Homeownership: American Dream or Illusion of Empowerment?

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# Homeownership: American Dream or Illusion of Empowerment?

Kristen David Adams*

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"The sentiment for home ownership is so embedded in the American heart that millions of people who dwell in tenements, apartments, and rental rows of solid brick have the aspiration for wider opportunity in ownership of their own home."

I. INTRODUCTION: AMERICA’S LOVE AFFAIR WITH HOMEOWNERSHIP

This quote from President Hoover captures the contemporary American sentiment perfectly: homeownership is our national ideal,\(^2\) and we expect renters to strive for ownership.\(^3\) Statements from former British Prime Minister Margaret Thatcher\(^4\) and former United States Presidents Franklin Delano

1. Rosalyn Baxandall & Elizabeth Ewen, Picture Windows: How the Suburbs Happened 33 (2000) (quoting President Herbert Hoover in Richard O. Davies, Housing Reform During the Truman Administration xii (1966)) (emphasis added). President Hoover also said this about homeownership:

"Maintaining a high percentage of individual home owners is one of the searching tests that now challenge the people of the United States. The present large proportion of families that own their own homes is both the foundation of a sound economic and social system and a guarantee that our society will continue to develop rationally as changing conditions demand."

John P. Dean, Home Ownership: Is It Sound? 40 (1945) (internal quotation marks omitted). Though published just prior to the post-World War II housing boom, many of Dr. Dean’s statements seem just as relevant in 2008 as they must have been in 1945. Dr. Dean is one of just a few scholars—others would include Drs. Baxandall and Ewen—who have spoken strongly against the notion of near-universal homeownership.


3. See Lynne Dearborn, Homeownership: The Problematics of Ideals and Realities, 16 J. Affordable Housing & Community Dev. L. 40, 40 (2006) (“[M]ost people in America confer different personal attributes and levels of social esteem on owners and renters, with renters being assigned much lower social status than owners.”) (citing Constance Perin, Everything in Its Place: Social Order and Land Use in America 32 (1977))); Winton Pitcuff, Has Homeownership Been Oversold?, Shelterforce, Jan./Feb. 2003, at 1, 6 (quoting Sheila Crowley, president of the National Low Income Housing Coalition, for the statement that “[r]enting is seen as inferior to owning, rather than simply another form of tenure”); see also Rohe et al., supra note 2 (“[A] full 57 percent of renters said that buying a home is a very important priority in their lives.”).

Roosevelt, Calvin Coolidge, George W. Bush, and Bill Clinton convey the same outlook. Consistent with this mindset, in recent times the United States has pursued the goal of near-universal homeownership. In this Article, I endeavor to show that because Americans value homeownership so much—in fact, more than we should—we have placed ourselves in an untenable position as a country and now find ourselves in the midst of a well-documented housing crisis. In addition, we have used the primacy of homeownership as an

responsible citizens.

5. "[A] nation of home owners, of people who own a real share in their own land, is unconquerable.”

6. "No greater contribution could be made to the stability of the Nation, and the advancement of its ideals, than to make it a Nation of home-owning families. All the instrumentalities which have been devised to contribute toward this end, are deserving of encouragement."

7. (crediting President Bush with the statement that "ownership has the power to transform people").

8. (crediting President Clinton with the “belief that homeownership and decent housing are an essential part of the American Dream” and stating that he “wanted to make the dream of homeownership a reality for all Americans”).

9. See John Adams, Tax Benefits of Home Ownership Are Almost Too Good to Be True, http://new.realtor.com/basics/buy/closepossess/taxbenefits.asp (last visited Apr. 1, 2009) (urging readers to “buy and sell to your heart’s content”); Elizabeth Weintraub, Eight Reasons to Buy a Home, http://homebuying.about.com/od/buyingahome/b/buyhome.htm (last visited Apr. 1, 2009) (listing the “eight good reasons why you should buy a home” as (1) pride of ownership, (2) appreciation, (3) mortgage interest deductions, (4) property tax deductions, (5) capital gain exclusion, (6) preferential tax treatment, (7) equity, and (8) equity loans); see also Dearborn, supra note 3 (“From President Herbert Hoover’s support for the ‘Own Your Own Home’ campaign to the Ownership Society Initiative of President George W. Bush, the policy-level push for increasing homeownership has been based upon the unquestioned idea that homeownership has immense benefits over other forms of tenure at the personal, neighborhood, and national levels for all households, regardless of income.”); infra notes 67–70 and accompanying text (discussing the Department of Housing and Urban Development’s National Homeownership Strategy). The tone of the Adams article is consistent with a get-rich-quick mentality and seems to assume that everyone should buy a home.

10. See Kristen David Adams, Do We Need a Right to Housing?, 9 NEV. L.J. (forthcoming 2009) (distinguishing the value of housing from that of homeownership). Notably, I do not think Americans necessarily overvalue housing; in fact, I have endeavored to comprehensively analyze the benefits of high quality housing. Rather, my contention is that Americans—and American policymakers—have favored and privileged homeownership over other forms of housing in a way that is unreasonable and ultimately counterproductive.

11. I am not the first person to make this claim about America’s love affair with homeownership. Following the Great Depression, members of the Regional Planning Association of America asserted that the Depression-era “housing crisis was rooted in the ideology of individual home ownership and the peculiar workings and speculative practices of the housing market.” BAXANDALL & EWEN, supra note 1, at 52.

excuse not to fulfill our country’s commitment to provide housing assistance to those persons who need it most.\textsuperscript{13} We have done this in part by undervaluing quality, affordable rental property (and quality renters) just as we have overvalued homeownership (and homeowners).\textsuperscript{14} Some have used the word “myth” in talking about the American view of homeownership;\textsuperscript{15} however, the word I prefer is “illusion,” which I intend to be less pejorative while still acknowledging that homeownership does not always deliver the benefits it promises, particularly for lower income homeowners. This Article is not particularly concerned with the question of who is to blame for the current housing crisis, because I believe fault in this context is too complicated to be laid at the feet of just one party or another.\textsuperscript{16}

situation concerning delinquencies).

13. This commitment dates back at least to 1949 when Congress adopted language recognizing, at President Franklin Delano Roosevelt’s request, the importance of “a decent home and a suitable living environment for every American family.” Housing Act of 1949, Pub. L. No. 81-171, ch. 338, 63 Stat. 415 (codified as amended at 42 U.S.C. § 1441 (2000)). Similarly, another author has claimed that focusing on market-rate rentals is one means of failing to acknowledge the needs of those who cannot secure housing at market rates. See Padraic Kenna, Housing Rights—The New Benchmarks for Housing Policy in Europe?, 37 URB. LAW. 87, 90 (2005). The phenomenon of favoring market interests over affordable housing is not limited to the United States. In Ireland, one source claims, the “Right to Buy” program has taken some of the country’s most desirable public housing stock off the public rosters at an enormous discount. See Tony Ruddy, Selling the Stock—Meeting the Need?, HOUSING RTS. REV., Spring–Summer 2003, at 8, 8.

14. See, e.g., Joshua Rosner, Cleaning House: Too Many People Own Homes, THE NEW REPUBLIC, May 7, 2008, at 12, 14 (“Renting has real economic value—especially for that portion of the workforce that needs to remain mobile in order to find employment—yet investment in rental properties has been minimal for decades.”).

15. See, e.g., Dearborn, supra note 3 (“[T]he power of the homeownership myth may have contributed to certain severe housing problems that face the United States today.”). Specifically addressing predatory lending and poor housing quality, Dearborn urges housing policymakers to “moderate the myth of homeownership as a quick or easy enterprise.” Id. at 41. Additionally, Dr. Michael Stone has noted “the role of homeownership in the myth of the U.S. as a middle-class society.” Michael E. Stone, Housing and the Economic Crisis: An Analysis and Emergency Program, in AMERICA’S HOUSING CRISIS: WHAT IS TO BE DONE? 99, 116 (Chester Hartman ed., 1983). Dr. Stone goes on to state as follows:

[T]he promotion and extension of homeownership has served both politically and economically as the principal device for coping with an otherwise intractable housing affordability problem – as a mechanism for integrating a large proportion of the working class into the myth of middle class America and also for stimulating the economic growth on which the myth rested.

Id.

16. In describing his interview with Palm Harbor, Florida real estate agent Joe Koebel, Paul Reyes makes a similar point regarding the foreclosure climate, in which banks seem to be turning down offers by “real human being buyers” in favor of auctions and other commercial dispositions:

Who was to blame for the insanity in this kind of decision-making? Banking officials, mortgage brokers, buyers’ agents, overanxious consumers—all were guilty parties. Parceling out which foreclosures were the consequences of scams, bad luck, or fiscal
Part II of this Article examines the median American household, mortgage, and house, concluding that many Americans cannot afford the homes they have purchased. Next, Part III addresses the question of why our country overvalues homeownership to such an extent that it now finds itself in this position. In doing so, Part III examines the many benefits that homeownership supposedly provides to both individuals and society. Part IV contrasts society’s customary treatment of homeownership as a virtue with its stigmatization of renters, concluding that the latter is unfounded. Part IV also explores how the very interests that have promoted homeownership have also benefited most from its growth. Part V considers several factors that contributed to the real estate boom that culminated in the mid-2000s, including homeowners’ treatment of mortgage debt as wealth, financing options such as no-down-payment and interest-only loans, increased utilization of home equity loans, and certain features of subprime lending. Part VI concludes by suggesting that universal homeownership does not provide the benefits Americans have come to expect from it and proposing four steps policymakers should follow in creating healthier, more sustainable housing policy.

II. NATIONAL OPEN HOUSE DAY

This Part examines the median American household, the median American mortgage, and the typical American house, for the purpose of showing why the United States finds itself in the midst of a housing crisis. 17 Using standard

recklessness was a nearly impossible task. In the end, no matter the math, the numbers could never fully divulge the motives.

Paul Reyes, Bleak Houses: Digging Through the Ruins of the Mortgage Crisis, HARPER’S MAG., Oct. 2008, at 31, 43. Journalist Andrew Rice, interviewing Bob Toll, chief executive of the luxury homebuilder Toll Brothers, reports that Toll shares a similar viewpoint with Koebel: “In our conversation, he spreads the blame liberally, even pointing to customers, saying it wasn’t the builders’ fault that banks made foolish loans and people took them, knowing full well what their incomes were: ‘What cracked the market was not just our greed but the greed of our buyers.’” Andrew Rice, Master Overbuilder, CONDÉ NAST PORTFOLIO, Oct. 2008, at 130. Perhaps my favorite statement along these lines, however, comes from journalist Michael Lewis: “To blame the people who lent the money for the real estate boom is like blaming the crack dealers for creating addicts.” Michael Lewis, The Mansion: A Subprime Parable, CONDÉ NAST PORTFOLIO, Oct. 2008, at 136, 140; see also Richard E. Gottlieb & Andrew J. McGuinness, When Bad Things Happen to Good Cities: Are Lenders to Blame?, BUS. L. TODAY, July/Aug. 2008, at 13, 13 (comparing the blame placed on banks for predatory lending, which the authors put in quotation marks, with the body of “gun-dumping” cases). The authors contend that cities pushed for higher rates of subprime lending to increase homeownership opportunities. Id. at 14.

17. Throughout this article, I use “median” rather than “average” or “mean” data. The U.S. Census Bureau generally relies on median data, particularly when examining income and net worth:

The distribution of wealth in the United States has a large positive skew, with
affordability criteria, I examine whether the median American family can afford the typical American house and the median American mortgage.\(^{18}\) I enjoy thinking of this exercise as a hypothetical National Open House Day during which, assuming that (1) every household in America is in the market for a home and (2) a home is available for every household, all of the households in America would be lined up by income from lowest to highest. All of the houses would also be ordered from lowest price to highest price, and each family\(^{19}\) would walk up to the front door of its corresponding house. The question would

relatively few households holding a large proportion of the wealth. For this type of distribution, the median is the preferred measure of central tendency because it is less sensitive than the average (mean) to extreme observations. The median is also considerably lower than the average, and provides a more accurate representation of the wealth and asset holdings of the typical household. For example, more households have a net worth near the median of $55,000 than near the average of $182,381.


Mean (Average) income. Mean (average) income is the amount obtained by dividing the total aggregate income of a group by the number of units in that group. The means for households, families, and unrelated individuals are based on all households, families, and unrelated individuals, respectively. The means (averages) for people are based on people 15 years old and over with income.

Median income. Median income is the amount which divides the income distribution into two equal groups, half having incomes above the median, half having incomes below the median. The medians for households, families, and unrelated individuals are based on all households, families, and unrelated individuals, respectively. The medians for people are based on people 15 years old and over with income.


18. The Wells Fargo Housing Opportunity Index, the product of a three-year arrangement through which Wells Fargo has sponsored the National Association of Home Builders (NAHB) Housing Opportunity Index, examines similar data. As the NAHB explains, “The Housing Opportunity Index (HOI) for a given area is defined as the share of homes sold in that area that would have been affordable to a family earning the local median income based on standard mortgage underwriting criteria.” NAHB Indices, What is the NAHB–Wells Fargo Housing Opportunity Index?, http://www.nahb.org/generic.aspx?sectionID=135&genericContentID=533 (last visited Apr. 1, 2009).

19. While I use the terms “family” and “household” interchangeably, the United States Census does not. Instead, Census data defines “household” as “all the people who occupy a housing unit” and “family” as “a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together.” U.S. Census Bureau, Current Population Survey—Definitions and Explanations, http://www.census.gov/population/www/cps/cpsdef.html (last visited Apr. 1, 2009). Throughout this paper, I have used household data rather than family data.
then become whether each household could afford its house. Notably, I do not assume that every household would purchase a newly constructed home.20 This hypothetical employs, of course, many assumptions that do not reflect reality: not every family owns a home,21 not every family that owns a home has a mortgage,22 not every family is in the market for a house at this time,23 and some families own multiple homes.24 Even so, I find the notion of a National Open House Day to be an interesting and worthwhile exercise because America has been called a nation of homeowners,25 and it thus seems reasonable to examine how American families at all income levels would fare in the housing market.

My conclusion at the end of this exercise is that a family earning the median American household income and making the median monthly mortgage payment would pay $177 to $468 each month above what it can afford; notably, 

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20. This assumption is important because the median existing home is considerably less expensive than the median new home. Compare Nat’l Ass’n of REALTORS, Sales Price of Existing Homes (2008), http://www.realtor.org/research/research/ehsdata (follow “Existing-Home Sales Overview Chart for Printing” hyperlink) [hereinafter Sales Price of Existing Homes] (listing the median sales price of existing homes in October 2008 at $186,500), with U.S. Census Bureau & U.S. Dep’t of Hous. & Urban Dev., New Residential Sales in October 2008 (2008), http://www.census.gov/const/newressales_200810.pdf (listing the median sales price of new homes in October 2008 at $218,000). The median home in this exercise comes from the country’s housing stock as a whole, which includes both new homes and existing homes.

