The Grapes of Rent: A History of Renting in a Country of Owners

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Abstract

In a recent study of neighborhood development, Goetz and Sidney (1994) found an "ideology of property" separating the interests of homeowners from the interests of lower-income tenants. According to this ideology, owners are better citizens than renters, and therefore public policy should benefit owners at the expense of renters. In spite of continuing research that shows this allegation to be false, a widespread bias against renters persists. Why is this so?

A deliberate bias favoring property owners and harming renters has been prominent in American public policy from colonial times to the present, although its exact form has varied over time—property requirements for suffrage, land redistribution schemes promising ownership but delivering tenancy and poverty, and tax policies that privilege ownership and punish tenancy. Public policy that stigmatizes renters represents a bias as pernicious as other biases of gender, race, religion, and nationality.

Keywords: Rental housing; Property; Tax policy

> Land gives so much more than the rent. It gives position and influence and political power, to say nothing of the game.
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> —Anthony Trollope's Archdeacon Grantly in *The Last Chronicle of Barset* (1932, 178)

The bias of ownership

In a study of neighborhood development in Minneapolis, suggestively titled "Revenge of the Property Owners," Goetz and Sidney (1994) document the conflict between property owners and lower-income tenants. They found that community organizations were dominated by people who espoused an "ideology of property," a key point of which is that too much rental housing leads to neighborhood decline. Affordable housing policies for renters were to be avoided, according to this dominant faction, because they increase the neighborhood's concentrations of both poverty and transients who have no stake in the neighborhood. Because property owners are less transient and have a stake in the neighborhood's long-term well-being, policy should therefore be crafted to provide benefits for them, halting middle-class flight and attracting investment and stakeholders. This ideology—that owners are better citizens than renters—is a modern manifestation of a bias hardened in stereotypes that has misguided American public policy from colonial times to the present.

Scholars continue to produce evidence to debunk these myths.[1] Rohe and Stegman (1994) studied the impact of homeownership on political and social involvement in Baltimore. They focused on a group of home buyers before and after their purchase of a home, comparing them with a control group of continuing renters. They found that the home buyers were less likely to be neighborly than the continuing renters. Although the home buyers were more likely to participate in neighborhood and block associations, they did not participate more than renters in other types of community activities. Moreover, those home buyers who bought primarily for investment purposes rather than for shelter and amenity reasons were no more likely to participate in social and political affairs than renters (Rohe and Stegman 1994).

Community activism was studied in public housing projects and their stressed inner-city neighborhoods in two New Jersey cities by Greenberg (1998). He found that ownership made no statistically significant difference in discriminating between those who were very active in community affairs and those who were moderately active. However, it did play a role in discriminating between those who were very active and those who were inactive: The inactive people tended to be owners (Greenberg 1998).[2]

Indeed, Kemeny and Marcuse have each put forward the thesis that homeownership fosters values of privatization that inhibit the desire for the public involvement so often deemed characteristic of homeowners (Kemeny 1981; Marcuse 1987). Lundqvist (1998) has performed extensive testing of the impact of tenure form on various kinds of political participation in Sweden, finding no significant substantiation of the thesis except that political party membership is significantly higher among homeowners. However, he finds that the high correlation of education and income with homeownership confounds the analysis and notes that the ideology that property

[1] For extended treatments see Perin (1977), Heskin (1983), and Čapek and Gilderbloom (1992).

[2] Oates (1998) draws attention to an extensive body of evidence of a "renter illusion" that correlates higher public spending in communities with higher proportions of renters. The renters supposedly vote for more public spending under the illusion that they do not pay the property tax.

ownership makes good citizens is "deeply engrained in Conservative thinking the world over" (p. 217).

In this article, I argue that from colonial times to the present, a bias in favor of property ownership has been prominent in American public policy. Over time, this bias has manifested itself in several ways: property requirements that denied renters the rights of suffrage in colonial times, land distribution schemes that aggrandized ownership rather than settlement, and finally a variety of regressive federal and state tax policies in which homeowners and the real estate fraternity are enormously subsidized by tenants who are excluded from the largesse they help to supply.

The colonial heritage: Property, taxes, and suffrage

A strong historical connection exists among landed property, the property tax, and political representation in the United States. According to our current theory and practice of property tax law, property tax is a tax on the land and improvements on it themselves, not the property owner. This disembodiment of property was not the case when the English first employed the property tax. The concept of apportioning taxes according to ability to pay, or "substance," from which our system derived, "was widely accepted as early as the fourteenth or fifteenth century" in England (Fisher 1996, 12). The concept of taxing possessions rather than people was not generally accepted until perhaps the 17th century because a person of substance without land was virtually inconceivable then.

Property measured a person's substance, and taxes were levied on that basis. Hence, lists of the number and quality of property holdings were kept. As the modern concept of a person with great income but without large landed property holdings became more common, these lists took on a life of their own. The tax came to be regarded as a tax on the properties on the lists rather than on the persons who owned them (Fisher 1996).

There is an irony in the way we have transformed yet perpetuated this social relationship. If someone were to have stood up in a local town meeting in colonial New England and said, "I am a respected citizen," everyone would have known, by implication, that he or she had property and paid taxes. Today people commonly stand up in local public meetings and declare, "I am a taxpayer!" and everyone is supposed to conclude that these are propertied people deserving of respect. The implication is that some people do not pay property taxes and therefore have not earned respect. Ownership means privilege over nonownership with reference to the thing owned.

That is fundamental to the notion of property rights (Christman 1994). If everyone is an owner (of some comparable thing), then there is a basis of equity. But if there is a class of owners and a class of nonowners, then a basis of inequity exists that may not be grounded in any other personal characteristics and behavior other than the act of owning.

