,⁹⁶ effectively trading-off ownership and potential capital gains for the greater ontological security presented by living in a community of peers with professional curation.⁹⁷ These occupational licences can be seen as an exemplary form of synthetic owner-occupation.⁹⁸ Occupants can typically keep a pet when taking up a licence, and may personalise the property to make it feel like their home. Significantly, government may consider licence-holding as tantamount to ownership and grant tax benefits traditionally reserved to owner-occupiers. In New Zealand, such licence-holders, unlike lessees, are deemed ratepayers and may apply for a low-income rates rebate.⁹⁹

⁹² See Florida, above n 39 on diversified investment opportunities in highly urbanised countries, such as Switzerland.

⁹³ Dan Andrews and Aida Caldera Sánchez, ‘The Evolution of Homeownership Rates in Selected OECD Countries: Demographic and Public Policy Influences’ (2011) *OECD Journal: Economic Studies* 207, 231 <http://dx.doi.org/10.1787/eco_studies-2011-5kg0vswqpmg2>.

⁹⁴ See Andreas Furrer and David Vasella, *Tenancy Law Project – Swiss Report* <<https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawSwitzerland.pdf>>.

⁹⁵ Ibid. However, Hazel Easthope notes that ‘even in [Germany] a country that affords significant rights to private tenants regarding security of occupancy and the right to undertake maintenance and repairs, the right to personalise a dwelling remains contested’. She was referring to the right to hammer a nail into an internal wall in order to hang a picture that was not confirmed by a German court before 2010. See Hazel Easthope, ‘Making a Rental Property Home’ (2014) 29(5) *Housing Studies* 579, 588.

⁹⁶ In New Zealand, 12 per cent of those aged over 75 live in retirement villages. See Rob Stock, ‘People no longer want to live in fortress-like gated retirement villages’ *Stuff* (online), 24 August 2018 <<https://www.stuff.co.nz/business/money/106509545/people-no-longer-want-to-live-in-fortresslike-gated-retirement-villages>>.

⁹⁷ Rob Stock, ‘Retirement living comes at a high price’ *Sunday Star Times* (online), 8 February 2015 <<https://www.stuff.co.nz/business/money/65858484/retirement-living-comes-at-a-high-price>>.

⁹⁸ Traditionally a lease grants a legal interest in the land and the lessee’s interest binds the lessor’s successors in title (an action in rem), whereas a licence is a personal right that generally only binds the original licensor and original licensee (an action in personam). A licensee is therefore in a more precarious position legally than a lessee. A great deal of trust – and regulatory oversight – is therefore necessary for retirement villages to function. This system of occupational licences could prove disastrous should one or more of the major retirement village providers collapse.

⁹⁹ See *Rates Rebate (Retirement Villages Residents) Amendment Act 2018* (NZ), effective 1 July 2018.

A. *A Model for SOO Tenancy*

Reprising, and seeking to neutralise, the disadvantageous features of tenancy noted in the Introduction, it is proposed that a model for SOO tenancy would manifest the following basic characteristics:¹⁰⁰

- Affordability;
- Security of tenure;
- Some form of rent increase restrictions;
- Features of a home; and
- Decent living conditions.

1 *Affordability*

According to Judith Yates

...a high proportion of lower income households face high housing costs because of the overall shortage of affordable housing. They do not have the option of limiting their housing costs to 30 per cent of income by living in a small dwelling or by locating to the capital city fringe or in a non-metropolitan region. There are simply not enough low-rent dwellings available.¹⁰¹

The benchmark of 30 per cent Yates mentions is generally used to indicate unaffordable housing.¹⁰² Alan Johnson and his co-authors note, tenants often pay a greater proportion of their household income for accommodation than owner-occupiers.¹⁰³ Yates' analysis demonstrates that the long-term solution lies in an adequate supply of affordable, rental housing in the inner-city places where people need to live. In the interim, rent assistance must also be adequate.