21. For an exploration of homeownership rates in the United States, see infra notes 58–70 and accompanying text.

22. In 2006, one source reported that 92% of homebuyers borrowed money for their home purchase. Nat’l Ass’n of REALTORS, The 2006 National Association of REALTORS Profile of Home Buyers and Sellers 56 (2006) [hereinafter 2006 Profile of Home Buyers]. The average purchaser financed 91% of the price of the home. Id. at 57.

23. On December 30, 2008, at 1:10 p.m., the National Population Clock was at 305,519,438. U.S. Census Bureau, U.S. Population Clock, http://factfinder.census.gov. The most recent U.S. Census figures show an average household size of 2.60. U.S. Census Bureau, 2005–2007 American Community Survey 3-Year Estimates, http://factfinder.census.gov (follow “Fact Sheet” hyperlink) (last visited Apr. 1, 2009) [hereinafter U.S. Census Bureau, American Community Survey]. Thus, there were approximately 117,507,476 households in the U.S. on that date. The National Association of Realtors reported a seasonally adjusted annual rate of 4,490,000 existing home sales for December 2008. See Sales Price of Existing Homes, supra note 20. Thus, a very rough approximation would be that 3.8% of American households purchased a home within the past year.


25. The phrase “nation of homeowners” is most famously associated with President Franklin Delano Roosevelt. See Social Benefits of Homeownership, supra note 4. According to journalist Richard Lord, two out of every three housing units in this country are owner-occupied, single-family homes. Richard Lord, American Nightmare: Predatory Lending and the Foreclosure of the American Dream 16 (2005).
the median monthly mortgage payment is $260 above the 28% maximum mortgage debt load for a family earning the median household income.26 This conclusion, moreover, assumes the family made a larger-than-average down payment and carried a low-to-moderate level of additional non-mortgage debt27 that kept its total debt service at 36% of its gross income, which is the upward bound of what is generally deemed affordable.28 To explain how I reach this conclusion, I walk through my data and each of my calculations below.

A. The Median American Household and the Median American House

According to the U.S. Census Bureau’s 2005–2007 American Community Survey 3-Year Estimates, the median household income is $50,007 and the average household includes 2.60 persons of median age 36.4.29 The average travel time to work is 25.1 minutes, and the median monthly mortgage payment for a family that has a mortgage is $1,427.30 I am not assuming the median household actually owns the median house and thus pays this median monthly mortgage payment; indeed, at $73,408, the median annual income of American homeowners having a mortgage is significantly higher than the median American household income.31 Instead, this initial calculation shows how out of

26. Robert J. Shiller, Irrational Exuberance 211 (2d ed. 2006) ("[A] widely used standard for home mortgage lending in the United States has been the 28/36 rule: the mortgage payments should be no more than 28% of a borrower’s [gross] income, and all debt payments should be no more than 36% of the borrower’s [gross] income.").
27. The average American family currently carries $8,565 in credit card debt. Gretchen Morgenson, Given a Shovel, Americans Dig Deeper into Debt, N.Y. TIMES, July 20, 2008, at A1. The average student leaves college with $20,000 in debt from student loans. Id.
28. See supra note 26. Thus, I assumed the family carried 8% of its annual income, or $4,000.56, in non-mortgage debt. See infra text accompanying note 29. As the data in note 27 suggests, this would be a below-average amount of consumer debt. Assuming this to be credit card debt charged at the average rate of 11.93%, as reported by the Federal Reserve at the end of August 2008, the family’s minimum monthly payment would be $100.01 as calculated by Bankrate.com, a popular internet calculator. See Bankrate.com Credit Card Calculator, http://www.bankrate.com/brm/calc/MinPayment.asp (last visited Apr. 1, 2009); Bd. of Governors of the Fed. Reserve, Federal Reserve Statistical Release: Consumer Credit (2008), http://www.federalreserve.gov/releases/g19/20081107/g19.pdf. I assumed that the family wisely decided to pay off this balance in one year, paying $333.38 per month on the debt. To make matters simpler, I assumed the family had no car loans or educational debt.
29. U.S. Census Bureau, American Community Survey, supra note 23.
30. Id. For data on the number of homebuyers who borrow money to purchase their home, see supra note 22.

https://scholarcommons.sc.edu/sclr/vol60/iss3/3
balance the median American home price is with the median American family’s purchasing power.

Data from the National Association of Realtors indicates that the median American home price in August 2008 was $203,200, having fallen from a high of $221,900 in 2006. Even when adjusted for inflation, home prices in the United States rose almost fourfold between 1940 and 2000. Home prices have traditionally been highest in the West, followed in order by the Northeast, the South, and the Midwest. At the same time that house prices have grown, the typical American house has also grown; newfound wealth deriving from home sales has sparked this growth, at least in part. Data from the National Association of Home Builders states that the typical American house more than doubled in size between 1950 and 2000, from 1,000 or fewer square feet to 2,265 square feet. The National Association of Realtors gives somewhat different data, stating that in 2006, “[t]he typical buyer purchased a home that was slightly more than 1,800 square feet in size.” During this same period, the

of $58,300. Id.

32. SALES PRICE OF EXISTING HOMES, supra note 20. The U.S. Census presents housing information somewhat differently, focusing on median home value as opposed to median price. See U.S. Census Bureau, American Community Survey, supra note 23. The Census Bureau reports a median home value for the 2005–2007 period of $181,800. Id.


34. See SALES PRICE OF EXISTING HOMES, supra note 20.

35. See Rice, supra note 16 (“Between 1980 and 2006, . . . the number of U.S. households earning more than $100,000 grew at a rate five times faster than that of the general population. The newly prosperous demanded spiral staircases and basement barrooms. And they were willing to ‘drive till they qualified,’ as the saying goes, accepting long commutes fueled by cheap gas in return for the grandest house the bank said they could afford.”). Along the same lines, at least for some homebuyers, house size has become more important than location. DANIEL MCGINN, HOUSE LUST: AMERICA’S OBSESSION WITH OUR HOMES 19 (2008) (“These days many people are willing to move far from the city, compromising their location to get more space. In the twenty-first-century location still matters. But for many buyers square footage matters more.”).

36. NAT’L ASS’N OF HOME BUILDERS, A CENTURY OF PROGRESS: AMERICA’S HOUSING 1900–2000, at 3 (2003), http://www.nahb.org/fileUpload_details.aspx?contentID=7135; see also THE HOMEHOUSE PROJECT: THE FUTURE OF AFFORDABLE HOUSING 90 (David J. Brown ed., 2004) (quoting architect and professor Steve Badanes) (“[T]he amount of square footage that the American family seems to need . . . has doubled in one generation.”). Compare NAT’L ASS’N OF HOME BUILDERS, supra (noting that in 1950 the typical American home was 1,000 square feet or less), with Witold Rybczynski, Why Can’t We Build an Affordable House?, WILSON Q., Summer 2008, at 16, 18 (citing an average new house size of 2,469 square feet).

37. 2006 PROFILE OF HOME BUYERS, supra note 22, at 5; see also McGinn, supra note 35, at 17 (citing an average new home size of 2,434 square feet in 2005). For detached single-family homes, the National Association of Realtors number was slightly higher, at 1,928 square feet. 2006 PROFILE OF HOME BUYERS, supra note 22, at 27.

McGinn appropriately asks the question, “How did it become perfectly normal for affluent Americans to live in 5,000 square-foot homes? How, exactly, do we use all this square footage?”
National Association of Home Builders reports that the average price for a new home increased from $11,000 to $206,400 as new means of financing became available.\(^{38}\) Interestingly, at the same time that sizes and prices of houses have increased, the size of the average American household has declined.\(^ {39}\)

\[\text{B. What Can the Median American Family Afford?}\]

There is some indication that housing has been targeted to the top of the market, out of the range of what is affordable for most Americans.\(^ {40}\) In determining whether the median American family can afford the median American home, I assume that the family qualifies for a prime, fixed-rate, thirty-year mortgage and has accumulated enough savings to supply a $10,000 down payment.\(^ {41}\) I apply an interest rate of 6.46%, which represents the national

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**McGinn, supra note 35, at 20.** He contrasts American excess with the size of housing in other countries:

In Japan the average home measures about 1,033 square feet (though in Tokyo the average is just 694 square feet). On a list of twenty developed countries, only the United States and Australia are building new homes that average more than 2,000 square feet. In Sweden, Ireland, Italy, Portugal, and the United Kingdom, the average new house is less than 1,000 square feet.

Id. at 43.

38. Nat’l Ass’n of Home Builders, supra note 36, at 3–4. In 1900, buyers generally purchased homes with cash; long-term amortized loans were very uncommon. Id. at 3. By 1950, when the FHA mortgage rate was 4.25%, limited long-term financing options were available. Id. By 2000, when the average interest rate for a thirty-year, fixed-rate loan was 8%, many additional options existed. Id.

39. See McGinn, supra note 35, at 17 ("When it comes to American homes, the only thing that’s decreased in recent years is the size of the plots of land on which they’re built and the size of the families who live inside."); see also 2006 Profile of Home Buyers, supra note 22, at 9 ("Most home buyers (62 percent) have no children under the age of 18 residing in the home, a finding consistent with characteristics of home buyers in recent years. Fewer than one in five buyers have one child under 18 years old, with 15 percent reporting that two children reside in the home.").

40. See Gwendolyn Wright, Building the Dream: A Social History of Housing in America 263 (1981) ("We’re selling 90 percent of the houses to 15 percent of the people. The ones who can’t afford [them], can’t afford anything." (quoting a real estate consulting firm executive) (internal quotation marks omitted)). Wright, an architectural historian, provides some stunning numbers regarding housing affordability (or, more accurately, the lack thereof) in the early 1980s:

The overwhelming majority of Americans cannot afford to buy a home today, whether it is a condominium, a townhouse, or a detached dwelling. The president of the National Association of Home Builders estimated in 1980 that only 8 percent of all potential buyers had sufficient income to purchase a home.

Id. (citation omitted).

41. I chose this particular round number because it represents approximately 5% of the median house price of $203,200. See supra text accompanying note 32. A 5% down payment is now significantly above average for a first-time homeowner. See infra notes 155–62 and
average interest rate for thirty-year primary mortgages on October 30, 2008.\textsuperscript{42} I also assume that the family would pay the national median of \$1,728 per year in property taxes\textsuperscript{43} and the national average of \$764 per year in homeownership insurance\textsuperscript{44} and that its monthly mortgage payment would be \$1,166.83.\textsuperscript{45} Plugging these numbers into the FHA mortgage calculator\textsuperscript{46} produces a hypothetical maximum loan of \$152,358 with a corresponding monthly payment (including taxes, interest, and mortgage insurance) of \$959. Similarly, the Federal Home Loan Mortgage Corporation (Freddie Mac) calculator\textsuperscript{47} produces the following results: (1) a "conservative estimate" loan amount of \$138,120 for a total home price of \$145,390 and a total monthly payment (including taxes, insurance, and mortgage insurance) of \$1,167; and (2) an

accompanying text. In addition, since the median American family ultimately cannot afford the median home, its \$10,000 down payment represents a greater percentage of the purchase price of the home it might ultimately purchase, applying standard affordability guidelines.

\textsuperscript{42} Freddie Mac's Weekly Primary Mortgage Market Survey, http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp?year=2008 (last visited Mar. 21, 2009) (adding an average of 0.7 for fees and points). I chose this particular date because it is immediately prior to the first of several interest-rate cuts by the Federal Reserve, which were specifically intended to stimulate the housing market.


\textsuperscript{45} This number falls right at the standard 28\% affordability cap (divide \$50,007 (median household income) by 12 months, which equals \$4,167.25; 28\% of \$4,167.25 equals \$1,166.83). See SHILLER, supra note 26.

\textsuperscript{46} FHA Mortgage Calculator - How Much Can I Borrow?, http://www.fha.com/calculator_borrow.cfm (last visited Mar. 21, 2009). Specifically, the calculator produced this maximum loan amount by using the following numbers: \$4,167.25 for monthly salary or wages; \$0 for other income; \$144 for monthly property taxes; \$63.66 for monthly hazard insurance; \$0 for monthly auto payment; \$333.38 for credit cards and other payments; 30 years for loan term; and 6.46\% for interest rate.

\textsuperscript{47} Freddie Mac, How Much Can I Borrow?, http://partners.leadfusion.com/leadfusion/freddiemac/home01/tool.fcs (last visited Mar. 21, 2009). Specifically, the calculator produced these loan amounts by using the following figures: \$4,167.25 for wages before taxes or deductions; \$0 for investment income before taxes, income from rental properties, other income, auto loans, student loans, rental property loans, other payments, and monthly alimony or child support; \$333.38 for monthly credit card payments; 6.46\% for interest rate; 30 term (years); 5\% for down payment; \$1,728 for yearly property tax; and \$764 for yearly property insurance. This calculator does not permit a lump-sum down payment, so the down payment amount was less than the \$10,000 this hypothetical family had set aside for this purpose.
“aggressive estimate” loan amount of $150,122 for a total home price of $158,023 and a total monthly payment of $1,250. 48

These numbers do not, of course, take into consideration several additional costs of purchasing and owning a house, including closing costs, maintenance, 49 garbage, repairs, and commuting costs. 50 In fact, there is some indication that new homeowners are not fully aware of the comprehensive costs of purchasing a home. 51 Even excluding the additional costs mentioned above, according to these calculations the median family would be $177 to $468 over budget each month if it carried the median monthly mortgage payment of $1,427. 52 The median family would fall short of being able to purchase the median American home by $45,177 to $57,810.

Another more conservative means of calculating housing affordability that seems to have fallen into relative disuse is to multiply family income by 2.0 or 2.5. 53 Under this calculation, the median income American family could afford to purchase a house costing only $100,014 to $125,018. Modern lending practices have tended to focus on monthly income and the monthly mortgage payment as opposed to annual income and the total size of the mortgage. 54 While this may seem like a modest distinction, I believe it has important

48. The hypothetical lower monthly payment of $1,167 places the family right at the recommended maximum of 28% of its gross income. The higher monthly payment of $1,250 places the family’s expenditure at 30% of its income.

49. Cf. Dearborn, supra note 3, at 46 (“[M]any . . . minority home buyers have low or moderate incomes, have not owned a home before, and may not come from a home-owning family. Thus, they often lack economic resources and know-how to address required maintenance.”).

50. Another author identifies the following as expenses associated with homeownership: (1) debt service; (2) fees; (3) taxes and special assessments; (4) repairs and maintenance; (5) fire insurance; (6) depreciation; (7) obsolescence; (8) interest on the investment; and (9) other expenses such as utilities, structural improvements, furnishings, transportation, and community services. Dean, supra note 1, at 110–14.

51. See Piteoff, supra note 3, at 3 (noting that many homeowners are “unprepared for the responsibility of homeownership” and enumerating some of the costs of owning a home).

52. See supra text accompanying note 30 (noting that the U.S. Census Bureau lists this amount as the median monthly mortgage payment for a family that has a mortgage).