In general, in colonial America, "the tax laws overburdened the politically impotent and favored the politically powerful, especially the landed classes" (Becker 1980, 11). Until the American Revolution, class distinctions required that a person have a good deal more than property to qualify to vote. Commonly excluded from the privileges of suffrage were women, Catholics, various non-English Europeans, African Americans, Native Americans, and the poor. Political historian Rogers Smith (1997, 58) tells us:

> The colonists also maintained English class hierarchies in legislating the political rights of even their British members. The "one outstanding and universal requirement" for suffrage was some type of landed property qualification, which disfranchised servants and laborers. Colonial America thus remained in many ways a medieval political world, with power structures defined by titles to estates more than commitments to self-governance.

Only 5 of the 13 colonies relaxed their initial property requirement to include personal property as well as real property. Property, like nationality, race, gender, and religion, was a characteristic of the person, a mark of who the person was. It was evidently less important, however, than racial and gender caste. Ownership of property for most Catholics, all slaves and most ex-slaves, all women, various ethnic groups, and Native Americans did not give them access to full citizenship or the right to vote.

Property and tenancy in the confederation

In the period of confederation (1776 to 1789), most white males had property and thus could vote. That still represented only about one in six inhabitants (Smith 1997). Nonetheless, states increasingly made efforts to replace land requirements with either personal property or taxpaying as the new test for suffrage. Smith (1997, 100) suggests that

> [T]he new property tests are better seen as signs of America's eagerness to become a more commercial society. Defenders of the new tests argued that they marked voters as proven contributors to the public weal and sufficiently propertied to act respon-

> sibly on financial issues, even if they did not provide republican proofs of economic self-sufficiency. For many Americans excited by liberal visions of commercial prosperity, those warrants sufficed. Indeed, at times Americans described property as "an interest in its own right," rather than a precondition for independent republican citizens.

We see here the development of property as a concept divided between urban and rural interests. Rural interests saw property as the yeoman farmer's source of work and character—personal property that was cared for and valued as a means to produce food and sustain life. Urban interests saw property as something to be bought and sold for a profit, a commodity with a life (market) of its own, "an interest in its own right." The republican virtues of autonomy and independence associated with owning and fruitfully tilling one's own land spoke nobly of the necessity of land for liberty in the Lockean argument against the feudal patterns of landownership by the European aristocracy. But the liberty argument had its dark side as the new American aristocracy belittled its landless in turn. "Is it not . . . true," wrote John Adams in 1776, "that men in general, in every society, who are wholly destitute of property, are . . . too dependent on other men to have a will of their own? . . . Such is the frailty of the human heart, that very few men who have no property, have any judgment of their own" (Alexander 1997, 31).

In her history of property and the making of the U.S. Constitution, Nedelsky shows how James Madison and the Federalists defined the problem of good government as a matter of protecting the rights of both people and property. No problem of class conflict is inherent in the goal of protecting people, because rich and poor alike are people and share this need. But when it comes to protecting property, those without it could not be counted on to share in its protection as long as they had none (Nedelsky 1990). The problem, to paraphrase Nedelsky, was, How could we have liberty and justice for all but property only for some? The Madisonian solution was to use property ownership as a boundary or barrier to government infringement on property by ensuring that the majority of citizens, who owned none, would not be eligible for government service, thus keeping the landed minority autonomous from the majority and its potential control of the vote.

The property test for suffrage gradually fell away. By 1828, 14 states still had either taxpaying or property ownership as a test for suffrage. But the language of the debate in New York state in 1821, Heskin (1983) points out, is remarkably similar to the heated debates between landlords and tenants of the 20th century. The opponents of suffrage for tenants characterized landowners as frugal, orderly, moderate, honest, and independent men to whom "we owe all the embellishments and comforts and blessings of life. Who builds our churches? Who erects our hospitals? Who raises our school houses? Those who have property" (Heskin 1983, 6). The landless were excoriated as "ringed and speckled, motley, idle and profligate" (p. 6). Nothing was to be gained by giving them the vote. They had not earned it. They had no property.

In 1830, only 6 of the 29 states and territories still had property requirements, although these 6 were important states: Rhode Island, Connecticut, New Jersey, Virginia, Tennessee, and South Carolina (Henretta et al. 1993). By 1860, only South Carolina retained similar restrictions. Today, property ownership is no longer a requirement for citizenship or the right to vote and participate fully in elections. Of course, the legal barriers built on gender, national origin, poverty, religion, and race are all down as well. But as de facto barriers to political, social, and economic participation, these hurdles remain all too pervasive in our society, and the property bias against renters is among the least recognized and understood.

Land sales and homesteads: Privatization for ownership

Federal efforts to promote landownership also go back to the colonial era. One form has been the distribution of land to war veterans, a practice that began in colonial times and was repeated after the Revolutionary War and through the Civil War.[3] This benevolence, in part, was a desire to "forestall the evils of a collection of landless, disgruntled ex-soldiers by helping them become landowners" (Mitchell 1985, 40). Once again, the two-sided coin of ownership is evident. On the bright side are liberty, independence, and self-sufficiency; on the other side are the shadow of dependency and the potential for lawlessness for those who have no stake in or pride of ownership.