2 *Security of Tenure*

Security of tenure laws in Anglophone jurisdictions are often weak relative to other OECD countries.¹⁰⁴ 'Only Australia, New Zealand, the United Kingdom (other than Scotland) and

¹⁰⁰ Tenants should also take personal responsibility for respecting the ultimate ownership of the landlord. However, current concerns lie with tenants' rights, rather than their duties. For a discussion of being or becoming a 'good tenant' see Cameron Parsell, Ornella Moutou, Eduardo Lucio and Sharon Parkinson, *Supportive Housing to Address Homelessness* AHURI Final Report No 240 (Australian Housing and Urban Research Institute at The University of Queensland, May 2015).

¹⁰¹ Judith Yates, 'Why Does Australia Have an Affordable Housing Problem and What Can Be Done About It?' (2016) 49(3) *Australian Economic Review* 328, 331.

¹⁰² See, for example, Matthew Thomas and Alicia Hall, *Housing affordability in Australia* Parliament of Australia <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/HousingAffordability>.

¹⁰³ Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Ministry of Building and Housing, 2018) 10. The authors' research relates to New Zealand but Australian tenants would have a similar experience.

¹⁰⁴ Daley et al, above n 89, 127.

some US jurisdictions allow termination without grounds.¹⁰⁵ Chris Martin and his co-authors observe ‘[T]he foremost approach to assuring tenants’ security is to allow landlords to terminate on prescribed grounds only. This is the situation currently in Germany, Sweden, Scotland, most of the Canadian provinces and some major US cities.’¹⁰⁶ In the light of falling homeownership rates, low-protection jurisdictions have taken tentative steps towards alleviating the precarious position of tenants. The United Kingdom’s Conservative government has proposed mandatory three year leases, whereas the country’s Labour opposition has called for an end to no fault evictions.¹⁰⁷ New Zealand’s Labour-led government has also promised improved tenancy protections, including an end no fault terminations, and extending notice periods from 42 to 90 days.¹⁰⁸ The Victorian government’s *Heading for Home* inquiry took an in-depth look at the *Residential Tenancies Act 1997* (Vic),¹⁰⁹ and made various recommendations including the removal of ‘termination for no specified reason end the end of the first fixed term of an agreement’.¹¹⁰

3 *Rent Increase Restrictions*

Of the ten jurisdictions Martin et al analysed, ‘[r]ent increases are regulated in four countries – Belgium, Germany, Spain and Sweden – most of the Canadian provinces and some major US cities by limiting them to a stated guideline or reference rent. Ireland and Scotland do so in designated “rent pressure zones”.’¹¹¹ The British Labour Party has proposed rent restrictions,¹¹² whereas New Zealand’s Labour-led government has more modestly promised to restrict rent increases to once, as opposed to the currently permitted twice, a year.¹¹³ In her analysis of rent controls in the United States, Radin acknowledges the classical economic arguments against rent controls but asks: ‘Might the level of efficiency losses be outweighed by other gains? Might some right of tenants “trump” the utility analysis?’¹¹⁴ Restricting the frequency or magnitude of rent increases may not conform with orthodox theories of market efficiency but might provide tenants with enhanced ontological security.

4 *Features of Home*

¹⁰⁵ Martin et al, above n 77, 5.

¹⁰⁶ Ibid.

¹⁰⁷ Mattha Busby, ‘Labour says government plans to provide renters with greater stability are “meaningless”’ *The Independent* (online), 1 July 2018 <<https://www.independent.co.uk/news/uk/home-news/conservative-renters-security-three-year-tenancies-labour-meaningless-a8425456.html>>.

¹⁰⁸ Labour, *Our plan to start fixing the housing crisis* (2017) <<https://www.labour.org.nz/housing>>.

¹⁰⁹ Victoria State Government, *Heading for Home: Residential Tenancies Act Review Options Discussion Paper* (2016) <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4714/8660/2001/Publication_-_External_-_FSH_Residential_Tenancies_Act_Options_Paper_final_-_December_2016.pdf>.