53. See Dean, supra note 1, at 84–85 (describing this as a then-current means of calculating affordability for FHA purposes). Notably, Freddie Mac still uses this as a means of determining affordability. See Freddie Mac, How Much Can You Afford to Spend on a Home?, http://www.freddiemac.com/corporate/buyown/english/preparing/right_for_you/afford.html (last visited Mar. 21, 2009); see also Rybczynski, supra note 36 (“In 1951, the price of the original Levittowner ($9,900) was three times the national average annual wage ($3,300). In 2008, with an estimated national average wage of $40,500, a similarly affordable house should have a sticker price of $121,500. Yet according to the Census Bureau, even in the current declining market the median price for a new single-family house in the first quarter of 2008 approached twice that: $234,100.”).

54. See infra notes 152–54 and accompanying text.
consequences because, depending on the specific characteristics of the mortgage loan, any given monthly payment can service various loan amounts.  

C. General Trends in Homeownership and Housing Affordability

Because Part II.B concludes that the median American family cannot afford the median American home, this section turns next to the question of whether American families can afford the homes they have actually purchased. The answer, increasingly, is no. According to U.S. Census Data, in 2007 the median amount that American households were spending on housing costs was about 24%. This result sounds fairly healthy until one considers that the same U.S. Census data reports that approximately 17% of homeowners were spending half or more of their income on housing while approximately 36% of homeowners were spending 30% or more.

Homeownership and housing affordability data suggest that homeownership is outrunning affordability by a significant measure. In 2002, U.S. Census data suggested that about 56% of all families, including both owners and renters, could qualify for a mortgage for a modestly priced home in the state where they lived. These potential homebuyers tend to be somewhat older, more likely to be Caucasian, and less likely to speak a language other


57. Id. This trend, however, is not a new one. See WRIGHT, supra note 40 (“Both renters and homeowners are paying a larger and larger portion of their income for a place to live.”).

58. HOWARD A. SAVAGE, U.S. CENSUS BUREAU, WHO COULD AFFORD TO BUY A HOME IN 2002? 1 (2007), http://www.census.gov/prod/2007pubs/h121-07-1.pdf. Later, the same report uses the phrase “in the area where they lived” instead of “in the state where they lived.” Id. at 2. The report does not, however, explain how far the family might be required to travel (i.e., across town or across the state) to reach a home they could afford. Still, I read the data to suggest that the analysis matched urban families with urban homes and suburban families with suburban homes. See id. (“Home prices were determined for states and the District of Columbia and segmented by whether a home was inside or outside a metropolitan area.”).

59. See Dearborn, supra note 3, at 41. Professor Dearborn describes the situation as follows: Since the country’s founding, homeownership benefits have not accrued equally to all levels or types of U.S. citizenry. Historically, Whites (i.e., non-Hispanic Whites) in the United States have been the primary beneficiaries of homeownership. Racial discrimination in the home-buying process has limited wealth and asset accumulation opportunities for minority households, a legacy that still impacts minority homeownership.

Id. Dearborn notes that the Community Reinvestment Act, which Congress meant to remediate these problems, ultimately “laid the groundwork for the explosive growth of subprime lending,” particularly in predominately minority neighborhoods. Id. at 43. She notes that commentators have called this process “reverse redlining.” Id. at 47.
than English as their primary language than the U.S. population as a whole.\textsuperscript{60} In addition, and perhaps consistent with this trend, repeat home buyers account for the majority of home sales.\textsuperscript{61} Although the Census report unfortunately does not indicate how far a family could reasonably be expected to commute, it defines “modestly priced home” as a home priced at the 25th percentile.\textsuperscript{62} The same body of data indicates that 96% of this 56% of respondents who could afford to purchase a home in fact owned their own homes at the time of the survey.\textsuperscript{63} The last time that the American rate of homeownership was as low as 56%, however, was 1950.\textsuperscript{64} Since that time, homeownership has been up to about 13% higher than the Census data has suggested is tenable.\textsuperscript{65} Thus, simply comparing housing affordability data with homeownership rates tends to suggest that many Americans may not be able to afford the homes they have purchased. Instead, there is some indication that these record levels of homeownership are much higher than the market can naturally sustain.\textsuperscript{66}

\begin{itemize}
\item \textsuperscript{60} 2006 Profile of Home Buyers, supra note 22, at 8, 10 (noting the median homeowner’s age of 41, that 81% of buyers described themselves as white, and that only 5% spoke a language other than English as their primary language).
\item \textsuperscript{61} ld. at 11 (reporting that first-time home buyers accounted for only 36% of recent sales, down from 40% in the previous survey).
\item \textsuperscript{62} Savage, supra note 58, at 2 (“A modestly priced home is one priced so that 25 percent of all owner-occupied homes in the area in which the survey respondent lives are below this value and 75 percent are above.”).
\item \textsuperscript{63} ld. at 1. The report also indicates that most renters could not afford to purchase a home of modest price at the time of the survey. ld. (reporting that only approximately 8% of renters could afford to do so). Harvard University’s Joint Center for Housing Studies reflects slightly different numbers for the early 2000s, indicating a higher percentage of renters may choose to rent than the Census data would suggest. See Rohe et al., supra note 2 (“Of the renters surveyed, 67 percent said they rent because they are unable to afford to own, while 26 percent said it was a matter of choice.”).
\item \textsuperscript{64} Cf. Social Benefits of Homeownership, supra note 4, at 4 exhibit 1 (illustrating a generally increasing rate of homeownership since 1940).
\item \textsuperscript{65} Cf. R. Christopher Whalen, The Subprime Crisis—Cause, Effect and Consequences, 17 J. Affordable Housing & Community Dev. L. 219, 221–22 (2008) (describing the history of the public policy partnership of government agencies, banks, and companies that, beginning in the early 1990s, used “creative financing” to make homeownership more widely affordable in an attempt “to stimulate a sluggish economy”). The second quarter of 2004 brought a record-high level of homeownership: 69.2%. Press Release, U.S. Census Bureau, Census Bureau Reports on Residential Vacancies and Homeownership 4 tbl.4 (Oct. 25, 2004), available at http://www.census.gov/hhes/www/housing/hvs/qtr304/q304prss.pdf. By contrast, homeownership was at 46.5% in 1900, 55.0% in 1950, and 63.0% in the early 1990s. Nat’l Ass’n of Home Builders, supra note 36, at 5; Social Benefits of Homeownership, supra note 4, at 4 exhibit 1.
\item \textsuperscript{66} Rosner, supra note 14, at 12 (“Today, more Americans may ‘own’ their homes in a very narrow sense—home ownership has jumped from its usual level of 62–64 percent (where it had stayed for 40 years) to almost 70 percent—but the market’s natural equilibrium has been disturbed by the government’s attempts at social engineering.”). To explain what he means when he speaks of “own[ing]” their homes in a very narrow sense,” Rosner concludes the article by stating, “a

https://scholarcommons.sc.edu/sclr/vol60/iss3/3
The increase in homeownership rates in the U.S. in the past several decades has been, at least in part, the product of government initiatives such as the Department of Housing and Urban Development’s (HUD) National Homeownership Strategy, which began in August 1994 under Henry G. Cisneros’s leadership. The program’s goal was to achieve record high homeownership in six years. In the early 1990s, homeownership stood at 63%; in 2005, it reached a peak of 69%. As part of this goal, the National Homeownership Strategy encouraged “creative financing” as a positive good.

In putting American homeownership rates into perspective, it may be helpful to know that some other countries have similarly high rates of homeownership—most notably Australia, Britain, Canada, and New Zealand. Each of these countries, like the United States, has tended to have a homeownership rate between 60% and 70%. Even so, it would be inaccurate to assume that all of the countries in the developed world have homeownership rates that are as high as the United States has experienced in recent years. Instead, Denmark, France, the former West Germany, and the Netherlands are examples of countries that have tended to have lower rates of homeownership, falling between 40% and 50%.

Notably, the housing affordability problem outlined above is not limited to the subprime market. Instead, the problem is a more pervasive, systemic one that is rooted in the American love affair with homeownership. In addition, the irresponsible extension of credit is not limited to subprime borrowers. Instead,
and especially as job losses continue to mount, delinquencies and foreclosures among prime borrowers are increasing as well.\textsuperscript{76}

III. HOMEOWNERSHIP AS AMERICA SEE S IT

Having concluded that the median American family cannot afford the median American house and that many Americans cannot afford the homes they have actually purchased, this Part addresses the question of how the United States has found itself in this position. To answer this question, this Part examines the particular claims that have been made about homeownership as a positive good for both individuals and society. The conclusion is that Americans have stretched beyond their means to purchase homes because they believe homeownership carries with it important advantages for individuals and society.\textsuperscript{77} Too often, homeownership fails to deliver these expected benefits, particularly when homeowners cannot afford their homes.\textsuperscript{78} In fact, as one

financing to sell the homes. In the process, speculators also used the creative financing to leverage their bets on home price appreciation in the bubble environment, ultimately resulting in record foreclosures in the present marketplace.

\textit{Id.}

\textsuperscript{76} Data from the Mortgage Bankers Association’s National Delinquency Survey in December 2008 indicates that, since the second quarter of 2008, the delinquency rate for prime loans had increased by 41 basis points to 4.34%, “seriously delinquent” prime loans had increased by 52 basis points to 2.87%, and foreclosures for prime loans had increased 16 basis points to 1.58%. Press Release, Mortgage Bankers Association, Delinquencies Increase, Foreclosure Starts Flat in Latest MBA National Delinquency Survey (Dec. 5, 2008), available at http://www.mbaa.org/NewsAndMedia/PressCenter/66626.htm. According to a lenders’ group called HOPE NOW, there were actually more prime foreclosures in July 2008 than subprime foreclosures. Hope Now Loss Mitigation National Data: July 2007 to August 2008, http://www.hopenow.com/upload/data/files/HopeNowLossMitigationNationalDataJuly07toAugust08.pdf (last visited Mar. 21, 2009). According to the HOPE NOW data, “foreclosure starts” for prime and subprime mortgages were equal in number in May 2008; prime foreclosure starts then exceeded subprime foreclosure starts in June, July, and August 2008. \textit{Id.}

\textsuperscript{77} \textit{Cf.} \textit{SOCIAL BENEFITS OF HOMEOWNERSHIP, supra} note 4 (noting research on the economic benefits of homeownership and statements promoting homeownership by leaders of Western democratic countries in response to the purported social benefits of homeownership). However, a strong correlation between homeownership and social outcome variables may simply be superfluous in that the correlation is simply capturing the impact of higher income, education, and the like. To isolate the impact solely attributable to homeownership and/or stable housing, it is important to control for factors that are generally present with homeownership (like higher income and older age).

\textit{Id.} at 3.

\textsuperscript{78} \textit{See WINTER, supra} note 71, at 35 (“Whilst it is clear that home owners enjoy economic advantages unavailable to renters, it is not clear that all home owners enjoy all of these advantages all of the time.”); Dearborn, \textit{supra} note 3, at 44 (“The premise that homeownership has absolute benefits has rarely been tested among low- to moderate-income and minority populations. As a
author notes, it is really a misnomer to refer to an individual as a homeowner when the individual’s mortgage is non-amortizing or negative-amortizing.\textsuperscript{79} In addition, potential home buyers often ignore the usual signals of affordability and fail to meaningfully consider the debt associated with homeownership.\textsuperscript{80} Mortgage debt is often termed “good debt,” with the emphasis on “good” and the fact that it is still “debt” often ignored.

\section{A. Tangible Benefits for Individuals and Families}

Homeownership has been associated with control,\textsuperscript{81} independence, tax breaks, wealth-building,\textsuperscript{82} security,\textsuperscript{83} and stability.\textsuperscript{84} Authors have highlighted result, few of the putative benefits of homeownership can be expressly substantiated for traditionally underrepresented groups.”); Rohe et al., supra note 2, at 23 (“The research on the impacts of homeownership . . . suggests that these benefits may not accrue to all homeowners. The possibility of these negative impacts suggests that those involved in promoting homeownership should be careful not to oversell homeownership, particularly among those who are less likely to be successful homeowners.”).

\textsuperscript{79} Mason, supra note 67, at 2 (discussing the difference between a borrower who merely “lives in” a home and one who actually buys one). Another author has identified six factors that may suggest whether a particular family is a good match for homeownership: (1) “the homeowner’s knowledge of and attitudes toward the obligations of home purchase”; (2) maturity; (3) changing family needs; (4) family mobility; (5) size of income; and (6) fluctuations in income. \textsuperscript{80} \textbf{DEAN, supra note 1, at 75–88.} Regarding household income, the author reminds the reader that, “for many owners the house has first claim on budgetary increments.” \textit{id.} at 83.

\textsuperscript{81} See Lewis, supra note 16, at 138 (discussing the author’s own experience renting the “most conspicuously grand house in New Orleans,” which ended up being far beyond his family’s means); \textit{id.} at 140 (“Americans feel a deep urge to live in houses that are bigger than they can afford. This urge cuts so cleanly through the population that it touches just about everyone. It’s the acceptable lust.”). Later in the article, Lewis elaborates upon this point:

\textsuperscript{82} People who buy something they cannot afford usually hear a little voice warning them away or prodding them to feel guilty. But when the item in question is a house, all the signals in American life conspire to drown out the little voice. The tax code tells people . . . that while their interest payments are now gargantuan relative to their income, they’re deductible. Their friends tell them how impressed they are—and they mean it. Their family tells them that while theirs is indeed a big house, they have worked hard, and Americans who work hard deserve to own a dream house. Their kids love them for it. \texti{id.} at 141. Lewis also states that “we are, quite obviously, a nation of financial imposters, poised to seize the first opportunity to live in houses we cannot afford.” \texti{id.} at 173.

\textsuperscript{83} \textbf{WINTER, supra note 71, at 36} (“Home owners . . . enjoy rights of control over the dwelling far beyond those of either public or private renters.”).

\textsuperscript{84} \textbf{SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4} (“Household real estate holdings totaled $20.7 trillion in the third quarter of 2005. After subtracting for mortgage obligation, net real estate household equity totaled $10.9 trillion. The median net worth of a renter was $4,800 compared with $171,700 for homeowners in 2001.”); see also \textbf{ERIC BELSKY & JOEL PRAKKEN, HOUSING WEALTH EFFECTS: HOUSING’S IMPACT ON WEALTH ACCUMULATION, WEALTH DISTRIBUTION AND CONSUMER SPENDING 3} (2004), available at http://www.jchs.harvard.edu/
the benefit of independence by associating homeownership with freedom from a landlord who refuses to make needed repairs or imposes restrictive rules, freedom from eviction, and freedom from increased rent. The National Association of Realtors would add to this list increased educational achievement, civic participation, better health, and a lower incidence of

publications/finance/w04-13.pdf (comparing home equity with stock holdings) (“At last measure, over two thirds of households owned a home but only about half owned stocks or mutual funds containing stocks. And fully six in ten homeowners had more home equity than stock equity. Furthermore, housing wealth is far more broadly distributed across income levels than stock wealth. The top one percent of stock holders in 2001 held one out of every three dollars of stock wealth while the top one percent of homeowners held a lesser one out of every eight dollars of home equity.”); id. at 5 (“Home equity constituted 19 percent of household wealth in the fourth quarter of 2003. This is almost the same share as stocks and mutual funds combined.”); DEAN, supra note 1, at 14–18 (extolling the benefits of homeownership, such as being a good investment, creating an incentive to save money, and providing educational influence); WINTER, supra note 71, at 83–86 (surveying the financial meanings of homeownership and tenancy to homeowners and tenants).