But land distribution to war veterans was but a drop in the bucket. The federal government found itself the steward of a supply of land constituting 80 percent of the nation's territory while the eastern shore overflowed with crowded populations demanding farms and freedom to expand territorially. Almost all of Illinois, Indiana, Michigan, Ohio, Wisconsin, Alabama, Mississippi, and Tennessee

[3] For example, those who served in state militias during the Revolutionary War were promised farmsteads, the size of which was to be determined by their rank. Eastern states, such as Connecticut, claimed military reserve lands west of the Appalachian mountains, in what was then technically British territory, for use as payment to those who served in the colonial army. The Western Reserve, a tract of land in northeastern Ohio, has its settlement origins from Connecticut war veterans who took advantage of the state offer of land in exchange for military service.

had been ceded to the federal government by 1781 (Popper 1984). The Louisiana Purchase from France in 1803 more than tripled the inventory of federal lands. The Oregon Compromise of 1846, the Mexican Cession of 1848, and the Alaska Purchase of 1867 piled it on. "There was born," writes Frank Popper, "the largest regional development project in American history, the white settlement of the West" (1984, 120). In 1836, the federal government received 36 percent of its revenue from the sale of public lands. Over time the terms of sale became more and more liberal and instrumental to the accumulation of lands by speculators. "Frontier land was the stock market of the day" (Geisler 1984, 10).

But even then the distribution of the dividends was steeply skewed. Reservations for Native Americans were three times larger in 1873 than they are today. Under the Dawes General Allotment Act of 1887 and the Curtis Act of 1887, many reservations were divided into small family allotments, privatized in a manner similar to that encouraged today in Third World countries by the International Monetary Fund and the World Bank. The land in excess of the individual allotments was then sold to non–Native Americans. On some former reservations, white land owners now outnumbered Native American landowners (Ortiz 1984).

The slogan "40 acres and a mule" fired the imagination of freed slaves after the Civil War. But the concept, to the extent that it was implemented at all, was effective only in the cases of about 40,000 freed slaves on the Sea Islands of South Carolina and Georgia, resulting from a special field order of General William Sherman (McDougall 1984). The dominant pattern for African Americans was that established by the Bureau of Refugees, Freedmen, and Abandoned Lands, which arranged leases of 40 acres each and established wage and pay scales. However, after Andrew Johnson pardoned many Southerners and restored them to the African-American–occupied lands, the new system looked formidably like the old one:

> The contract labor system and the return of the former slave masters kept the Black man subservient and resulted in the system we know today as sharecropping. Sharecropping was much like slavery; Black people were bound again to land owned by non-Blacks. When the Bureau closed in 1872, it had reestablished and solidified the oppressive land tenure patterns which existed in the antebellum South. (McDougall 1984, 174)

Even the idea of "40 acres" sounds like something of a fraud when one contrasts it with the Homestead Act of 1862. Lincoln declared, "I am in favor of settling the wild lands into small parcels so that every poor man may have a home" (Robbins 1942, 206). The law originally offered 160 acres essentially for free to a family that would settle on it for 5 years. There were 552,000 original claims over 20 years, but less than half of these managed to fulfill the 5-year requirement. The resulting status of the would-be yeoman was less than the dream had promised. Geisler (1984, 19) sums up the heritage of the period:

> Crop liens and farm debt were intractable, as were the foreclosures and land centralization they hastened (Goodwyn 1980). The agricultural census showed that tenancy rose dramatically between 1880 (25 percent of all farms) and 1925 (35 percent) and continued to climb for the next fifteen years. By 1935 some 6.8 million people inhabited America's farmland in seeming fulfillment of the Jeffersonian ideal. Yet nearly half were tenants. Where the twin faces of tenancy and landlordism appeared, so did socialist ferment.

The condition of tenancy reflected poverty, debt, and socialist—that is, un-American—political sympathies. Tenants were also held responsible for land abuse:

> The *Farm Tenancy Report* of 1937, the 1938 *Yearbook of Agriculture,* and scholarly research of the period viewed tenancy as the source of soil erosion. Such blaming the victim, though later abandoned (Fast 1981), may explain why the New Deal land reformers in Washington saw tenants, rather than the prevailing tenure system, as the problem. . . . The late Depression years saw the demise of the Farm Security Administration through red-baiting and conservative assaults on its budget (McConnell 1969). Its replacement, the Farmers Home Administration, embodied new federal priorities. Rural landownership as a national concern was supplanted with urban and particularly suburban homeownership expansion—a shift that can be traced to President Hoover's Conference on Home Building and Home Ownership in 1931, foreclosure moratorium laws (such as the 1934 Frazier-Lemke Act), and a revolution in credit fostering the illusion of homeownership and fulfillment of the American dream. (Geisler 1984, 23–24)

A gradual change of strategy: From giving land away to giving incentives to buy

The transformation of the Jeffersonian ideal—the yeoman farmer as the bearer of civic virtue—into the suburban homeowner on what Jackson (1985) has dubbed the "crabgrass frontier" began during the Civil War with the first income tax experiments that provided special tax benefits to homeowners:

> In the Revenue acts of 1864 and 1865 [income] taxpayers were permitted to deduct interest expense and local tax payments. Within these, two categories of expenses related to homeownership: mortgage interest payments and property taxes. The policy was restated in the first statute implementing the 1913 constitutional amendment establishing the Federal income tax system existing today. The policy has remained virtually unchanged. (U.S Department of Housing and Urban Development 1974)