¹¹⁰ Martin et al, above n 77, 5.

¹¹¹ Ibid.

¹¹² Busby, above n 107.

¹¹³ Labour, above n 108.

¹¹⁴ Margaret Jane Radin, ‘Residential Rent Control’ (1986) 15(4) *Philosophy & Public Affairs* 350, 352.

Security of tenure and rent increase restrictions provide tenants with a degree of ontological certainty but do not, in themselves, constitute a home. Home is different from the particular legal concept of real property ownership, which is demonstrated in the most extreme form by *ius abutendi* (the right to destroy).¹¹⁵ The owner-occupier of a house can prove their proprietorship by wantonly smashing holes in a drywall with a hammer, without sanction, but it would be untenable to propose that a tenant should have a similar freedom. A better indication of a home or homeliness is the right to put a nail in a wall to hang a picture – or to be able to plant flowers and vegetables, and to have a pet.¹¹⁶ Hazel Easthope emphasises ‘the importance of home in housing policy that takes into account the importance for residents of having both security of occupancy and the ability to make changes to their dwellings’.¹¹⁷

5 Decent Living Conditions

While some homeowners may also live in substandard homes, tenants are particularly vulnerable: for example, in New Zealand, ‘36% of renters have insulation compared to 73% of home owners and renters are less likely to have double glazing, a heat pump, or a ventilation system’.¹¹⁸ Regulation is the primary tool for ensuring decent living conditions; for example, the *Healthy Homes Guarantee Act 2017* (NZ) introduces healthy homes standards (on matters such as heating, insulation and ventilation) to the *Residential Tenancies Act 1986* (NZ),¹¹⁹ but tax signals and concessions may help.

V TAXES TO PROMOTE SOO TENANCIES

Tax measures, such as including a person’s primary residence in the capital gains tax (‘CGT’) net, could narrow the differences in wealth outcomes of tenants and homeowners, but are politically implausible. Besides, this article is principally concerned with the consumption experiences of housing. In part IV, a model of SOO tenancy was proposed which requires: affordability; security of tenure; some form of rent increase restrictions; features of a home; and decent living conditions. These are, in the main, regulatory issues, but tax measures may also contribute to realisation of the model.¹²⁰

¹¹⁵ See A M Honoré, ‘Ownership’ in A G Guest (ed), *Oxford Essays in Jurisprudence: A Collaborative Work* (Oxford University Press, 1961) 107, 118.

¹¹⁶ Jonathan Hair and Brendan Arrow, ‘Victorian tenants given right to have a pet under sweeping changes to rental laws’ *ABC* (8 October 2017) <<http://www.abc.net.au/news/2017-10-08/victorian-tenants-allowed-pets-in-rental-properties/9027000>>.

¹¹⁷ Easthope, above n 95, 594.

¹¹⁸ Findings from the *HRV State of the Home Survey 2017* in ‘The renter vs landlord war wages on’ *Scoop* (2 August 2017) <<http://www.scoop.co.nz/stories/AK1708/S00049/the-renter-vs-landlord-war-wages-on.htm>>.

¹¹⁹ As ratifying countries of the International Bill of Rights, Australian governments are also obliged to ensure that low-income owner-occupiers also live in decent accommodation: see, in particular, article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976).

¹²⁰ Barrett, above n 9 examines relevant tax issues in greater detail.

A. AHURI Recommendations

In addition to reform of residential tenancy law, in their research for the Australian Housing and Urban Research Institute ('AHURI'), Sharon Parkinson and her co-authors identify three other 'key institutional areas that have direct impact for the sustainability and growth of the PRS [private rental sector] in Australia', these are: negative gearing; capital gains tax; and the Commonwealth Rent Assistance ('CRA').¹²¹

1 Negative Gearing

This article is concerned with the differential position of owner-occupiers and tenants, rather than differences between property investors and others. Nevertheless, negative gearing may impact on levels of homeownership, and consequently the number of people who must rent. According to the centre-right think tank Onward, more than two million families in the United Kingdom are denied homeownership because of buy-to-rent tax concessions.¹²²

Provided a taxpayer can show an intention to generate income through an investment in a rental property, it is not obvious why, in terms of general income tax principles, deductions should not be allowed against their other income. Nevertheless, New Zealand has announced plans to disallow negative gearing.¹²³ Adopting a more subtle approach, Parkinson et al suggest that the concession should be used as a signal to encourage landlords to invest in areas of need, and to enter into long-term tenancies.¹²⁴ Following this idea, it is proposed that negative gearing could be used to promote SOO tenancies.