83. DEAN, supra note 1, at 11 (“Families buying homes are likely to feel that the home will supply security for old age.”). The author elaborates on this point as follows: “Once a home is owned clear, it affords cheaper housing than renting . . . . But for the home to supply such genuine security for old age, all the vicissitudes through the years must have been successfully weathered and the structure must still be desirable as a place in which to live.” id.

84. See BAXANDALL & EWEN, supra note 1, at 106; see also Dearborn, supra note 3 (“Winton Pitcoff[, housing activist and theorist] notes that the move from renting to ownership often has produced a more stable and well-adjusted household.”); Rohe et al., supra note 2, at 11–16 (examining the data on the relationship between homeownership and neighborhood stability and noting that, while “the research findings tend to confirm an association between homeownership and both neighborhood stability and socially or civically desirable behaviors,” it remains unclear “whether homeownership actually causes greater stability and participation”).

85. BAXANDALL & EWEN, supra note 1, at 106; DEAN, supra note 1, at 16–17; see also WINTER, supra note 71, at 36–37 (citing contract clauses that restrict pets or prevent the tenant from redecorating).

86. SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4, at 8–10; see also Rohe et al., supra note 2, at 19–22 (examining the relationship between homeownership and “better school performance among youth, lower school dropout rates and lower rates of teen parenthood”).

87. SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4, at 10–11; WINTER, supra note 71, at 40 (noting the assumption that homeowners are more politically active than renters “due to a need to defend their private property interests,” particularly property values); cf. Rohe et al., supra note 2, at 16–19 (noting that “existing research . . . supports the idea that homeowners are more actively involved” but emphasizing that the reasons behind higher participation rates “are still not clear” and may possibly be “spurious”).

88. SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4, at 11–12; see Rohe et al., supra note 2, at 8–11. Rohe et al. note that “[t]he weight of the limited evidence on the relationship between homeownership and health suggests that there is a positive association between homeownership and health, as long as the household is current on its mortgage payments.” Rohe et al., supra note 2, at 10. However, the authors caution that “[t]he existing studies . . . do not adequately control for potentially confounding variables including socioeconomic status and housing and neighborhood conditions.” id. at 10–11.
crime.\textsuperscript{89} Historically, city authorities have emphasized such concerns in the name of slum clearance and urban renewal.\textsuperscript{90} And, while some of these benefits may accrue to individuals through better housing as opposed to homeownership,\textsuperscript{91} the National Homeownership Strategy also stressed many of these attributes and specifically attributed these benefits to homeownership.\textsuperscript{92}

\textbf{B. Intangible Benefits for Individuals and Families}

In addition to the concrete benefits of homeownership discussed above, homeownership has been credited with increasing life satisfaction,\textsuperscript{93} psychological health and self-esteem,\textsuperscript{94} and better home life.\textsuperscript{95} Perhaps for these

\textsuperscript{89} See SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4, at 12–13.
\textsuperscript{90} See ATLANTA MUN. HOUS. AUTH., TENTATIVE REPORT OF HOUSING CONDITIONS OF ATLANTA 4 (1934) (emphasizing that blighted areas tended to have higher-than-average rates of adult crime, juvenile delinquency, tuberculosis, and infant mortality).
\textsuperscript{91} Cf. Rohe et al., supra note 2, at 11 (suggesting that higher quality housing, rather than homeownership, may be the mechanism through which ownership impacts health). For example, sociology Professors James E. Rosenbaum and Stefanie DeLuca have explored the effects that neighborhoods can have on families and specifically children, focusing especially on Chicago’s Gautreaux program and other housing mobility initiatives. See James E. Rosenbaum & Stefanie DeLuca, What Kinds of Neighborhoods Change Lives? The Chicago Gautreaux Housing Program and Recent Mobility Programs, 41 IND. L. REV. 653 (2008). The findings suggest that “it is possible for low-income black families to make permanent escapes from neighborhoods with concentrated racial segregation, crime, and poverty and that these moves are associated with large significant gains in education, employment, and racially integrated friendships, particularly for children.” Id. at 662. The authors caution, however, that the data from another program, Moving to Opportunity, are more mixed. Id. Moreover, the National Association of Realtors has acknowledged that the stability of tenure, rather than homeownership itself, may be the factor that carries with it the other positive attributes often associated with homeownership. SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4, at 8 (“[T]he purported benefits of homeownership may partly arise not directly from the ownership, but from greater housing stability and social ties associated with less frequent movements among homeowners. Therefore, policies to boost homeownership can raise positive social outcomes, but only to the extent that homeownership brings housing stability. Also, if it is in fact the case that housing stability matters more than homeownership in bringing social benefits, then the policy implication is not necessarily to promote homeownership but to assist in residential stability.”).
\textsuperscript{92} See Mason, supra note 67; see also Rohe et al., supra note 2 (quoting the introduction to the National Homeownership Strategy) (“Homeownership is a commitment to strengthening families and good citizenship. Homeownership enables people to have greater control and exercise more responsibility over their living environment[,] . . . helps stabilize neighborhoods and strengthen communities [, and] creates important local and individual incentives for maintaining and improving private property and public spaces.”).
\textsuperscript{93} See Rohe et al., supra note 2, at 2–4 (“The limited research evidence on the relationship between homeownership and life satisfaction tends to support a positive association.”).
\textsuperscript{94} Cf. id. at 4–8 (examining the research and finding that the results are not yet conclusive on this contention, for a number of reasons). The authors also state that “little, if any, research exists on the impacts of foreclosure on a person’s self-esteem or any other psychological
reasons, homeownership is also a significant source of societal status. Some have suggested that the grandness of one’s home has become an even more important means of ranking people than jobs are. In fact, housing may be even more than a means of gaining status; it may be a means of defining identity.

constructs.” *Id.* at 8.

95. WINTER, supra note 71, at 4 (“Home ownership[, according to an Australian politician,] generally means better home life, and better home life must unquestionably be reflected in better citizenship.” (citation omitted)).

96. DEAN, supra note 1, at 12 (“Homes rank high in the scale of things that proclaim one’s status to the world . . . .”); see also Lewis, supra note 16, at 173 (“There’s a moment in the life of every American child when it dawns on him or her that the divvying up of material spoils is neither arbitrary nor a matter of personal choice, that money is a tool used by grownups to order and rank themselves, and that the easiest way to establish those rankings is through their houses. At first, everyone’s house appears more or less the same; at any rate, you don’t spend much time dwelling on the differences. But then, one day, someone’s house is either so much humbler or so much grander than anything you’ve ever seen that you realize: A house is not just a house. It’s one of the tools people use to rank me.”). I enjoy contrasting Dean’s and Lewis’s perspectives with that of the architect Friedensreich Hundertwasser, whose work has fascinated me for over a decade. When he was designing his Viennese low-income housing project called Hundertwasserhaus, he chose to incorporate gold onion domes (including approximately the gold content of one coin for all of the domes combined) to make a statement about the value of the lower-income people who would live there. FRIEDENSREICH HUNDERTWASSER, HUNDERTWASSER ARCHITECTURE: FOR A MORE HUMAN ARCHITECTURE IN HARMONY WITH NATURE 266 (Phillip Mattson trans., 1997). He explained his decision as follows:

Rich and powerful people have always had towers. But for a modern average person to have towers, even golden ones, that is new. Architecture should elevate man, not humiliate, oppress, and enslave him. A golden onion tower on your own house elevates the resident to the status of a king. The grey mass misery is over. The Golden Age has dawned.

*Id.*

97. McGINN, supra note 35, at 11; see also WINTER, supra note 71, at 47 (“The form of tenure is taken as a primary social sign. Tenure is used to classify and evaluate people in a shorthand way, much as people—unfortunately—are taught to use race, income, and occupation as predictors of other traits.” (quoting John S. Adams, The Meaning of Housing in America, 74 ANNALS OF THE ASS’N OF AM. GEOGRAPHERS 515, 523 (1984))). McGinn describes the situation as follows:

As so many of the jobs that help pay megamortgages on nice homes have evolved into such narrow, incomprehensible niches, addresses have become a substitute for occupation when making status judgments. Humans, like all animals, have an innate need to size one another up. Since we can’t do it by sniffing (at least most of the time), and as jobs have become less useful status markers, instead we send signals by where we live—a piece of information that communicates socioeconomic rank as clearly as shoulder stripes denote status in the military.

MCGINN, supra note 35, at 11.

98. See PIERRE RESTANY, HUNDERTWASSER: THE PAINTER-KING WITH THE FIVE SKINS 10–11 (1998). According to Hundertwasser, man’s first skin is the epidermis; the second skin consists of his clothes; the third skin is his housing—and, more specifically, his ability to exercise dominion over his housing by making changes to it; the fourth skin is the social environment; and man’s fifth skin is the planetary skin, *Id.*
C. Benefits for Society

In addition to its claimed benefits for individuals and families, homeownership has also been credited with significant benefits to the larger society.\(^99\) It has been called a cure for class strife and labor tension,\(^100\) an asset to democracy,\(^101\) and a key to helping workers become consumers\(^102\) and stakeholders\(^103\). Homeownership has also been described as being essential for

\(^99\) McGinn, supra note 35, at 12 (“In America, homeownership has always been treated as a virtue.”).

\(^100\) Baxandall & Ewen, supra note 1, at 37 (“[A] range of social critics [in the 1920s]... argued that housing was the burning social issue of the era... [This issue] was the true measure of whether the economy could live up to its promise of endless bounty, mitigate the old misery of the working class, and lay to rest the class conflict that haunted the industrial age.”); Winter, supra note 71, at 5 (“[Homeownership] would not only make a better citizenry generally, but would also promote greater industrial harmony.” (alteration in original) (citation omitted)).

\(^101\) Dean, supra note 1, at 3–4 (quoting the President’s Conference on Home Building and Home Ownership) (“It is doubtful whether democracy is possible where tenants overwhelmingly outnumber home owners... [Homeownership] is regarded as a bulwark against the invasion of alien systems of government.”); Winter, supra note 71, at 5 (quoting an Australian politician) (“[Homeownership is] the basis of national social security... If we desire to rid the community of communism... we must provide every opportunity to the people to acquire their own homes.”) (citations omitted); see also Baxandall & Ewen, supra note 1, at 39 (discussing Edward Filene’s view that “modern workers would express their new sense of freedom in the consumer marketplace” and stating that Filene “redefined democracy as people’s freedom to consume” a vast array of “mass-produced goods—including houses”).

\(^102\) See Baxandall & Ewen, supra note 1, at 38 (citing the opinions of progressive businessman Edward Filene, who associated homeownership with consumption); id. at 55 (attributing similar statements to Keynesian economist Alvin Hansen and President Franklin Delano Roosevelt); Winter, supra note 71, at 39, 55 (describing homeownership as fundamental to capitalism). Paul Goodman and Percival Goodman, a social critic and an architect, respectively, wrote about how society might encourage consumption as follows: “One solution is to build obsolescence into the product; this, it is alleged, is being done in some industries, but it is morally repugnant. More morally tolerable, and psychologically exciting, is to have a variety of styles and changing fads.” Paul Goodman & Percival Goodman, Communitas: Means of Livelihood and Ways of Life 125 (1960). Daniel McGinn provides an example of this latter method of encouraging consumption in his book House Lust, where he notes that some have begun to refer to an existing house as a “used house.” McGinn, supra note 35, at 53. Indeed, “[W]ho wants to settle for used when you can buy new?” Id. This seems to be a fair assumption regarding the consumption argument. Belsky & Prakken, supra note 82, at 1 (“Over the past 50 years, housing expenditures have accounted for more than one fifth of the nation’s gross domestic product. But housing’s influence on the economy extends beyond its direct contribution. Careful analysis reveals that housing also influences the level of consumer spending. When housing wealth increases, consumers spend more.”).

\(^103\) See, e.g., Winter, supra note 71, at 5 (“Buying a home has been ‘sold’, if you’ll allow me, as the equivalent in principle of owning a factory or some other form of the means of production.”); Dearborn, supra note 3, at 40 (noting that “the desire to live in a house in good repair and potential financial gain when the house is sold” may lead owners, as contrasted with renters, to take better care of the property”); What Our Politicians Have to Say...; Housing RTS.
promoting a stable, peaceful, patriotic citizenry with wholesome "small town" or rural values. At a more concrete level, homeownership is said to improve property values and protect neighborhoods. Notably, some of these claimed benefits are those that people commonly associate with property ownership more generally.

Another notable phenomenon is the way in which the positive attributes of "home" have transferred to "homeownership" and, more specifically, ownership of a single-family detached home, as opposed to rental housing or ownership of a multi-family housing unit. As Chicago's Gautreaux program has demonstrated, ownership of a single-family home is not the only means by which a household can enjoy considerable benefits from improved housing circumstances. In addition, it is not entirely clear that homeownership—rather than other, related factors—is the key to the benefits that scholars and policymakers have claimed for it.