Carliner (1998), in a recently published article in this journal, argues that these policies should not be considered as evidence of a bias in favor of homeownership because "the deduction of interest expense was not limited to home mortgage interest and the deduction of local and state taxes was not limited to property tax" in these earliest versions of the income tax (p. 301). Indeed, he points out, the distinction between mortgage interest and other consumer interest was not made until the 1986 Tax Reform Act. This argument ignores several important points. First, as Mitchell (1985) points out, "Every President, from Herbert Hoover [not to mention Lincoln] who started the ball of federal housing policy rolling, to Ronald Reagan who slowed it down, has acknowledged that homeowners are the backbone of the nation and declared his fervent wish that every American household so desiring might join the ranks" (p. 40). Second, Carliner does not take into account the share of state and local tax collections in the early 20th century taken up by the property tax burden. Today, property taxes are about 30 percent of state and local tax collections (Aronson and Hilley 1986), but in 1913 the property tax was 79 percent of state and local tax collections (U.S. Department of Commerce 1975). The income tax exemption of state and local taxes may not have been limited to the property tax, but there was little else to those taxes and hence little incentive to discriminate between them. Third, and similarly, there was less need to distinguish between mortgage debt interest and consumer (nonmortgage) debt interest. In 1912, residential nonfarm mortgage debt was $4.9 billion and consumer debt was $1.6 billion (U.S. Department of Commerce 1975). In 1986, tax expenditures for mortgage interest on owner-occupied homes were $30.4 billion, and tax expenditures for interest on consumer credit were $17.9 billion (*American Housing Survey 1995*). We had gone from 33 cents of consumer debt for every dollar of home mortgage to 59 cents of consumer debt tax exemption per dollar of mortgage debt tax exemption, nearly doubling consumer debt's share of the total. It is little wonder that the line was finally drawn between the two to clarify the homeownership policy. The point is that at the time of the establishment of the income tax, there was in fact a near identity between the home mortgage and consumer interest payments and a near identity between the property tax and state and local tax revenues. The property bias was plain to see in these early identities and clarified in subsequent changes.

In 1951, in response to the Korean War and the hardships of mobilization, Congress added a third benefit to homeowners, the deferred capital gains tax provisions. In 1964, to relieve the burden of accumulated capital gains on elderly homeowners, any gains under $20,000 were exempted from the tax. That limit has been raised since, most recently in 1997 to $500,000 for a married couple; the exemption can be claimed every two years and no longer requires sellers to buy an equally or more expensive housing unit before reaching the age threshold for cashing out. The National Multi Housing Council (1997) has estimated that these changes, which no longer require moving up before moving out of homeownership, may in fact increase the demand for rental housing, particularly at the upper end of the market. Although the changes remove a rule that may have prolonged homeownership for a few and certainly will permit earlier downsizing of owned units, the increase in demand for multifamily rental housing, if it materializes, appears to benefit landlords more directly than tenants and high-income tenants far more than low-income tenants.

These tax breaks amount to a great deal of money. In a study that is probably well known to many readers of this journal, Henry Aaron (1972) estimated that in 1966, homeowners paid $7 billion less in taxes "than they would have if they had been governed by the rules applicable to investors in other assets" (p. 55). He attributed $2.9 billion to deductions for property tax and mortgage interest and $4 billion to an imputed net rent exemption (tax on income that would have been taxable if owners had paid themselves rent for their home-as-investment). Federal tax expenditures for 1997 mortgage and property tax deductions were $73.8 billion (*American Housing Survey 1995*). We can estimate a tax expenditure value for the exemption of imputed net rent by assuming that the ratio between the values of the imputed net rent deduction and the mortgage and property tax deduction in Aaron's 1966 estimates holds in 1997. This yields a tax expenditure estimate of $101.8 billion. To these benefits we must add the tax benefits from deferred capital gains ($18.2 billion), capital gains exemptions ($5 billion), and exclusion of interest on owner-occupied mortgage subsidy bonds ($1.7 billion) (*American Housing Survey 1995*). Thus, the total of these subsidies to homeownership in 1997 was $200.5 billion, or over $3,000 per homeowning household.[4] Aaron's conclusions bear repeating:

[4] There were about 100 million housing units in the United States in 1997, 66 percent of which were owner occupied (U.S. Bureau of the Census 1999).

> These tax subsidies affect allocation of resources, distribution of income, and the form of legal tenure of housing. Consumption of housing services is greater than it would be in the absence of tax benefits. The increase cannot be gauged precisely, but is about 20 percent in the aggregate. Homeowners in particular reap large benefits—especially those subject to high tax rates, for whom implicit subsidies equal 30 percent or more of the cost of housing services. (Aaron 1972, 70)

A corollary to Aaron's point is that the benefits of these breaks are not especially large for lower-income homeowners (who tend to itemize deductions less frequently and include the elderly, who are more likely to be mortgage free) and are nonexistent for renters.

Vale (1998) has found that the most recent federal policy initiative to promote homeownership—the sale of public housing to its occupants—may be of limited effectiveness. Although a large majority of occupants of public housing in a Boston study would like to be homeowners, this reverence for the American dream in many cases does not translate into wanting to buy the particular unit occupied in that particular development. Neither does an enhanced desire to own correspond with jobholding and prospects for achieving that end. The policy, Vale implies, has the cart before the horse. What is needed is education and training programs that would develop the economic power of choice.

The case of tenants and state tax policy: A test of one state

To see how these federal policies of bias toward ownership play out at the state level, we can look at the case of New Jersey, which might serve as a test of tenant friendliness in tax policy at its best. New Jersey contains the largest number of municipalities with rent control (Keating 1998). Approximately 120 of New Jersey's 566 municipalities have what are generally considered moderate rent controls with provisions for vacancy decontrol and substantial annual rent increases, encompassing about 70 percent of the state's 1 million rental units (Barr 1998). This includes all nine cities with populations greater than 70,000. From 1985 to 1990 and beginning again in 1996, New Jersey was one of a few states willing to recognize tenants as property taxpayers.[5] In the following sections, I consider how fairly renters were dealt with in the last three opportunities the state's legislature had to address tenant equity in tax policy.

[5] A study by the Advisory Commission on Intergovernmental Relations (1994) noted only three states that permitted renters an income tax deduction in lieu of property taxes: Indiana, Massachusetts, and Wisconsin.

The state income tax

Under New Jersey's current state income tax policy, both renters and homeowners can deduct a portion of their property taxes from income in computing tax liability. The monetary reward for most households is small, but the treatment of owners vis-à-vis renters is not evenhanded. Homeowners are allowed to claim 75 percent of their property tax or $5,625 (75 percent of $7,500), whichever is smaller, as a deduction from income on their state income tax returns. The program provides a $56 savings for a family with $50,000 income and a property tax bill of $3,000. A family earning $100,000 with a property tax bill of $7,500 would save $247. Hence, with roughly double the income and property taxes, one gets nearly four and one-half times the savings in state income taxes, a fine illustration of how a progressive tax rate produces a regressive tax exemption.