2 CGT

According to Parkinson et al, policy in the key areas, including CGT, 'has been unremarkable and has failed to respond to key changes and challenges in housing provision and housing trajectories over successive decades in Australia.'¹²⁵ It would be a matter of speculation to predict whether the changes to CGT taxed announced by the Turnbull government in the 2017 Budget will be effective,¹²⁶ but it is significant that CGT concessions are seen as a means of promoting affordable housing. In addition to the usual 50 per cent discount on capital gains for

¹²¹ Sharon Parkinson, Amity James and Edgar Liu, *Navigating a Changing Private Rental Sector: Opportunities and Challenges for Low-Income Renters*, AHURI Final Report No 302 (2018) 78 <<https://www.ahuri.edu.au/research/final-reports/302>>. See, also Martin et al, above n 77. CRA is not a tax but is a relevant benefit.

¹²² See Jim Pickard and Aime Williams, 'Conservative think-tank seeks end to buy-to rent tax break' *Financial Times* (online), 24 June 2018 <<https://www.ft.com/content/be0d8b7c-7635-11e8-b326-75a27d27ea5f>>.

¹²³ See Hon Grant Robertson, *Budget 2018: Future Proofing New Zealand's Economy* (1 May 2018) <https://www.beehive.govt.nz/sites/default/files/2018-05/Grant%20Robertson%20pre-Budget%20speech%201%20May_0.pdf>.

¹²⁴ Parkinson et al, above n 121, 81.

¹²⁵ Ibid 78.

¹²⁶ Commonwealth of Australia, *Budget 2017–18: budget overview* (9 May 2017) <<http://www.budget.gov.au/2017-18/content/glossies/overview/download/Budget2017-18-Overview.pdf>>.

assets held for at least 12 months, individuals will be entitled to a discount of up to 10 per cent for capital gains on gains attributable to disposal of dwellings used to provide affordable housing for three years or more.¹²⁷ Similar concessions will apply for individuals investing in qualifying trusts or managed investment trusts that invest in dwellings that provide affordable housing for at least three years.¹²⁸ If the aim of these concessions is to promote long-term investment in affordable rental properties, three years seems an unduly short period to promote that outcome.¹²⁹

New Zealand does not currently levy a general CGT but, at the time of writing, the possibility of introducing such a tax is under investigation by the Tax Working Group. In its interim report, the Group notes the likely connection between housing affordability and capital taxation but observes '[t]here is an open question as to whether an extension of capital income taxation would have a material effect on the housing market. A concern for the Group is to understand these impacts further.'¹³⁰ A particular issue for the Group relates to 'assumptions about the elasticity of supply [as these are] are critical to an assessment of the distributional impacts of tax changes in the housing market': the absence of a capital gains tax may have benefitted low-income renters through lower rents.¹³¹

3 CRA

CRA 'is a non-taxable income supplement payable to eligible people who rent in the private rental market or community housing'.¹³² Accommodation Supplement is the New Zealand equivalent of CRA.¹³³ The critical feature of any such benefit is that it should relate to 'a meaningful affordability measure'.¹³⁴

¹²⁷ See the explanatory memorandum to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2017.

¹²⁸ The dwelling must pass conditions relating to: residential premises; property management; the National Rental Affordability Scheme; and MIT membership. *Ibid.*

¹²⁹ Compare with the short affordability period under the abandoned National Rental Affordability Scheme, relative to the United States' Low Income Housing Tax Credit scheme. See Anita Blessing and Tony Gilmour, 'The Invisible Hand? Using Tax Credits to Encourage Institutional Investment in Social Housing' (2011) 11(4) *International Journal of Housing Policy* 453, 466.