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104. WINTER, supra note 71, at 5 (noting that politicians have "portray[ed] home owners as 'stable pillars' of the community").
105. See BAXANDALL & EWEN, supra note 1, at 38 (citing the arguments of Edward Filene that a consumer society would be a peaceful society but also that, before workers could become consumers, they needed more economic freedom, part of which included new housing).
106. DEAN, supra note 1, at 3 ("Home ownership has ... been heavily identified with 'Americanism,' with the fundamental traditions of the United States."). The author expands on this idea by stating, "A professor of economics has underwritten the value of home ownership by showing that our constitution was ratified primarily by owners of real estate." Id.
107. See BAXANDALL & EWEN, supra note 1, at 112 (discussing a New Haven Register article that emphasized that raising "children on city streets" cannot compare to "rearing a family in a small town or country environment").
108. See Dearborn, supra note 3 ("Evidence suggests that owner-occupied housing is in better physical condition than housing occupied by renters."). Dearborn also notes that owner-occupied housing may tend to depreciate more slowly than rental housing. Id.
109. See DEAN, supra note 1, at 3 ("Home ownership has often been cloaked with the virtues ordinarily attributed to any private property ownership.").
110. See Adams, supra note 10, for an exploration of these attributes.
111. 2006 PROFILE OF HOME BUYERS, supra note 22, at 5 ("Three-quarters of homes purchased [in the 2006 survey] were detached single-family homes."); see also DEAN, supra note 1, at 13 ("The transformation which replaces the desire for 'home' with the desire for 'home ownership' takes two steps: (1) 'home' is interpreted as a detached, single-family dwelling, however humble, and (2) the dwelling must become the family's home not merely by being inhabited by the family, but also by coming under full-fledged ownership.").
112. See Rosenbaum & Deluca, supra note 91, at 655–56.
113. See WINTER, supra note 71, at 18 ("[T]enure is not the single most important factor in explaining social life. It is not necessarily the determining variable. [Instead, we need to take account of how tenure interacts with other social factors such as occupation, income, family life cycle and gender, to affect the material experience of private property rights and, thus, sift which tenure-based meanings are more or less important at the household level.").
University has made similar observations about the lack of clear causation between homeownership and the kinds of putative benefits discussed above.\textsuperscript{114} Even so, Americans have historically expressed a strong preference for the single-family detached home.\textsuperscript{115} In responding to the way in which Americans have seen homeownership as the national ideal, Nathan Straus, former head of the United States Housing Authority, suggested that a different perspective may be more accurate: “Under conditions of modern civilization, a man does not have to buy a cow because his family needs milk. He should not have to buy a house because his family needs a home.”\textsuperscript{116}

\textbf{IV. LOOKING BEHIND THE FAÇADE}

\textit{A. Pro-Ownership or Anti-Rental?}

In addition to the ways in which Americans associate homeownership with other positive virtues,\textsuperscript{117} American society has come to deem homeownership a virtue in its own right.\textsuperscript{118} The other side of this phenomenon is that Americans have stigmatized renting and renters.\textsuperscript{119} I suggest that stigmatizing renters and

\textsuperscript{114} See Rohe et al., supra note 2, at 24. As Rohe and his coauthors note, future research needs to do a better job controlling for potentially confounding variables. Much of the existing research on the impacts of homeownership fails to adequately control for alternative explanations for the relationships found. Homeownership is strongly correlated with income, education, age, stage in the life cycle, marital status, race, the presence of children, and employment tenure and security. However, many studies fail to control for one or more of these variables. Further, owner-occupied units tend to be larger, better-maintained, single family detached dwelling units located in more desirable neighborhoods. To truly isolate the impacts of owning, these variables must also be controlled.

\textsuperscript{115} See DONALD MACDONALD, DEMOCRATIC ARCHITECTURE: PRACTICAL SOLUTIONS TO TODAY’S HOUSING CRISIS 52 (1996) (describing several practical and psychological reasons for the societal preference for detached housing and stating that, “for better or worse the image of the single-family home on its own land is a deeply rooted American tradition,” and “[i]n many cases [physical separation [from other homes] was a decisive selling point”).

\textsuperscript{116} BAXANDALL & EWEN, supra note 1, at 109 (internal quotation marks omitted).

\textsuperscript{117} Dearborn, supra note 3 (discussing the connection between homeownership and perceptions of civic virtue).

\textsuperscript{118} DEAN, supra note 1, at 13 (“[H]ome ownership is not merely a means by which one achieves other values; it is also an end in itself . . .”).

\textsuperscript{119} WINTER, supra note 71, at 47 (“In a country where home-ownership is the national dream and home-owners are seen as the paradigm of the model citizen, the status of the tenant inevitably suffers. Tenants are commonly regarded as transitory or as failures, people who have little commitment to property or community.” (citation omitted); see also DAVID M.P. FREUND, COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA 231 (2007) (quoting MICHAEL N. DANIELSON, THE POLITICS OF EXCLUSION 52–53, 55 (1976)) (“By the 1970s, ‘almost all zoning ordinances consider[ed] apartments an inferior and therefore more
over-privileging homeowners is unfounded, in that homeownership sometimes brings dependence and loss of wealth rather than the expected independence and increased wealth.\footnote{120} This is especially true in the case of a non-amortizing or negative-amortizing loan, which allows the borrower in question only to live in his or her home, not to purchase that home in the usual sense of the word.\footnote{121} In addition, homeowners who purchase an older home in a central city neighborhood or an older suburb may not reap the same benefits as homeowners who purchase a home in a newer, suburban neighborhood.\footnote{122} Furthermore, it is the lower income, more vulnerable homeowners who appear least likely to enjoy the touted benefits of homeownership.\footnote{123}

\section*{B. The Roles of Madison Avenue, Wall Street, and Uncle Sam}

In addition to the claims that authors and commentators have made about homeownership, a number of industries and groups that benefit from homeownership have actively promoted it.\footnote{124} Among these interested groups are chambers of commerce, the automobile industry, the highway lobby, appliance manufacturers, and banking, real estate and lumber interests.\footnote{125} Moreover, restricted land use than single-family residences.' Multiple-unit dwellings purportedly undermined residential environments.”) (alteration in original).

120. For one of the most useful and best balanced surveys of the effects of homeownership, see Rohe et al., supra note 2.

121. See Mason, supra note 67, at 3. Moreover, as another author has suggested, “[w]ithout people with incomes sufficient to cover operating costs, fixed charges and amortization of the debts, habitations become vacant and [are] of no more use to those whose incomes [have] vanished than had the houses been built upon the moon.” BAXANDALL \& EWEN, supra note 1, at 52 (quoting Frederick Ackerman, Debt as a Foundation for Houses, ARCHITECTURAL FORUM, Apr. 1934, at 255, 256–57).

122. See Dearborn, supra note 3, at 44–45 (“[C]entral city areas typically have poorer quality schools, higher crime rates, less healthy environmental conditions, fewer jobs that pay living wages, and fewer services than suburban locations.”); see also Pitcoff, supra note 3, at 5 (quoting Anne Shlay at Temple University) (“Low-income people are being encouraged to buy older homes with an unclear shelf life that may or may not appreciate in value.” (internal quotation marks omitted)).

123. See Pitcoff, supra note 3, at 3–4 (“Some studies have found that, setting aside the growth in home equity, low-income homeowners actually save less than renters and have fewer funds available for home maintenance or to cushion against income loss.”).

124. Commentators have described several of these industries as having a symbiotic relationship with one another. See Hudson, supra note 55, at 43 (“[T]he FIRE sector [is] short for finance, insurance, and real estate. These industries are so symbiotic that the Commerce Department reports their earnings as a composite.”); see also FREUND, supra note 119, at 123 (“Consumers benefited by gaining access to affordable credit, and thus to housing, which eventually translated into substantial home equity. Lenders benefited through their largely risk-free participation in this fast-growing and lucrative market. And, of course, the real estate, construction, and related industries benefited because more homes were built and sold.”).

125. BAXANDALL \& EWEN, supra note 1, at 107.
builders and developers, architects, public utilities, household magazines, and newspapers also benefit from high rates of homeownership. In addition to the private interests enumerated above, government officials have long considered boosting homeownership and new construction to be a reliable means of boosting a sluggish economy. In addition, homeownership issues always seem to excite the political base. One scholar has referred to what he calls congressional “infatuation with housing policy as a means of buying votes.”

In the banking industry, not only are mortgage loans usually good moneymakers, but there is also some indication that banks have “aggressively targeted low-income and minority neighborhoods with mortgage and other loan products” because the housing market for higher income buyers was “virtually saturated.” Thus, at least to some extent, banks may have offered mortgage loans to lower income borrowers due to the banks’ own business need to explore new markets, rather than the borrowers’ ability to repay the loan. This phenomenon has created systemic problems in that it has placed families in homeownership who simply cannot afford a home.

Government policies have long favored homeownership over renting. Housing economists have gone so far as to characterize the contemporary American housing market as “highly regulated, heavily subsidized, and unimaginable without sustained federal involvement.” As Ian Winter notes, “[r]enters are economically disadvantaged and owners advantaged by their housing tenure, immediately differentiating their tenure experiences.” Winter refers to this phenomenon as a regressive redistribution of wealth.

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126. DEAN, supra note 1, at 19.
127. See Whalen, supra note 65; see also BAXANDALL & EWEN, supra note 1, at 54 (“Many government officials [in the 1930s] began to suspect that mass housing could become the linchpin of economic recovery.”). The authors further state that “[b]uilding homes could stimulate stalled industries and create a ripple effect through the economy.” Id.
128. Whalen, supra note 65, at 231; see also Rosner, supra note 14, at 12 (“By stimulating home ownership while failing to account for the reasons home ownership is valuable to society, Washington has simply sought to buy our votes with our own debt.”).
129. Pitcoff, supra note 3, at 2 (noting that regulations have forced banks “to turn to new markets in order to remain profitable”).
130. See id. at 1 (quoting Kathy Tullberg of the Massachusetts Community and Banking Council) (“Many banks think that low-income homebuyers will eventually move into needing additional loans for cars or education, as well as other banking products, and that these homebuyers will come back to the same bank where they got their mortgage.” (internal quotation marks omitted)).
131. Rosner, supra note 14, at 12.
132. FREUND, supra note 119, at 121–22. Freund cites data from the late 1930s and 1940s showing that, “[f]or most eligible borrowers, buying a new, FHA-eligible suburban house suddenly became the least expensive alternative, often cheaper than renting an apartment in the central city.” Id. at 134.
133. WINTER, supra note 71, at 22. Although Winter’s research primarily focused on
Because both public and private interests have so heavily promoted homeownership, there is some indication that the American preference for homeownership is not really an organic preference but rather a creature of policy and marketing that makes subtle coercion appear to be personal choice. Some authors have suggested that, left to their own devices, many Americans would actually prefer to rent than to own. One author goes so far as to state that, “[b]eginning in the early 1930s, there was no pure, ‘private market’ for homeownership in the United States, because the supply of and demand for credit were decisively shaped by an activist state.” REGARDLESS OF ITS GENESIS, HOWEVER, THE CONTEMPORARY AMERICAN DESIRE FOR HOMEOWNERSHIP IS VERY REAL. One author calls this desire the “House Lust” phenomenon, which he traces, at least in part, to the national fascination with going to look at others’ homes and model homes.

Australia, these points are equally valid when applied to the United States. Winter goes on to state that, while “incomes and rental payments rise with inflation, mortgage repayments are devalued by inflation.” ID. AT 23. Further, “as house prices rise home owners have the opportunity of reaping untaxed capital gains,” and “the imputed rent value of owner occupation remains untaxed.” ID. Finally, “first home owner schemes continue to be funded at the expense of rental subsidies.” ID. For a discussion of similar U.S. policies, see Weintraub, supra note 9.

See Rohe et al., supra note 2 (“In a recent national survey . . . 86 percent of all respondents felt that people are better off owning than renting a home, and 74 percent believe that people should purchase a home as soon as they can afford it, regardless of their marital status or whether they had children in the household.”).

See Dean, supra note 1, at viii (“Walton Hamilton has pointed out that business succeeds rather better than government in enforcing its coercions because the coercions of business are disguised as ‘choices.’”); see also Baxandall & Ewen, supra note 1, at 106 (noting that a Fortune survey from 1946 found that “more people, particularly in the North Atlantic states, preferred renting an apartment to owning a home”); Winter, supra note 71, at 49 (citing Jim Kemeny, The great Australian nightmare: A Critique of the Home-Ownership Ideology (1983)) (“[T]he growth of home ownership in Australia has not been a natural event. [It] has not been a response to an innate desire on the part of Australians but, rather, is the product of government and market mechanisms that have combined to extend home ownership to more and more households by offering larger and larger subsidies while neglecting other tenures.”).

See Dean, supra note 1, at 1 (suggesting that in 1945 about one out of every six families who owned homes would have preferred not to have bought a home).

Freund, supra note 119, at 122.

McGinn, supra note 35, at 3; see also Dean, supra note 1, at 25 (quoting a male head of household) (“Well, to make a long story short, we got the habit of visiting those new houses. Pretty soon the wife was so dissatisfied with our old house that we had to buy one.”); Dearborn, supra note 3 (“Homeownership in the United States has been linked to an idealized notion of the American way of life since Thomas Jefferson envisioned a nation of yeoman farmers.”). McGinn later provides some context on the phenomenon of house lust:

This syndrome is not altogether new. Homes and real estate have always had a peculiar hold on the American psyche. Our founding fathers considered land ownership a prerequisite to voting. A generation later, their pioneer descendants settled the West, drawn largely by an irresistible lure: cheap (or even free) land. We still tell our children...
V. FINANCING THE BOOM

A. Debt as the New Wealth

Homeownership may sometimes be oversold, with its promoters tending to emphasize its positive attributes more than its potential risks.140 One important but sometimes underemphasized potential risk associated with homeownership is the significant debt a mortgage represents.141 Economist Michael Hudson has noted the irony in the way that debt—at least mortgage debt—has come to be associated with wealth and freedom.142 Along the same lines, some Americans have come to see home equity as a substitute for savings.143 This trend has been particularly pronounced for lower income homebuyers.144 At the same time, debt—even what Americans formerly called a “second mortgage” and now more frequently call a “home equity loan”—has lost its stigma.145

the story of the Three Little Pigs (the moral: Build the sturdiest house you can), and spend rainy afternoons marching pieces around Monopoly boards (the lesson: The key to profits is location, location, location). And for decades, many people have had a Sunday-morning ritual that has nothing to do with church: Over coffee they read the real estate listings, even if they’ve no intention of buying or selling a home.

Id. at 4.

140. See DEAN, supra note 1, at 7 (“No agency, governmental or otherwise, has taken upon itself the task of supplying prospective owners with the information needed to implement sound decisions. It is difficult to cite more than half a dozen discussions which point up the shortcomings as well as the benefits of home ownership.”).

141. See Rosner, supra note 14, at 12 (“The term ‘mortgage’ comes from the French root mort, meaning dead, and the Germanic root gage, meaning pledge, which suggests how seriously the use of debt to buy a home was once taken.”).

142. Hudson, supra note 55, at 39 (“in the odd logic of the real estate bubble, debt has come to equal wealth. And not only wealth but freedom—an even stranger paradox. After all, debt throughout most of history has been little more than a slight variation on slavery.”).

143. MCGINN, supra note 35, at 9. McGinn describes the situation in 2005, noting that “for the first time since the Great Depression, the nation’s savings rate dipped below zero, meaning the average American was spending more than he earned. Families were doing this, some economists reckoned, because they figured the rising value of their home was providing all the savings they needed.” Id.

144. Pitcoff, supra note 3, at 4 (“With most or all of their savings in their homes, low-income homeowners are vulnerable to housing market downturns.”).