Tenants are permitted to attribute 18 percent of their rent to property taxes. Hence, for a family that rents with an income of $50,000 to get a credit equivalent to a $3,000 property tax payment, it would have to be paying $12,500 a year in rent (25 percent of gross income). And for a family that rents with an income of $100,000 to get a credit equivalent to a $7,500 property tax, it would have to be paying $31,250 a year in rent, roughly 45 percent of income net of state and federal income taxes. Few renters who earn $100,000 put themselves in such a position. Given that the percentage of income spent on housing declines as income rises, it would appear that the biggest tax benefits in this program go mainly to the higher-income homeowners, while the benefit to renters, whose average income tends to be lower than that of homeowners, is minimal. At least in this one case, the distribution of benefits at the state level seems to repeat the inequities found by Aaron at the federal level.

The Tenant Property Tax Rebate Act of 1997

The question of who is credited with paying the taxes was muddied in New Jersey's Tenant Property Tax Rebate Act of 1997. A 1976 New Jersey law of the same name and its 1991 amendments affirmed that tenants, like homeowners, pay property taxes through their rent. When a property tax reduction for a landlord resulted from a revaluation or reassessment, this act provided that the reduction be passed on to his or her tenants each year that the landlord realized a property tax savings, using 1990 as the base year. In 1997 the legislature proposed, debated, and passed amendments that radically altered the law. It exempted owners from passing the savings on to the tenants if the owners owned fewer than four units. It also exempted owners when the tax deduction was the result of an owner's tax appeal and limited the rebate to tenants to one year, the year of the initial reduction. The benefit in subsequent years would remain with the owner, with no obligation to pass it on.

The bill was supported by the landlords' New Jersey Apartment Association, the New Jersey Department of Community Affairs, and the New Jersey League of Municipalities and opposed by the New Jersey Tenants Organization, which galvanized opposition to the bill because, in their view, it gutted the original legislation. They poured energy and resources into their opposition and lost by a few votes. One of the reasons they cited for failing to get tenants behind their movement was the widespread violation of the legislation to begin with. Many tenants had been in a position to get a rebate but never knew that their landlords had gotten one and had failed to pass it on.

The Homestead Property Tax Reimbursement Act of 1998

In a third New Jersey case, the Homestead Property Tax Reimbursement Act of 1998, the question of whether the renter pays a property tax never got off the ground. This act, passed with no opposition, freezes the property taxes of low-income elderly and disabled people who have owned their homes for more than 10 years. ("Low income" was defined as $17,550 for singles and $21,519 for couples.) Made possible by surplus state income from the Casino Revenue Fund, the act would reimburse an estimated 200,000 owners for any property tax increase they suffered. The estimated cost is $21 million in fiscal year 1999, increasing to $160 million by 2008. The act's only critics were those who observed it to be a political gimmick in an election year. Although the act got considerable press coverage, there was never a mention of the tenants' interests. Why not relieve the poor elderly and disabled tenants of tax increases as well? The New Jersey Tenants Organization basically said they were so exhausted and defeated in their previous battle over the tax rebate that they could not afford to mount a campaign for this one.

The proportion of renters in New Jersey is nearly identical to the national average of 34 percent. Homeownership is highest in developing, exurban Ocean County (83 percent) and lowest in older, urban Hudson County (33 percent). The mixed record of achieving a level playing field between homeowners and renters in property tax treatment in New Jersey is both hopeful and discouraging: hopeful in that some principle of parity between homeowners and renters has been recognized but discouraging because the differentials in real outcomes reveal the old biases still at work, because there have been reversals in progress toward equity, and because as bad as things are in New Jersey, they are worse in most states.

Who owns America?

In June 1995, a conference titled "Who Owns America?" was held at the University of Wisconsin at Madison, organized by the Land Tenure Center and sponsored by a broad range of interests, including the Ford Foundation and the W. K. Kellogg Foundation. The feeling was that land reform had for too long been seen solely as a Third World concern and it was high time for the issue to be brought home. A second conference, "Who Owns America? II," was held in June 1998, and "Who Owns America? III" is scheduled for the year 2000. What does this question mean?

First of all, the question is open to the interpretation that whoever has title to the land is the sovereign nation. Although much of our history can be interpreted as a battle over control of the nation's resources and destiny, the country is owned by its citizens, past, present, and future. But we do not have the same ownership rights over the nation that we have over other forms of property. No one can legally sell it or destroy it or claim exclusive right to possess it or use it. Why not? Because it is common property. The ground we sit on may not be commonly held, but whatever makes it American ground makes it a shared property. It is not American because of its latitude and longitude but because the space defined by that latitude and longitude is legitimized, protected, and given value by a constitution, a history, and a government that makes that property American. So perhaps a better question is this: Who is at home in America, and what has ownership of property got to do with it?

Second, the question has an empirical ring that suggests it might be easily answered by examining titles to parcels. In one important sense this is true. It is well established, although out of sight and out of mind for most of us, that the federal government still owns nearly a third of the nation's land. Then, in lower orders of magnitude, come huge private holdings: 11 percent of California is owned by 10 private parties; the paper industry owns 37 percent of Maine; in 1968, 39 people owned 44 percent of Hawaii; 8 oil companies own 65 million acres; and so on (Popper 1976). Popper (1979) affirms that "the difference between landowners and the landless is one of the key social divisions in contemporary America" (p. 131).