¹³⁰ Tax Working Group, *Future of Tax: Interim Report* (September 2018) 6 <<https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-interim-report-sep18.pdf>>.

¹³¹ *Ibid* 56.

¹³² See Australian Government, *Housing Support* (2018) <<https://www.dss.gov.au/housing-support/programmes-services/commonwealth-rent-assistance>>.

¹³³ See Ministry of Social Development, *Accommodation Supplement* <<https://www.workandincome.govt.nz/products/a-z-benefits/accommodation-supplement.html>>.

¹³⁴ Parkinson et al, above n 121, 79. See also Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services* (Inquiry Report No 85, 27 October 2017) <<https://www.pc.gov.au/inquiries/completed/human-services/reforms/report/human-services-reforms.pdf>>.

B. *Other Possibilities*

Alan Holmans and his co-authors identify numerous international policies aimed at promoting affordable rentals.¹³⁵ For tenants, the main concessions are: tax deduction of rents; tax credits for low-income tenants; housing allowances; government guarantees of rent payments for low-income households. For landlords, the main concessions are: income tax exemptions for providers of social housing; depreciation for rental units; deductibility of interest on loans, and operating expenses; negative gearing; reduced CGT rates; tax relief for interest from mortgage-backed securities for housing; setting off of capital outlays against rental income. Potential landlords may be encouraged by: taxation of vacant properties to bring them back into use; property tax discounts for new or renovated houses; reduced rates of value added tax on conversions or new builds; subsidised loans for developers of affordable housing; land provided for affordable housing at below market value; grants to refurbish empty homes. Finally, investors may be incentivised by: tax relief on investment in construction of affordable housing; preferential tax treatment for housing-finance institutions; preferential tax treatment for employer-provided housing; grants for construction or renovation of affordable housing; taxation of empty land to encourage housebuilding.

Given this plethora of possibilities, questions need to be asked about the likely effectiveness of tax concessions. Since a lack of supply of landlords offering SOO tenancies is the principal problem,¹³⁶ how could taxes encourage the ‘right’ kind of landlord?

C. *Landlords*

Who does government want to be landlords? Perhaps it is not a matter whether SOO tenancies are offered by ‘mum and dad’ private landlords, community housing providers or institutional investors, provided all are subject to appropriate regulation.¹³⁷ However, it is widely believed that ‘mum and dad’ property owners lack professionalism,¹³⁸ and do not – and, perhaps, cannot – take the long-term perspective of a large corporation, for-profit or otherwise.¹³⁹

¹³⁵ Alan Holmans, Kathleen Scanlon and Christine M E Whitehead, *Fiscal policy instruments to promote affordable housing* (Research Report VII, Cambridge Centre for Housing and Planning Research, 2002) 19. The authors also identify various measures designed to help low to medium income owners buy their own homes.

¹³⁶ Yates, above n 101, 331 notes: ‘The supply of affordable private rental housing, however, has declined steadily over the past 25 years, both in absolute terms and in relation to the growing number of lower income households in private rental.’ Affordability is a key feature of SOO tenancies.

¹³⁷ See Martin et al, above n 77 on the strictly regulated German market which is dominated by private landlords.

¹³⁸ Ibid 124-26. Property managers must also develop as a profession. See Anglican Advocacy, *A Decade Overdue: The need for regulation of property management in New Zealand* (August 2018) <http://www.anglicanadvocacy.org.nz/wp-content/uploads/2018/08/AA_Property-Management-Report_WEBVIEW.pdf>.

¹³⁹ Daley et al, above n 89, 72.