145. See infra Part V.C (discussing the increasing attractiveness to Americans of spending home equity). Although he chooses not to explore the issue of home equity spending, Daniel McGinn phrases the problem in a way that likely resonates with many: “Was it really wise that so many Americans came to regard it as perfectly normal to borrow against the equity in their homes to . . . fund a trip to Disney World?” MCGINN, supra note 35, at 5.
B. The Role of Creative Financing

How has this transformation of debt into perceived wealth been made possible? In the mid-2000s, the United States found itself at the height of a real estate boom\footnote{146}{A quote from John Dean’s 1945 book *Homeownership: Is it Sound?* seems eerily on-point as we consider this most recent boom: When prosperity is visible on every hand, men tend to be optimistic about the future. It is not surprising that many families step into the market at times such as this and buy homes when it is least feasible. So great and institutionally encouraged is the American habit of surging forward in optimism at these times that it is perhaps too much to demand of the lone individual that he prove wiser than the world about him.}\footnote{147}{In his recent article, Andrew Rice provides an idea of the breadth of the recent real estate boom. See Rice, supra note 16, at 131. Rice states that, “During the height of the housing bubble, from 2004 to 2006, [the well-known luxury homebuilder] Toll Brothers reported nearly $16 billion in revenue, putting it in the top ranks of the industry.” Id. at 132.} which in turn continued to fuel the boom. The strong housing market camouflaged concerns about the viability of many of these creative financing options.\footnote{148}{In their book *Picture Windows*, Rosalyn Baxandall and Elizabeth Ewen provide a picture of pre-Depression lending practices that is startlingly similar to those associated with the current housing crisis, describing “an unsound web of first, second, and even third mortgages,” “precarious” financing, widespread defaults and foreclosures, and the resultant frozen credit. BAXANDALL & EWEN, supra note 1, at 32 (citing NATHANIEL SCHNEIDER KEITH, POLITICS AND THE HOUSING CRISIS SINCE 1930, at 18 (1973)). Even the governmental efforts to respond to the Depression sound strikingly similar to those the government is currently undertaking. Id. at 36 (discussing the work of the Home Owners Loan Corporation in purchasing defaulted mortgages and providing opportunities for lower income homeowners to refinance their debt).} The repeat-sale home price index rose by nearly one-third between 2000 and 2003,\footnote{149}{Raymond H. Brescia, *Capital In Chaos: The Subprime Mortgage Crisis and the Social Capital Response*, 56 CLEV. ST. L. REV. 271, 295 (2008) (“[T]he strong market delayed any questions about affordability of the underlying mortgage, or the inequitable nature of its terms, to a day when rising home values could no longer make up for the borrower’s inability to meet the terms of his or her mortgage.”). In addition, the practice of securitization tended to promote riskier loans. Id. at 297 (citing Subprime Mortgage Market Turmoil: Examining the Role of Securitization: Hearing Before the Subcomm. on Securities, Insurance, and Investments of the S. Comm. on Banking, Housing, and Urban Affairs, 110th Cong. (2007) [hereinafter Subprime Hearing] (testimony of Kurt Eggert, Professor of Law, Chapman Univ. School of Law); id. (testimony of Christopher L. Peterson, Assoc. Professor of Law, Univ. of Fla.) (“[W]ith the rise of the securitization market, the incentive structure has changed, rewarding quantity over quality. The broker seeks to identify a mortgage product for which the borrower might qualify, but might not think of the long-term viability of the borrower to meet his or her obligations.”)). Instead, Brescia notes, the broker’s focus is on the “quick payday once the mortgage is transferred to another entity for sale as a security.” Id.} and house prices continued to increase until 2006–2007. Many areas...
saw double-digit increases, with the greatest increases—and thus the greatest levels of land speculation—occurring in Florida, Las Vegas, Phoenix, and San Diego.  

During this boom period, the subprime market experienced tremendous growth.  

These creative financing techniques were not merely a creature of the housing market; government policy actively encouraged them as part of the National Homeownership Strategy.  Many of these techniques encouraged potential homeowners to focus on their monthly payment, rather than the size of the loan, in determining what they could afford.  This practice caused Americans to perceive housing as relatively affordable, even during the boom period when housing prices were rising so rapidly.  

One important factor in Americans’ misperception of what they could afford was the increased incidence of no-down-payment loans, which were a direct result of initiatives to increase homeownership.  Average down payments were much higher prior to the 1930s and have fallen significantly since the 1970s.  At the same time, the average period of a mortgage increased from 20 years in the 1930s to 35 years for FHA loans in the mid-1960s.  

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151. One estimate is that the subprime market, previously a “niche” market, “exploded” from $35 billion in new loans in 1994 to $150 billion in 1998. LORD, supra note 25, at 17 (citing data from the Department of Housing and Urban Development and the Department of the Treasury).

152. See supra notes 67–70 and accompanying text. One scholar has called the National Homeownership Strategy “an odious public policy partnership.” Whalen, supra note 65, at 220. The author goes on to state that “[t]he partnership for affordable housing was the creation of the real estate, home building, and [government-sponsored entities] lobbies, relying upon legal mandates such as the Community Reinvestment Act (CRA) to ‘encourage’ the banking industry to target increased home ownership in the United States.” Id. at 221.

153. See Hudson, supra note 55.

154. See id. at 42 (“The median price of a home has more than doubled in the last decade, from $109,000 in 1995 to a peak of more than $206,000 in 2005. That growth far outpaces the consumer price index, and yet housing affordability—the measure of those month-to-month housing costs—has remained about the same.”).


156. Pitcoff, supra note 3, at 1 (“Until the 1930s, homebuyers typically paid 40 percent down. In the 1970s and 1980s, 15 percent down payments were common.”). The government intended these post-Depression changes in the structure of mortgage lending to promote homeownership among a broader range of Americans. Stone, supra note 15, at 120–21.

157. FREUND, supra note 119, at 186. In elaborating, Freund states as follows:
2005, 43% of first-time home buyers and 28% of all home buyers made no down payment.\(^{158}\) This number was 54% higher than it had been only two years prior, in 2004.\(^{159}\) The median down payment in 2006 for first-time buyers was only 2%.\(^{160}\) In recent years, down payments were lower than normal for repeat home buyers as well. In 2006, the median down payment for repeat home buyers was 16%.\(^{161}\) By way of comparison, 20% has historically been considered a standard, moderate down payment.\(^{162}\)

No-down-payment loans are risky because lenders often provide them to purchasers with little or no savings. Such homeowners may be more likely than those with substantial savings to miss payments if they encounter financial difficulties and may therefore be more inclined to draw upon home equity in the event of an emergency.\(^{163}\) This last point is troubling because a homeowner who purchases a home with no down payment may not have any equity at the time of closing and thus lacks an important head start in accumulating wealth from his or her home. In addition, some evidence suggests that lower income homeowners are more likely than higher income homeowners to borrow against the equity in their homes.\(^{164}\)

Another threat to the growth of equity is the proliferation of negative-amortization loans.\(^{165}\) When a homeowner makes only the minimum monthly

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To purchase a $7,500 home in 1934, an FHA-approved borrower needed to pay $1,500 down and commit to a 20-year repayment schedule; four years later, the down payment was $900 and the loan spread out over 25 years. By 1950, the down payment had been reduced by almost half, to $500, and by 1957 it was cut in half again, to $225, with repayment extended to 30 years. By 1964, FHA loans had 35-year amortization periods. (noting that such borrowing is often done at relatively high rates of interest).

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158.  NAT’L ASS’N OF REALTORS, THE 2005 NATIONAL ASSOCIATION OF REALTORS PROFILE OF HOME BUYERS AND SELLERS 5 (2005). For 2006, the same group reported that 45% of first-time buyers and 29% of all buyers financed the entire purchase price. 2006 PROFILE OF HOME BUYERS, supra note 22, at 57. Another source reports similar numbers for 2005. Hudson, supra note 55, at 41 (“Nearly half the people buying their first homes last year were allowed to do so with no money down, and many of them took out so-called interest-only loans, for which payment of the actual debt—amortization—was delayed by several years.”).


161.  Id.

162.  See, e.g., id. (“Before the mid-1980s, the plain-vanilla, 20% down mortgage was virtually the only game in town.”).

163.  Cf. Greg Griffin et al., Foreclosing on the American Dream, DENVER POST, Sept. 17, 2006, at A1 (stating that life events often cause people to default on their mortgages and that home equity gives people “options when they face financial problems”).

164.  Pitcoff, supra note 3, at 3 (noting that such borrowing is often done at relatively high rates of interest).

165.  Many homeowners entered into such arrangements without concern for the level of risk.
payment on such a loan, the result is an increased principal balance and, correspondingly, decreased equity. In addition to preventing homeowners from having access to cash in the event of an emergency, not having equity—or having decreased equity—can prevent a homeowner from obtaining favorable refinance terms and can thus lead him or her to experience substantial "sticker shock" in the event of an adjustable-rate mortgage reset.

Another problem results when a homeowner who is "upside down" on a mortgage needs to sell the house during a period when home prices have fallen. One estimate is that 10% of American homeowners may be upside down at this time. As unemployment numbers continue to rise more sharply in some regions of the United States than others, many homeowners may be in the position of needing to move to find new employment and may be unable to do so because they owe more than their homes are worth.

C. Spending Equity for Groceries and Vacation

At the same time that it is increasingly possible for a homeowner to be in a position of having no equity at the time of closing, spending home equity has become increasingly common and attractive. For example, in the fourth quarter of 2004, the Federal Deposit Insurance Corporation (FDIC) reported that home equity lines of credit were "the fastest growing asset class in financial institutions' balance sheets and comprise[d] 7 percent of bank loan portfolios, up from 3 percent in 2000." Moreover, housing-spurred consumer

they assumed. McGinn, supra note 35, at 8 ("I met many people who felt no anxiety about taking on variable-rate, interest-only mortgages to stretch to buy the homes of their dreams. 'If all my friends are doing the same thing,' they said, 'how risky can it be?'").

166. See generally Hudson, supra note 55, at 41, 46 ("[P]rices are falling even as the buyers' total mortgage remains the same or even increases. Eventually the price of the house will fall below what homeowners owe . . . .").

167. Obtaining an adjustable-rate mortgage is really just "renting from the bank, betting that the value of the house will go up enough to cover your risk." Anya Kamenetz, Generation Debt: Why Now is a Terrible Time to Be Young 145 (2006).


169. Fed. Deposit Ins. Corp., supra note 69, at 18; see also Hudson, supra note 55, at 41 ("Many . . . owners are spending tomorrow's capital gain today by taking out home-equity loans."). In explaining this phenomenon, the FDIC reported as follows:

The rationale for homeowners' greater use of [home equity lines of credit] is straightforward. With consumer spending outpacing income growth in the 2000s, homeowners have turned increasingly to home equity lending as a substitute for consumer credit to finance new consumption, reduce outstanding debt, or purchase a home in a two-loan package deal. The appeal over other more costly credit alternatives derives from the significant advantages of comparatively low interest rates, tax
expenditures reached record levels in 2001, 2002, and 2003, even outpacing income growth.\textsuperscript{170} Government officials have generally cheered such expenditures, crediting them as a significant factor in the United States’ post-September 11, 2001, recovery.\textsuperscript{171} Indeed, government policies have encouraged home-equity borrowing. The Tax Reform Act of 1986 eliminated the tax deduction for most forms of consumer credit and expanded the home mortgage interest deduction to include interest on home-equity loans.\textsuperscript{172} As a result, homeowners have experienced an increased incentive to use home equity for ordinary expenses rather than the home-improvement expenses that were the original purpose for such loans. The FDIC reports that between 1986 and 2004 mortgage debt grew by 151\% in inflation-adjusted figures, while other consumer debt grew 88\%.\textsuperscript{173} During this same period, mortgage debt grew from 64\% to 72\% of an average family’s debt.\textsuperscript{174}
D. Some Perspective on Subprime Lending

Not all interest-only or no-down-payment loans are subprime or can fairly be called predatory. Indeed, I believe the country’s housing problem is much larger than the subprime market. In addition, subprime lending is not wholly bad, particularly in light of the opportunities it has created for some individuals and families who would otherwise not have qualified for a home mortgage. There are, nevertheless, some particular features of subprime lending that are worth mentioning. First, at least one scholar has suggested that low “teaser rates” for subprime mortgages are an “urban legend.” Instead, many subprime mortgages had interest rates—even at the start—that were equal to or greater than those associated with prime mortgages. In addition, subprime lending has had a well-documented and disproportionate effect on lower-income and higher-percentage-minority neighborhoods. In fact,

175. Professor Raymond Brescia provides the following definition of “subprime” borrowers: “Those ‘who do not qualify for prime interest rates because they exhibit one or more of the following characteristics: weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments or bankruptcies; low credit scores; high debt-burden ratios; or high loan-to-value ratios.’” Brescia, supra note 148, at 287 (citing Subprime Hearing, supra note 148 (statement of Roger T. Cole, Director, Division of Banking Supervision and Regulation of the Federal Reserve)).

176. One commentator has proposed the following definition of “predatory” loans:

[T]hey charge higher interest and fees than required to cover the added risk of lending to borrowers with credit problems; . . . they contain abusive terms and conditions that trap borrowers and lead to increased indebtedness[,] they fail to consider the borrower’s ability to repay the loan[,] or . . . they violate fair lending laws by targeting women, minorities, or the elderly.


177. Brescia, supra note 148, at 282 (“The increase in subprime lending has unquestionably made the dream of homeownership available to people who, because of many factors—including outright discrimination, community-based redlining and greater lender scrutiny of perceived risk—might not have obtained a mortgage just a decade ago.”); Pitoff, supra note 3, at 4 (“Loans to low-income homebuyers increased by 94 percent between 1993 and 1999.”).


179. Krimminger, supra note 178 (“In fact, of subprime hybrid mortgages originated in 2006, the average starter rate was 8.29 percent, which exceeded the average rate on subprime fixed-rate loans made in that same year (8.06 percent) and was well above rates paid on prime fixed-rate loans.”).

180. See, e.g., Lei Ding et al., Neighborhood Patterns of High-Cost Lending: The Case of...
subprime lending has disproportionately affected even higher-income minority borrowers, when compared with their majority counterparts.\textsuperscript{181}

Among subprime adjustable-rate mortgage (ARM) loans that were originated in 2006, more than one-half had a monthly debt-service-to-income ratio of over 40\%.\textsuperscript{182} Lenders knew that most of these ARMs were unsustainable at the reset rate and never intended them to perform at that rate; instead, lenders approved the loans with the expectation that they would be refinanced prior to the time of reset.\textsuperscript{183} One leading independent rating agency estimates that almost one-half of the subprime mortgages that were originated in 2006 will be foreclosed.\textsuperscript{184} In considering these numbers and keeping the

\textit{Atlanta}, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 193 (2008) (presenting an empirical analysis of high-cost mortgages in Atlanta “to better understand the extent to which high-cost lenders target particular neighborhoods and borrowers”); Ernst & Goldstein, \textit{supra} note 178, at 276 (“In 2006, the latest year for which data collected under the Home Mortgage Disclosure Act are available, among borrowers who took a typical loan to purchase a home, a majority of African Americans (53.7 percent) and a near majority of Latinos (46.6 percent) received loans described in the data as higher-rate. The corresponding measurement among white non-Latino borrowers was 17.7 percent.” (citing Robert B. Averv et al., \textit{The 2006 HMDA Data, FED. RES. BULL.} (Fed. Reserve Bd., Wash., D.C.), Dec. 21, 2007, at A73, A96, \textit{available at http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf}). For a further exploration of racial disparities in property ownership and homeownership in the United States, see FREUND, \textit{supra} note 119.