But is homeownership policy designed to break up this massive concentration of power? No. Indeed, as Geisler (1984) has suggested, the homeownership resulting from federally backed home finance policy is largely an illusion. Most owners have mortgages on their homes. If the mortgaged homeowner doesn't pay the mortgage, he's out. And if the renter doesn't pay the rent, she's out. When the crunch comes, owning and renting are not so different. The number of Americans who own their homes free and clear is only about 25 percent (see table 1). A recent survey by the University of Michigan's Survey Research Center for the Federal Reserve Board and the American Financial Services Association shows that the higher one's income and education, the more likely one is to be mortgaged (Harney 1998). Aside from the irony conveyed by that statistic, it is even more disturbing to look at the center's findings on the use of second mortgages, whose interest is also tax exempt. Forty-eight percent of those taking out second mortgages do so to consolidate credit card debt, the direct interest on which is not tax deductible, and 20 percent use the money to purchase a car, the direct interest on which is also not tax deductible (Harney 1998). Not only are renters suffering from a free-rider problem—homeowners in the income tax commons—but we have also structured the commons so badly that we encourage those free riders to double dip. These disbenefits come with important racial and spatial maldistributions as well, as shown in table 1.

Third, and most important, the everyday notion of ownership ignores a multitude of claims to the bundle of rights in property by nonowners—claims expressed in taxation and regulation by the public sector and the numerous liabilities of owners for the impacts of their property on the rights and lives of others (Christman 1994; Rose 1985). Furthermore, laws that recognize that tenants pay property taxes through their rent, like the two New Jersey acts discussed above, reinforce an old principle that users of property become invested in that property whether it is theirs in title or not. Oliver Wendell Holmes wrote 100 years ago, "A thing which you have enjoyed and used as your own for a long time . . . takes root in your being and cannot be torn away without your resenting the act

Table 1. **Homeownership and Rentership in the United States, 1997**

	Mortgage-Free Homeownership (%)	Mortgaged Homeownership (%)	Home Rentership (%)
Total population	25	40	34
African American	16	28	55
Hispanic	15	28	57
Central city	18	32	50
Suburban	24	48	28
Nonmetropolitan	38	36	26

Source: The split between owner-occupied and renter-occupied units is based on 1998 data (U.S. Bureau of the Census 1999). The proportion of mortgage-free units is based on *American Housing Survey 1995*. (Rows may not add to 100 due to rounding.)

and trying to defend yourself, however you came by it" (Youngman 1997, 98). John Steinbeck's tenant farmer in *The Grapes of Wrath,* ejected from his land by the owner's men and now facing the tractor about to bulldoze his home, ponders the meaning of the land:

> Funny thing how it is. If a man owns a little property, that property is him, it's part of him, and it's like him. If he owns property only so he can walk on it and handle it and be sad when it isn't doing well, and feel fine when the rain falls on it, that property is him, and some way he's bigger because he owns it. Even if he isn't successful he's big with his property. That is so. . . . But let a man get property he doesn't see, or can't take time to get his fingers in, or can't be there to walk on it. . . . He can't do what he wants, he can't think what he wants. The property is . . . stronger than he is. And he is small, not big. Only his possessions are big—and he's the servant of his property. That is so too. (Steinbeck 1939, 50–51)

Margaret Jane Radin, legal theorist, put it this way:

> A tenancy, no less than a single-family house, is the sort of property interest in which a person becomes self-invested; and after the self-investment has taken place, retention of the interest becomes a priority claim over curtailment of merely fungible interests of others. To pursue the parallel with home ownership, there the owner's interest is personal and the mortgagee's interest is fungible. That is why it seems right to safeguard the owner from losing her home even if it means some curtailment of the mortgagee's interest. (Radin 1993, 84)

This view represents a doctrinal shift in how legal culture perceives the character of housing, a shift that underlies the revolution that landlord–tenant law underwent in the 1960s (Alexander 1997). The shift was away from a relationship between landlords and tenants that was subject to minimal legal regulation and toward one of public regulation. At the federal level, the Fair Housing Act of 1968 prohibited discrimination in the private housing market, and at the state level, many statutes created a "warrant of habitability" reversing the traditional rule that held tenants responsible for the care and condition of rental housing. According to Alexander (1997, 360),

> The most important aspect of the new "warranty" was that it was nonwaivable: landlords and tenants could not bargain around the new warranty even if they were so inclined. The overall effect of these and other changes was to remove landlord and tenant relations, especially in the residential context, from the realm of private ordering to the domain of public regulation. The new regulatory regime withdrew from landlords many of the traditional prerogatives of property ownership.

Although the traditional relationship between tenant and landlord has tended to put them in opposition to each other, some evidence suggests that they suffer in common the prejudice against tenancy.[6] Richard L. Michaux, past chairman of the National Multi Housing Council, is concerned about the biases in the language we use to discriminate between renters and homeowners. He quotes a local newspaper carrying a typical front-page story

> about the proposed renovation of ". . . an affordable apartment *complex* of 104 *units* where *tenants* pay . . ." The article went on to note that "*residents* of nearby *homes* would very much like to see these *units* improved" (Michaux 1996, 26; Michaux's italics).

He calls our attention to the language. Some people live in units in complexes. They're called tenants. Other people live in homes in neighborhoods or communities. They're called residents. Why? According to Michaux, who is also chairman and CEO of Avalon Properties in Alexandria, Virginia:

> These words project an image of apartment living as second-class to home ownership and of apartment dwellers as less fortunate than "residents" of "homes" who live in "communities," an image that is not accurate today.
>
> . . . [D]evelopers are competing with home ownership, which is promoted by no less than federal and state governments. The biases toward home ownership present challenges for the apartment industry to show that we are providing first-class housing for first-class citizens. (Michaux 1996, 24)

Even the classic defense of zoning by the Supreme Court in *Village of Euclid v. Ambler Realty Co.* (272 U.S. 365 [1926]) displayed an antitenant bias. It noted that "very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district" (Berger and Williams 1997, 813–15). The suggestion of the court is that tenants do not have the character of residents. They have the character of nonresidents. They do not belong.