As Treasurer, Scott Morrison outlined the structure of the Australian rental market, and thereby implied its weaknesses.¹⁴⁰ In Australia, 27 per cent of rental residential properties are owned by private investors, whereas the corresponding figure for the United Kingdom is 18 per cent. Conversely, 18 per cent of rental properties are owned by public or community organisations in the United Kingdom, compared to five per cent in Australia. Some 2 million Australian taxpayers own a rental property, with 72 per cent owning one property, and 90 per cent owning no more than two properties. Investor demographics are similar in New Zealand. According to the Ministry for Building, Innovation & Employment, almost 80 per cent of investors own one property, and 97.5 per cent fewer than six properties.¹⁴¹ Generally, unlike their United Kingdom counterparts, private Australasian investors are principally seeking capital gains, rather than a steady flow of rental income.¹⁴² Reducing CGT concessions or negative gearing is, therefore, politically implausible. Mass exit of small investors from the rental market might benefit those currently excluded from homeownership, but is unlikely to benefit tenants. Nevertheless, achieving more balance among providers, over time, is clearly in the public interest.

John Daley and his co-authors support institutional landlords.¹⁴³ But, as Martin et al observe, large corporate landlords are unusual internationally, and, while they ‘are now a standing item on the Australian housing policy agenda’, they do not yet exist, and how they should be structured is unclear.¹⁴⁴ Not-for-profit providers seem uncontroversial. In New Zealand, for example, qualifying community housing entities, which assist low-income people into the housing market,¹⁴⁵ have donee organisation status,¹⁴⁶ and their income of is tax exempt.¹⁴⁷ The provision of social services by for-profit companies has not largely been successful.¹⁴⁸ Social enterprises, such as the United Kingdom community interest company (‘CICs’), may be better placed to provide affordable rental housing than traditional charities,¹⁴⁹ or for-profit companies.

¹⁴⁰ Morrison, above n 8.

¹⁴¹ MBIE Official Information Act Request (OIA 1538, 9 July 2015). Even allowing for different methodologies, the Reserve Bank’s conclusion that more than a quarter of investors in residential properties hold seven or more properties seems implausible. Reserve Bank of New Zealand, *Financial Stability Report* (May 2015) 14 <<https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Financial%20stability%20reports/fsr-may2015.pdf>>.

¹⁴² Morrison, above n 8.

¹⁴³ Daley et al, above n 89, 72.

¹⁴⁴ Martin et al, above n 77, 4.

¹⁴⁵ Section 225D of the *Tax Administration Act 1994* (NZ) provides for a regulation to be set describing who can be a client or beneficiary of a community housing entity.

¹⁴⁶ *Income Tax Act 2007* (NZ) s LD (3)(1)(ab).

¹⁴⁷ *Ibid* s CW 42B.

¹⁴⁸ See, for example, Gill Plimmer, ‘Serco and Home Office criticised over Yarl’s Wood failures’ *Financial Times* (online), 8 July 2016 <<https://www.ft.com/content/6243e22c-441f-11e6-9b66-0712b3873ae1>>.

¹⁴⁹ Robert Coffey, Judith Smyth and Max Hogg, *Using the Community Interest Company model in the housing sector: A marriage in the making?* (Joseph Rowntree Foundation, 2007).

While CICs do not themselves attract tax concessions,¹⁵⁰ since social enterprises fudge the traditional distinctions between charities and for-profit companies, tax rules might be changed to accommodate their dual purposes.

D. *Investors*

According to Anita Blessing and Tony Gilmour:

Within the context of recoil from public spending and private debt, a quest has emerged for what has become the ‘Holy Grail’ of contemporary social housing policy: steady streams of large-scale institutional equity investment. The target investors are banks, insurance companies, investment vehicles and pension funds.¹⁵¹

One of the key aims of the policy changes announced in 2017 Australian Budget was to guide investments, particularly from overseas property investors, into the affordable rental market. Other measures could be taken.