\textsuperscript{181} See LORD, \textit{supra} note 25, at 43 (“African Americans nationally were more than twice as likely to be turned down for conventional home purchase loans than were whites. . . . \textit{Upper-income} African Americans were denied conventional purchase mortgages almost three times as often as upper-income whites.”); \textit{id.} (“Latinos were 1.5 times as likely to be denied as whites. . . . Upper-income Latinos were turned down more than twice as frequently as upper-income whites.”); \textit{id.} (“Well-off black or Hispanic borrowers were even more likely to be denied conventional home purchase loans than were moderate-income whites.”).

\textsuperscript{182} Krimminger, \textit{supra} note 178. The author notes that, “[e]ven at the starter rates,” many of the subprime borrowers were “financially stretched.” \textit{id.}

\textsuperscript{183} \textit{ld.} at 261–62. Krimminger goes on to note that, [i]f refinancing became unavailable, the reset payments were unsustainable for the vast majority of borrowers. As a result, very few subprime hybrid ARMs ever paid at the higher reset rates for any length of time. For example, of the subprime hybrid ARMs securitized in 2003, only one in thirty was still paying at the higher contract rates after four years.

\textit{id.} So long as home prices were rising and refinancing options were readily available, these loans actually performed rather well. \textit{id.} at 263.

\textsuperscript{184} Ernst & Goldstein, \textit{supra} note 178, at 273 (citing GLENN COSTELLO, FITCH RATINGS, \textit{UPDATE ON U.S. RMBS: PERFORMANCE, EXPECTATIONS, CRITERIA} 18 (2008), http://fitchratings.com/web_content/sectors/subprime/us_rmbs_update_feb08.pdf). Another author has noted that a lender choosing not to foreclose may create an even worse situation. See Kermit J. Lind, \textit{The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland’s Neighborhoods}, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 237, 240 (2008) (“Sometimes the lien holders do not even initiate foreclosure on worthless property, especially if the house has been demolished. Abandonment of mortgage liens results in a title that is toxic, meaning that the title is
situation in perspective, it is important to keep in mind that most mortgages carry a fixed interest rate.\textsuperscript{185}

Despite the considerable current problems in the subprime market, some of these creative lending products had their origins in products that served a limited, but important, purpose. One example is the “alt-A” or “near prime” loans that were originally intended to serve borrowers with good credit and fluctuating incomes, such as sales representatives and brokers.\textsuperscript{186} When lenders began to employ alt-A mortgages as an “affordability” product, the alt-A sector of the market exploded from about 5% in 2002 to 20% in 2006.\textsuperscript{187} About 60% of these were interest-only or negative-amortization loans, and 81% were no- or low-documentation loans.\textsuperscript{188} Often, lenders coupled these loans with high loan-to-value rates and simultaneous second mortgages.\textsuperscript{189}

VI. CONCLUSION: CONFRONTING THE ILLUSION

A. Step One: Waking Up from the Dream of Universal Homeownership

Where do we go from here? In this Article, I have shown that the median American family cannot afford the median American home and that altering the traditional financing structure to increase homeownership has created an untenable situation. Housing has carried too much weight in American society, bearing not only its own burden but also in significant measure the fortunes of other industries. Especially for homeowners who have purchased above their means, homeownership does not always deliver the benefits society has come to expect of it. In his October 2008 article, Paul Reyes speaks of “leagues and leagues of homeowners trapped in pathetic confusion, having been upended by their desire, taught as a tenet of good citizenship in America, to own something

not marketable except by litigation and a judicial sale at public expense.”\textsuperscript{186}).

185. 2006 PROFILE OF HOME BUYERS, supra note 22, at 58 & exhibit 5-6 (reporting that, in 2006, 71% of homebuyers indicated they had a fixed-rate mortgage, with a higher percentage of first-time buyers reporting that they borrowed under a loan that begins with a fixed interest rate that periodically adjusts).

186. Brescia, supra note 148, at 288 (citing Subprime Hearing, supra note 148 (statement of Roger T. Cole, Director, Division of Banking Supervision and Regulation of the Federal Reserve) ("[T]hese are borrowers who might have good credit, but have other deficiencies on their record, like high debt-to-income ratios or have less of an ability to document their income than the typical prime borrower.")); Krimminger, supra note 178, at 262.

187. Krimminger, supra note 178, at 262.

188. Id.; see also MCGINN, supra note 35, at 18 (discussing the rise of no-documentation loans, noting that some lenders offered loans in excess of a home’s value without requiring income verification, and attributing this, at least in part, to the climate of very low interest rates).

189. Krimminger, supra note 178, at 262–63.
permanent.”

Another problem is that the market has produced low quality single-family housing in an effort to supply a single-family house at nearly every price point. One author has identified poor-quality renovations as a significant contributing factor to the current housing crisis. Thus, and even setting aside the variable of market fluctuations, it is inappropriate to assume that a house is always a valuable asset in its own right.

B. Step Two: Recognizing when Housing Policy Is Not About Housing

One of the overarching problems is that in this country housing policy frequently has not really been about housing at all. While this phenomenon makes sense insofar as housing is an enormous part of the country’s economy, it is nevertheless important to understand the veiled economic agenda that the government may pursue in the name of housing. Just as the country’s strong promotion of homeownership has often been an attempt to advance other goals, so also the public-housing program has often been, at its core, more about jobs and economic renewal than about housing low income people. The Public Works Administration housing programs that were part of the New Deal, for example, were focused on providing much needed jobs, a fact evidenced by the little attention that the government paid to cost containment.


192. See generally Dearborn, supra note 3, at 45–46 (describing the poor housing quality that many minority and first-time homebuyers face). Interestingly, in 1911, Louis Mumford criticized the housing market along these lines. BAXANDALL & EWEN, supra note 1, at 40 (quoting PLANNING THE FOURTH MIGRATION: THE NEGLECTED VISION OF THE REGIONAL PLANNING ASSOCIATION OF AMERICA 13 (Carl Sussman ed., 1976)) (“Housing reform by itself has only standardized the tenement. . . . It is fatuous to suppose that private interests will correct this condition, for it is for the benefit of private interests that it exists.” (internal quotation marks omitted)).

193. Lind, supra note 184, at 238 (“By 1999, responsible nonprofit community developers were feeling the hurt when flippers, who applied cheap cosmetic repairs to distressed houses, marketed their so-called rehabs for the same price as houses completely rehabbed with quality workmanship and materials.”).

194. See SOCIAL BENEFITS OF HOMEOWNERSHIP, supra note 4.

195. See supra Part IV.B.

196. See BAXANDALL & EWEN, supra note 1, at 60 (“PWA housing in general was of better quality than most private housing and this particularly angered builders.”). The United States Housing Authority projects that followed were more modest in design. See id. at 62.
Another possibility that has not been fully explored is that pro-homeownership policies may be anti-rental policies, at their core.\textsuperscript{197} Indeed, there is some suggestion that the Federal Housing Administration may have aimed governmental housing subsidies, not only at homeownership, but also at expressly discouraging rentals.\textsuperscript{198} While the real estate lobby has associated homeownership with stability and patriotism,\textsuperscript{199} politicians and homeownership advocates have unfairly associated rental—and especially public housing—with socialism\textsuperscript{200} and the decline of free enterprise.\textsuperscript{201} In the past, pro-real-estate interests have also sometimes used pro-homeownership and anti-rental propaganda to advance a racist agenda.\textsuperscript{202}

\textbf{C. Step Three: Redirecting the Housing Subsidy, at Least in Part}

Congressional allocation of funding shows a strong preference for homeownership over rental housing, and I believe Congress should reconsider

\textsuperscript{197} See supra Part IV.A; BAXANDALL \& EWEN, supra note 1, at 65 ("What the real estate industry feared most was that decent housing would become an entitlement—a right every American shared, regardless of economic status. The lobby believed that this would threaten their economic and social interests by encouraging people to remain renters instead of becoming home owners.").

\textsuperscript{198} See BAXANDALL \& EWEN, supra note 1, at 65 (quoting Why Not Subsidies for Business, in PUBLIC HOUSING IN AMERICA 325, 326 (Morris Bartel Schnapper ed., 1939)).

\textsuperscript{199} See id. Joshua Rosner offers a different view regarding stability: Traditionally, buyers purchased their first home in their twenties or thirties as they were starting a family, and, since the 1930s, they always financed that purchase with a 15- or 30-year fixed-rate mortgage that required monthly payments of principal and interest. Because it was relatively difficult to sell, the home was in essence a forced savings plan that increasingly tied the interests of the borrower to those of the community. However, in recent years a confluence of factors—falling interest rates, new types of mortgages, the elimination of the once-standard 20 percent down payment, and a perverse tax structure that provides the greatest benefit to those that borrow the most—have transformed the home from an illiquid asset into just another consumer good. Home owners now have less equity in their properties, and, as a result, the social benefits of home ownership have decreased; their ties to their communities have been weakened.

Rosner, supra note 14, at 12.

\textsuperscript{200} See BAXANDALL \& EWEN, supra note 1, at 89–94 (discussing how Senator Joseph McCarthy made New Deal housing policy a major point of attack).

\textsuperscript{201} See id. at 66, 92–93.

\textsuperscript{202} See id. at 94 (quoting Lee F. Johnson, The Housing Act of 1949 in Your Community, in NATHAN STRAUS, TWO-THIRDS OF A NATION: A HOUSING PROGRAM 207, 207 (1952)) ("Real estate propaganda used racism as another fear tactic, specifically pointing out that ‘certain “undesirable” persons—i.e. Negroes or Mexican-Americans—would be eligible for public housing and would therefore become neighbors of the established residents.’").
this priority, at least in part. HUD’s budget has been decreasing over time, and the number of new public housing units built each year has declined as well. The reason for this decline is that the federal government has focused on emergency shelter housing instead of rental housing. Even so, and while homeless assistance is certainly a very important priority, this emergency assistance has never been sufficient to address even the level of needed emergency shelter that exists in this country.

While the preceding paragraph may create an impression that the federal government simply has not made housing issues a priority or lacks the funding to provide greater assistance to renters, such an impression would be inaccurate. At the same time that rental assistance has declined precipitously and homeless assistance continues to be inadequate, the federal government is funding homeowner subsidies at ever-higher levels that exceed HUD’s entire operating budget. Perhaps the most stunning testimony on this point comes from Cushing Dolbeare:

203. W. REG’L ADVOCACY PROJECT, WITHOUT HOUSING: DECADES OF FEDERAL HOUSING CUTBACKS, MASSIVE HOMELESSNESS, AND POLICY FAILURES i (2006), http://www.wraphome.org/downloads/without_housing.pdf (“In 1978, HUD’s budget was over $83 billion. In 1983, HUD’s budget was only $18 billion... HUD budget authority in 1978 was 65% more than its 2006 budget of $29 billion.”).


205. See id. at ii–iii, 9–10 (discussing the Housing First program). The Western Regional Advocacy Project also states that “[w]hile emergency, transitional, and supportive housing programs have indeed rescued some individuals from homelessness, the lack of truly substantial funding for affordable housing production—which is the causal epicenter of contemporary homelessness—continues to reverberate throughout the United States.” Id. at iii.

206. Id. at i (“Since 1987, annual [Stewart B.] McKinney [Act] homeless assistance has never been more than $1.4 billion.”). The authors estimate the annual need for affordable housing, not just homeless assistance, at $54 billion. Id. at iv.

207. Id. at iii (citing BIPARTISAN MILLENNIAL HOUS. COMM’N., U.S. CONG., MEETING OUR NATION’S HOUSING CHALLENGES 101 tbl.8 (2002)) (“Over the past 30 years, annual tax expenditures for homeowner subsidies have grown from less than $40 billion to over $120 billion per year. Every year since 1981, tax benefits for homeownership have been greater than HUD’s entire budget and have dwarfed direct expenditures for programs that benefit low-income renters.”); see also Piteoff, supra note 3, at 1 (noting that tax deductions for mortgage interest and property taxes “total about $100 billion each year, more than three times HUD’s current annual budget to support affordable housing”). Peter Dreier reports similar numbers: homeowners received a $103.1 billion subsidy in 2000, comprising $61.5 billion in deductions on mortgage interest payments, $22.6 billion in deductions on property tax payments, and $18.9 billion in deferrals of capital gains on home sales. Peter Dreier, Federal Housing Subsidies: Who Benefits and Why?, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 105, 107 (Rachel G. Bratt et al. eds., 2006). Meanwhile, expenditures on HUD-assisted housing, which almost entirely goes to low-income households, totaled only $30.8 billion. Id. at 111.
Benefits from federal housing programs are so skewed that the total of all the assisted housing payments ever made under all HUD assisted housing programs, from the inception of public housing in 1937 through 1980, was less than the cost to the federal government of housing-related tax expenditures in 1980 alone.  

There is some indication that these subsidies were not part of the government’s carefully crafted agenda to create higher rates of homeownership, but rather took on a life of their own. Americans can even use some HUD programs that the government originally intended to support rental housing to purchase a home. Thus, it would not be accurate to say that the federal government is not spending money on housing or that it is focusing these efforts on the neediest citizens. Instead, the citizens who receive most of the country’s housing subsidies are homeowners and especially higher-income homeowners. For example, the National Coalition for the Homeless reports that,


209. Dolbeare, supra note 208, at 65–67 (quoting Federal Tax Policy and Urban Development: Hearing Before the Subcomm. on the City of the H. Comm. on Banking, Finance and Urban Affairs, 95th Cong. 20–21 (1977) (statement of George Peterson, Director, Public Finance Programs, The Urban Institute)). (“The laws establishing mortgage interest and property tax payments as allowable deductions from homeowner incomes were adopted by Congress during the Civil War, when the treatment of housing costs was debated briefly before passage of the emergency tax act which helped to finance the North’s war effort. Since that time, the country has merely applied old definitions of taxable income in its successive income tax laws, despite a total transformation in the personal income tax system. The longstanding homeowner deductions did not take on true significance until World War II, when the marginal federal tax rate paid by most Americans was suddenly jumped from 4 per cent to 25 per cent, making the deductibility of homeowner expenses far more valuable than it previously had been and in the process creating an important after-tax gap between homeownership and rental costs.”) Id. at 65–67.

210. Pitcoff, supra note 3, at 2 (citing Section 8 vouchers and Home Investment Partnership (HOME) and Community Development Block Grants as examples). Pitcoff notes that “[f]orty-nine percent of HUD’s HOME program funds were used for rental housing in 1995; that number declined to 36 percent by 1997.” Id.

211. W. REG’L ADVOCACY PROJECT, supra note 203, at iii (citing CUISHING N. DOLBEARE ET AL., CHANGING PRIORITIES: THE FEDERAL BUDGET AND HOUSING ASSISTANCE 1976–2005, at 7 (2004), http://www.nlihc.org/doc/cp04.pdf) (“In 2004, 61% of all federal housing subsidies went to households earning over $54,788, while only 27% of those subsidies went to households earning under $34,398. In 2005, federal homeowner subsidies totaled over $122 billion, while HUD affordable housing outlays were only $31 billion—a difference of more than $91 billion.”). The authors go on to state, “Current federal expenditures on homeownership tax deductions are nearly twice the budget authority that the Department of Housing and Urban Development had before it was decimated in the 1980s.” Id. at 3 (citing DOLBEARE ET AL., supra, at A-1).