Not only is the multifamily housing industry trying to change the language to make it less prejudicial, but it is also changing the designs of the buildings and site plans to make apartments look more like traditional single-family housing, putting several apartments in what looks like a large manor house or city row house. As one New Jersey developer put it, " 'It just says home. . . . I have a home

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[6] One of the latest and most curious landlord moves in this conflict is a takings clause found in New Jersey lease forms in which tenants assign to landlords any and all compensation from condemnation (Forest Realty Management, Inc. 1997).

with my own front door. I have a garage and can use my garage door opener and take my groceries in without walking through a parking lot' " (Shatzman 1998, 83). In racial terms, the apartment renters and their builders are trying to "pass."

These efforts to change the language and the look of apartment living are not so much an attempt to right a centuries-old bias as they are an attempt to respond to market forces, namely the large number of renters-by-choice—renters who can afford to be homeowners but choose not to be. Varady and Lipman (1994), in their study of a National Association of Realtors data set of 2,000 renters, found that three groups of renters, constituting 57 percent of the sample, were not seeking homeownership. They labeled them as lifestyle renters (21 percent), recent college graduates (26 percent), and elderly life-cycle renters (10 percent). The stigma of parasite does not fit. The popular image of renters fails to recognize that one-third of the rental housing in the United States is single-family housing (*American Housing Survey 1995*). It is largely invisible.

Conclusions

American land history amounts to one long struggle to own, not rent. We have seen that property for the elite colonists of America was the guardian of political rights as well as a principal form of wealth. As the property test for suffrage fell away, the privileges of property ownership were distributed through land reform and taxation policies that promoted ownership and accrued to a growing middle class. Property took on a life of its own as a market commodity more than as a custodian of community. The stigma of not owning property and its association with being poor, transient, politically suspect, and different persists in contemporary society, in community politics, in real estate markets, and in our tax structures.

In this article I have argued that we give too much social significance to ownership. Nobody owns the United States the way we own other things in life. We are the inheritors of a nasty and pervasive property bias in our society with roots that run deep, just as other strong biases of gender, race, and nationality still do in spite of our efforts to outlaw them. Our institutions and practices continue to embody and perpetuate the property bias, particularly in the tax system—in the subsidies given to owners but denied to renters and in many of the property tax laws that deny that renters are stakeholders in their communities. The celebration of homeownership in the United States stigmatizes those who don't, can't, or won't buy property. What is needed, it seems, is a civil rights movement for renters. We need federal and state housing policies that seek a balance of tenure choices through incentives that support markets in proportion to the needs and abilities of all consumers. We need a tax system that treats equally all those who call the United States their home and that is hospitable to creating housing security, not just housing debt. Where are the institutions that promote and protect the economic and political interests of renters? Their interests in the United States are as legitimate and permanent as those who buy and sell the illusion of ownership.

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References

Aaron, Henry J. 1972. *Shelter and Subsidies: Who Benefits from Federal Housing Policies?* Washington, DC: Brookings Institution.

Advisory Commission on Intergovernmental Relations. 1994. *Significant Features of Fiscal Federalism.* Washington, DC.

Alexander, Gregory S. 1997. *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970.* Chicago: University of Chicago Press.

American Housing Survey 1995, H150/95RV. Washington, DC: U.S. Department of Commerce and U.S. Department of Housing and Urban Development.

Aronson, J. Richard, and John L. Hilley. 1986. *Financing State and Local Governments.* 4th ed. Washington, DC: Brookings Institution.

Barr, Kenneth. 1998. New Jersey's Rent Control Movement. In *Rent Control: Regulation and the Rental Housing Market,* ed. W. Dennis Keating, Michael B. Teitz, and Andrejs Skaburskis, 142–50. New Brunswick, NJ: Center for Urban Policy Research.

Becker, Robert A. 1980. *Revolution, Reform, and the Politics of American Taxation, 1763–1783.* Baton Rouge: Louisiana State University Press.

Berger, Curtis J., and Joan C. Williams. 1997. *Property: Land Ownership and Use.* New York: Aspen.

Čapek, Stella M., and John I. Gilderbloom. 1992. *Community versus Commodity: Tenants and the American City.* Albany: State University of New York Press.

Carliner, Michael S. 1998. Development of Federal Homeownership "Policy." *Housing Policy Debate* 9(2):299–321.

Christman, John. 1994. *The Myth of Property: Toward an Egalitarian Theory of Ownership.* New York: Oxford University Press.

Fast, Sarah E. 1981. An Historical Analysis of the Impact of Land Tenure on Soil Erosion, 1930–80. Unpublished manuscript. Cornell University, Department of Natural Resources.

Fisher, Glenn W. 1996. *The Worst Tax? A History of the Property Tax in America.* Lawrence: University Press of Kansas.

Forest Realty Management, Inc. 1997. Apartment lease. Springfield, NJ.

Geisler, Charles C. 1984. A History of Land Reform in the United States: Old Wine, New Bottles. In *Land Reform, American Style,* ed. Charles C. Geisler and Frank J. Popper, 7–31. Totowa, NJ: Rowman and Allanheld.

Goetz, Edward G., and Mara Sidney. 1994. Revenge of the Property Owners: Community Development and the Politics of Property. *Journal of Urban Affairs* 16(4):319–34.

Goodwyn, Lawrence. 1980. The Cooperative Commonwealth and Other Abstractions: In Search of a Democratic Premise. *Marxist Perspectives* 3:8–42.