1 *Real Estate Investment Trusts (‘REITs’)*

A social or affordable housing REIT can be a tax efficient mechanism for investment in social or affordable housing properties. (Tax efficiency for REITs lies with their usual tax transparency.) However, according to Margie Carlson

REITs typically generate returns for their investors by driving cost efficiencies through the use of professional management, by making property improvements which generate higher rents and by property sales in high growth markets. These methods make REITs successful in the private market but may make them ill-suited for affordable housing purposes because affordable housing will generate a lower return for investors.¹⁵²

2 *Superannuation Funds*

The lower return from affordable housing REITs may not be a problem for superannuation funds that require predictable returns in the long-term. For Graeme Newell and his co-authors, the ‘unlisted wholesale affordable housing fund is the most effective model to enhance the supply of affordable housing’; they argue that ‘re-shaping the policy setting on taxation to encourage the development of this affordable housing fund model is paramount’, notably providing a company tax exemption.¹⁵³

3 *Investment Tax Relief*

¹⁵⁰ But see HMRC, *Social investment tax relief factsheet* (2016) <<https://www.gov.uk/government/publications/social-investment-tax-relief-factsheet>>.

¹⁵¹ See Blessing and Gilmour, above n 129, 454.

¹⁵² Margie Carlson, *Alternative Sources of Capital for the Social/Affordable Housing Sector in Canada* (Housing Services Corporation/BC Housing, 2014) 8 <<https://www.refbc.com/sites/default/files/S13-Alternative-Sources-of-Capital-for-Social-Affordable-Housing-Sector.pdf>>.

¹⁵³ Graeme Newell, Chyi Lin Lee and Valerie Kupke, *The opportunity of unlisted wholesale residential property funds in enhancing affordable housing supply* (AHURI Final Report No 249, October 2015) 74.

The United Kingdom operate two kinds of investment tax relief. Community Investment Tax Relief is designed ‘to promote private investment in disadvantaged communities by providing a tax incentive to individuals and companies that invest in not-for-profit and profit-seeking enterprises in or serving those communities’.¹⁵⁴ Furthermore, investments in social enterprises and charities may qualify for Social Investment Tax Relief which allows income tax relief and CGT deferral.¹⁵⁵

The challenge for government lies in using tax concessions to promote effective investment in the most capable providers of SOO tenancies. It is not clear that governments in Australia or New Zealand have as yet formulated a coherent response to that challenge.

VI CONCLUSION

This article has noted the sharp decline in homeownership in Australia and New Zealand but, in principle, is agnostic on whether government should seek to reverse that trend, despite owner-occupation remaining a normal expectation. The Rawlsian proposal of property ownership as a basic principal of justice has not informed Australasian welfare-state capitalism, even in the neoliberal era. However, falling levels of homeownership lead to greater pressure on the affordable rental market, and this should be government’s principal policy focus.

It is proposed that policy efforts should be directed to ensuring that, to the extent practicable, tenants should experience *home* in similar ways to owner-occupiers. Differences in wealth experiences of housing between owners and tenants can be reduced, but radical equalising downwards is politically implausible. A more achievable goal is to use regulation, primarily, but also tax signals and incentives to promote similar consumption experiences of housing. This approach would level upwards.

A basic model of synthetic owner-occupation is proposed. SOO tenancies would ensure tenants enjoy affordability, security of tenure, some rent increase restrictions, elements of home, and decent housing conditions. Governments in New Zealand and Victoria, in particular, are already taking appropriate regulatory measures towards this end. AHURI researchers, among others, have indicated the types of tax signals and incentives that might promote adoption of a more professional and long-term approach by landlords. This article suggests greater involvement and development of social enterprise should also be investigated.

Younger people who, on the one hand, are increasingly excluded from homeownership, but, on the other hand, are expected to fund the retirement and health costs of preceding, propertied generations must be provided with housing options that are experientially similar to homeownership. Government should, therefore, use its powers of taxation to foster SOO tenancies.

¹⁵⁴ HMRC, *Community investment tax relief manual* (2016) <<https://www.gov.uk/hmrc-internal-manuals/community-investment-tax-relief-manual/citm1010>>.

¹⁵⁵ See HMRC, above n 150.