212. According to the Western Regional Advocacy Project, the mortgage interest deduction for homeowners is the second largest single break in the entire tax code and the wealthy receive the bulk of this benefit. A recent bipartisan
for every one dollar spent on low income housing programs, the federal treasury loses four dollars to housing-related tax expenditures, 75% of which benefit households in the top fifth of income distribution. In 2003, the federal government spent almost twice as much in housing-related tax expenditures and direct housing assistance for households in the top income quintile than on housing subsidies for the lowest-income households.\footnote{213}

Interestingly, many people do not view monies paid to homeowners as subsidies; instead, commentators often highlight rental subsidies despite their much smaller amount.\footnote{214} To address the imbalance between rental assistance

presidential advisory panel on taxation found that over 70% of tax filers received no benefit from mortgage interest deductions, and only 54% of taxpayers who pay interest on their mortgages received this tax benefit. More than 55% of the federal expenditures under this program went to 12% of taxpayers with incomes greater than $100,000—often to finance luxury or second homes. The presidential panel found that these mortgage interest breaks, which allow for deductions on mortgages up to one million dollars for first or second homes, exceed what is necessary to encourage increased homeownership in society or to help people buy a first home.

\textit{Id. at 25 (citing EXECUTIVE OFFICE OF THE PRESIDENT; PRESIDENT'S ADVISORY PANEL ON FED. TAX REFORM, SIMPLE, FAIR, AND PRO-GROWTH: PROPOSALS TO FIX AMERICA'S TAX SYSTEM 27, 72–74 (2005), http://www.taxreformpanel.gov/final-report).}

\textit{213. NAT'L COAL. FOR THE HOMELESS, WHY ARE PEOPLE HOMELESS? (2008), http://www.nationalhomeless.org/publications/facts/why.pdf (citing Cushing N. Dolbear, \textit{Housing Policy: A General Consideration}, in \textit{NAT'L COAL. FOR THE HOMELESS, HOMELESSNESS IN AMERICA} 34 (Jim Baumohl ed., 1996); CTR. FOR CMTY. CHANGE ET AL., \textit{THE CRISIS IN AMERICA'S HOUSING: CONFRONTING MYTHS AND PROMOTING A BALANCED HOUSING POLICY} 9 (2005), http://www.nlihc.org/doc/housingmyths.pdf); \textit{see also} Pitcoff, supra note 3, at 1–2 ("Since the Mortgage Interest Deduction and related benefits are available only to those with incomes high enough to itemize deductions, 63 percent of these deductions goes to those in the top one-fifth of the income distribution, and only 18 percent goes to those in the bottom fifth.").

214. David Freund notes that historically these conversations sometimes took on racial overtones that were tied in with segregation. \textit{Freund, supra note 119, at 206 ("[W]arnings about the perils of subsidized housing suggest how whites' understanding of the suburban property market was shaping their defense of racial segregation. Whites genuinely believed that their good fortune owed nothing to federal largesse. [Conversely,] [i]n the 1960s they believed that blacks posed a categorical \textit{economic} threat to their property. Thus they insisted upon their right to exclude, purely on economic grounds.".). Freund makes a similar point in a later chapter:

Whites insisted that blacks' inability to maintain their property had forced the federal government to intervene on their behalf in the housing market. Public housing and housing subsidies, according to this narrative, were symptomatic of black people's failures, not of the failure, let alone the discriminatory intent, of public policy and private practices. Of course, to insist that public housing represented an "unwarranted" government intervention required whites to believe that \textit{their} homes and communities, by contrast, were not beneficiaries of state largesse.

\textit{Id. at 359.}
and homeowner subsidies, some housing advocates have urged the federal government to limit mortgage interest deductions,\textsuperscript{215} which housing advocate and scholar Florence Wagman Roisman has called a regressive tax program.\textsuperscript{216} In addition, these subsidies may actually be hurting homeowners by inflating housing costs.\textsuperscript{217} Finally, it is clear that privileging homeownership has encouraged the construction of single-family homes in place of affordable rental housing, sometimes in spite of greater need for the latter.\textsuperscript{218}

**D. Step Four: Remembering and Valuing Renters**

Addressing the current housing crisis and the market imbalance will most likely require increased and better quality rental housing\textsuperscript{219} made available at more affordable rates,\textsuperscript{220} and more conservative lending to potential homeowners. There have been some notable prior attempts to make rental housing more attractive, including the Greenbelt development, which was founded in Maryland in the late 1930s. Even so, and while the Greenbelt

\begin{itemize}
\item \textsuperscript{215} Dolbeare, supra note 208, at 61.
\item \textsuperscript{216} See, e.g., Florence Wagman Roisman, Legal Strategies for Protecting Low-Income Housing, in AMERICA'S HOUSING CRISIS, supra note 208, at 78 (“These homeowner deductions are highly regressive: they help only people with incomes high enough both to own homes and to justify itemizing deductions.”).
\item \textsuperscript{217} W. REGIONAL ADVOCACY PROJECT, supra note 203, at 3 (“These tax deductions serve to artificially inflate the cost of housing, especially at the high end of the market.”).
\item \textsuperscript{218} Dolbeare, supra note 208, at 65 (“[Homeowner tax preferences] distort the housing market choices in favor of residential construction suitable for homeowners, creating a demand for more single-family homes and apartments for purchase than for rental units.”).
\item \textsuperscript{219} Dr. Dean provides some good ideas on this point:
\begin{itemize}
\item One step . . . would be to replace the poor showing which rental housing makes in competition with home ownership by a more vigorous rental appeal to home seekers. Apparently many families buy homes because, from their point of view, there is no decent alternative . . . . If families were shown places to rent where provisions were made for children, recreation, community life, and the aesthetic demands which only the harmony of green, open spaces and well-planned buildings can provide, they might bypass the temptations of a second-rate home ownership.
\end{itemize}
\item \textsuperscript{220} The National Coalition for the Homeless has noted that “[d]eclining wages . . . have put housing out of reach for many workers: in every state, more than the minimum wage is required to afford a one- or two-bedroom apartment at Fair Market Rent.” NAT'L COAL. FOR THE HOMELESS, supra note 213. The Coalition also notes that “[a]fter the 1980s, income growth has never kept pace with rents.” Id. at 4 (citing CTR. FOR CMTY. CHANGE ET AL., supra note 213, at 6).
\end{itemize}
initiative had some positive attributes from which contemporary policymakers might learn and draw ideas, it is important not to overlook the development’s anti-minority early history. Additionally, the nation’s current stock of rental housing is relatively expensive: the most recent U.S. Census data finds that the national median monthly rental rate is $789. Other research suggests that renting has become less and less affordable since 2000. The 2000 Census revealed that several groups of renters, most notably householders under twenty-five, householders seventy-five and older, and single female householders, paid rental rates at a median rate of more than 30% of household income. In addition, the supply of rental housing has been insufficient for decades and experienced a particular decline in 2005 and 2006, according to

221. See Baxandall & Even, supra note 1, at 70, 77 (describing the development as “a real alternative to individual private home ownership” that “embodied the ideal that democratic government should ensure the right to a decent dwelling in a livable environment,” but noting that all residents were white).

222. U.S. Census Bureau, 2007 American Community Survey 1-Year Estimates, Median Monthly Housing Costs for Renter-Occupied Housing Units, http://factfinder.census.gov/servlet/GRTSelectServlet?ds_name=ACS_2007_1YR_G00_ (follow “R2514: Median Monthly Housing Costs for Renter-Occupied Housing Units” hyperlink) (reporting a nationwide median rent of $789). The highest median rent is Hawaii, at $1,194, and the lowest is North Dakota, at $516. Id.

223. Bruce Katz & Margery Austin Turner, Rethinking U.S. Rental Housing Policy: Build on State & Local Innovations 3 (2008), http://www.brookings.edu/papers/2007/-~/media/projects/opportunity08/PB_Housing_Katz.pdf (“[G]ross rents . . . have been growing faster than inflation, while the median renter’s monthly income has declined 7.3 percent since 2000. As a result, average gross rents as a share of renter income have grown from 26.5 percent in 2000 to 30.3 percent today.”).

224. See generally Kamenetz, supra note 167 (compiling data on various affordability issues of particular interest to younger Americans from interviews with a variety of sources). Kamenetz notes that, “[b]etween 1995 and 2004, according to the U.S. Census, the percentage of people under age twenty-five who owned homes leapt 59 percent, while the percentage among those twenty-five to twenty-nine rose 17 percent.” Id. at 145. Even so, “under-thirty-year-olds remain far less likely to own a home than the population at large.” Id.

225. U.S. Census Bureau, Housing Costs of Renters: 2000, at 4–5 (2003), http://www.census.gov/prod/2003pubs/c2kbr-21.pdf (“When gross rent equals or exceeds 30 percent of household income, renters are often considered to be financially burdened.”). The report found that, “in 2000, rental housing was less affordable than in 1950 but more affordable than in 1990.” Id. at 8.

226. See Baxandall & Even, supra note 1, at 109–10 (quoting Nathan Straus, The Seven Myths of Housing 74 (3d ed. 1946)) (noting that the supply of new rental units had declined from the 1920s to the late 1940s such that many persons who might prefer renting to purchasing a home were not able to make that choice). As a report by the National Coalition for the Homeless notes, “[t]he gap between the number of affordable housing units and the number of people needing them has created a housing crisis for poor people. Between 1973 and 1993, 2.2 million low-rent units disappeared from the market.” Nat’l Coal. for the Homeless, supra note 213; see also Dearborn, supra note 3, at 43 (noting that preferential tax treatment of homeowners “prompt[s] increase[ed] production of single-family, suburban housing development[s]”). Dearborn goes on to describe the resultant “twenty years of decline in
U.S. Census Data. Builders seemed to have focused on higher rental units during this period, even at a point that outstripped demand. Thus, it appears that, while there is greater demand than supply at lower rental rates, there is greater supply than demand at higher rental rates. The National Coalition for the Homeless and others have made the intriguing suggestion that perhaps the government should give lenders incentives to convert foreclosed properties into affordable rental units. In addition, the Neighborhood Stabilization Act of 2008 will direct $15 billion for the purpose of assisting states in recovering foreclosed property to redirect it toward creating affordable housing and subsidized housing stock.”

227. U.S. Census Bureau, Survey of Market Absorption of Apartments, Oct. 17, 2008, http://www.census.gov/hhes/www/housing/soma/annual07/analyticaltxt.html [hereinafter Census Apartment Survey] (“[T]here were fewer unfurnished rental units built in 2006 and 2005 than in every year since the 104,000 constructed in 1994.”). The report further finds that “[f]ifty-eight percent of the unfurnished rental apartments built in the United States in 2006 were absorbed (rented) within the first 3 months of completion, 76 percent within 6 months, 87 percent within 9 months, and 92 percent were rented within a year of completion.” Id. Although the Census Bureau report does not comment on the absorption data, a report from the National Association of Home Builders suggests that a 58% three-month absorption rate would be considered disappointing. Dean Crist, Quarterly Update: Trends, Rental Statistics, and a Look at Condos, MULTIFAMILY MARKET OUTLOOK (Nat’l Ass’n of Home Builders, Washington, D.C.), Aug. 14, 2003, http://www.nbnews.com/outlook/issues/2003-08-14 (noting that three-month absorption rates “did not fall below 70 percent, and reached 80 percent on several occasions” between 1993 and 2000).

228. Census Apartment Survey, supra note 227. The survey states as follows: “In 2006, about 40 percent of unfurnished apartments rented for $1,150 or more—a greater proportion than any of the other asking-rent categories.” The survey further reports that “[t]he 3-month absorption rate for units renting for $1,150 or more was 50 percent, which was lower by about 25 percentage points than the rate for units renting for less than $750 and by about 17 percentage points than units in the $750–$849 asking-rent range.” Id.

229. See id.

230. See, e.g., Roisman, supra note 216, at 94–95 (“The government can provide a double service now, by offering assistance to the homeowners [in foreclosure], permitting them and their families to continue to live in their homes as long as they please, providing only that when the residents choose to leave, the government has control of the housing and uses it to house other needy people.”); Ernst & Goldstein, supra note 178, at 279 (“[Foreclosed properties] can be preserved at a minimum as affordable rentals for local residents, or, if at all possible, as lease-purchase opportunities for families that have recently lost their home.”); Mason, supra note 67, at 4 (“One way to preserve neighborhoods . . . is to sell the foreclosed homes and have them reoccupied as soon as possible after sale. Sometimes, that can be achieved by leasing the home back to the existing occupant.”) (emphasis omitted)); BOB ERLENBUSCH ET AL., NAT’L COAL. FOR THE HOMELESS, FORECLOSURE TO HOMELINESS: THE FORGOTTEN VICTIMS OF THE SUBPRIME CRISIS: A NATIONAL CALL TO ACTION 10 (2008), http://www.nationalhomeless.org/housing/foreclosure_report.pdf (recommending that lawmakers provide local, state, or federal incentives to encourage lenders to convey foreclosed properties they acquire to nonprofit affordable housing entities at sharp discounts).

231. H.R. 5818, 110th Cong. (as referred to S. Comm. on Banking, Housing, and Urban Affairs, May 12, 2008).
rentals.\footnote{232} The Brookings Institution has also called for state and local governments to get involved on the supply side of affordable rental housing through incentives for private actors\footnote{233} and the federal government to “encourage state and local governments to be ‘affordable housing friendly’ in the design and application of their regulatory regimes.”\footnote{234} Along these lines, perhaps a more basic priority should be for U.S. policymakers to make renters a serious priority. After all, “[o]ne-third of all Americans—more than 36 million households—rent.”\footnote{235}

In conclusion, and to reference a favorite television show, perhaps the American dream needs an \textit{Extreme Makeover: Home Edition}\footnote{236} in acknowledgement of the fact that homeownership is neither necessary nor sufficient to guarantee enjoyment of many of the benefits that have historically been associated with it.

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\begin{itemize}
\item \footname{232} Carr & Davidoff, \textit{supra} note 168, at 287.
\item \footname{233} See KATZ \& TURNER, \textit{supra} note 223, at 6–7 (“Using both regulatory policies and supply-side subsidies, states and localities should create incentives that induce private-market actors (both for-profit and non-profit) to produce and maintain rental housing that is affordable for people with moderate incomes.”).
\item \footname{234} \textit{id.} at 10 (recommending that “[t]he federal government . . . deploy a combination of carrots and sticks to effectively guide state and local action”).
\item \footname{235} \textit{id.} at 2.
\item \footname{236} This popular show is another reflection of the societal importance of “home” and the expectation that changing a family’s living environment can change the lives of family members in significant ways.
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