Greenberg, Michael. 1998. Understanding the Civic Activities of the Residents of Inner-City Neighborhoods: Two Case Studies. *Urban Geography* 19(1):68–76.

Harney, Kenneth R. 1998. The Portrait of a Homeowner Who Is Debt-Free. *Washington Post,* October 31, p. E01.

Henretta, James, W. Elliot Brownlee, David Brody, Susan Ware, and Marilynn S. Johnson. 1993. *America's History.* Vol. 1. New York: Worth Publications.

Heskin, Allan David. 1983. *Tenants and the American Dream: Ideology and the Tenant Movement.* New York: Praeger.

Jackson, Kenneth T. 1985. *The Crabgrass Frontier: The Suburbanization of the United States.* New York: Oxford University Press.

Keating, W. Dennis. 1998. The Courts and Rent Control. In *Rent Control: Regulation and the Rental Housing Market,* ed. W. Dennis Keating, Michael B. Teitz, and Andrejs Skaburskis, 27–40. New Brunswick, NJ: Center for Urban Policy Research.

Kemeny, J. 1981. *The Myth of Home Ownership.* London: Routledge & Kegan Paul.

Lundqvist, Lennart J. 1998. Property Owning and Democracy—Do the Twain Ever Meet? *Housing Studies* 13(2):217–31.

Marcuse, Peter. 1987. The Other Side of Housing: Oppression and Liberation. In *Between State and Market: Housing in the Post-Industrial Era,* ed. B. Turner, J. Kemeny, and Lennart J. Lundqvist. Stockholm: Almqvist & Wiksell International.

McConnell, Grant. 1969. *The Decline of American Democracy.* New York: Atheneum.

McDougall, Harold A. 1984. Land Reform and the Struggle for Black Liberation: From Reconstruction to Remote Claims. In *Land Reform, American Style,* ed. Charles C. Geisler and Frank J. Popper, 172–87. Totowa, NJ: Rowman and Allenheld.

Michaux, Richard L. 1996. Reconsidering the Vocabulary of Apartment Living. *National Real Estate Investor*, March, pp. 24–26.

Mitchell, J. Paul. 1985. Historical Overview of Federal Policy: Encouraging Homeownership. In *Federal Housing Policy and Programs: Past and Present,* ed. J. Paul Mitchell, 39–46. New Brunswick, NJ: Center for Urban Policy Research.

National Multi Housing Council. 1997. The Rental Housing Market and the Budget Accord. *Research Notes,* August.

Nedelsky, Jennifer. 1990. *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy.* Chicago: University of Chicago Press.

Oates, Wallace E. 1998. Property Taxation and Local Public Spending: The Renter Effect. Preliminary draft of a paper to be presented to the annual meeting of the National Tax Association.

Ortiz, Roxanne Dunbar. 1984. Land Reform and Indian Survival in the United States. In *Land Reform, American Style,* ed. Charles C. Geisler and Frank J. Popper, 151–71. Totowa, NJ: Rowman and Allenheld.

Perin, Constance. 1977. *Everything in Its Place: Social Order and Land Use in America.* Princeton, NJ: Princeton University Press.

Popper, Frank J. 1976. We've Got to Dig Deeper into Who Owns Our Land. *Planning* 42(9):17–19.

Popper, Frank J. 1979. Ownership: The Hidden Factor in Land Use Regulation. In *Land in America: Commodity or Natural Resource,* ed. Richard N. L. Andrews, 129–35. Lexington, MA: Lexington Books.

Popper, Frank J. 1984. The Ambiguous End of the Sagebrush Rebellion. In *Land Reform, American Style,* ed. Charles C. Geisler and Frank J. Popper, 117–28. Totowa, NJ: Rowman and Allenheld.

Radin, Margaret Jane. 1993. *Reinterpreting Property.* Chicago: University of Chicago Press.

Robbins, Roy M. 1942. *Our Landed Heritage.* Princeton, NJ: Princeton University Press.

Rohe, William M., and Michael A. Stegman. 1994. The Impact of Homeownership on the Social and Political Involvement of Low-Income People. *Urban Affairs Quarterly* 30(1):152–72.

Rose, Carol. 1985. Possession as the Origin of Property. *University of Chicago Law Review* 52:73–88.

Shatzman, Marci. 1998. Home Sweet Apartment: Single-Family Look Is Still the Trend. *Multifamily Executive* 3(3):82–83.

Smith, Rogers M. 1997. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History.* New Haven, CT: Yale University Press.

Steinbeck, John. 1939. *The Grapes of Wrath.* New York: Viking.

Trollope, Anthony. 1932. *The Last Chronicle of Barset.* London: H. Milford, Oxford University Press.

U.S. Bureau of the Census. 1999. *Housing Vacancy Survey Fourth Quarter 1998. Table 6. Homeownership Rates by Area, Fourth Quarter 1998 and 1997.* World Wide Web page <www.census.gov/hhes/www/housing/hvs/q498tab6.html> (accessed February 26).

U.S. Department of Commerce. Bureau of the Census. 1975. *Historical Statistics of the U.S.: Colonial Times to 1970.* Washington, DC: U.S. Government Printing Office.

U.S. Department of Housing and Urban Development. 1974. *Housing in the Seventies: A Report of the National Housing Policy Review.* Washington, DC: U.S. Government Printing Office.

Vale, Lawrence J. 1998. Public Housing and the American Dream: Residents' Views on Buying into "The Projects." *Housing Policy Debate* 9(2):267–98.

Varady, David P., and Barbara J. Lipman. 1994. What Are Renters Really Like? Results from a National Survey. *Housing Policy Debate* 5(4):491–531.

Youngman, Joan M. 1997. Henry George, Property Rights, and Taxation. In *Land Use and Taxation,* ed. H. James Brown, 91–102. Cambridge, MA: Lincoln Institute of Land Policy.