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## PREVENTING STRATEGIC DEFAULT: LESSONS FROM JAPAN

Brent T. White\*

### I. INTRODUCTION

During the 1980s, Japanese house prices doubled, capping an extraordinary 147-fold increase in home prices from 1950 to 1983.<sup>1</sup> The Japanese housing market, however, began to decline in 1990, as Japan's post-war economy sputtered and entered into a prolonged economic malaise known as "the lost decade."<sup>2</sup> By 2002, Japanese home prices had dropped more than 50% on average and as much as 69% in major cities from their 1989 peak.<sup>3</sup> Japanese house prices have continued a steady though less dramatic decline over the past decade.<sup>4</sup>

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1. Richard Ronald, *Meanings of Property and Home Ownership Consumption in Divergent Socio-Economic Conditions*, in HOMEOWNERSHIP: GETTING IN, GETTING OUT, GETTING FROM 127, 139 (John Doling, Marja Elsinga & Richard Ronald eds., 2010) (noting that "[f]rom 1950 to 1983 the price of the average house increased 147-fold" and that it doubled again in the 1980s: "The rate of house price inflation became exceptional during the 1980s (between 1980 and 1990 average housing costs in Tokyo increased from 24.8 million yen to 61.2 million yen for a condominium, and from 30.5 million yen to 65.3 million yen for a ready-built single-family house).").

2. *Id.* ("The first ten years of economic decline and house price deflation became known as the 'lost decade' in Japan.").

3. *Id.* ("[S]econdhand housing values have suffered most, with values declining by 50% in most cases of houses purchased during the bubble . . . [T]here has been little sign of property values recovering outside of new upmarket developments in Tokyo."); Ray Forrest, Misa Izuhara & Patricia Kennett, *Homeownership in Japan's Troubled Economy*, 46 HOUS. FIN. 50, 50 (2000) ("Since the onset of the recession, residential land prices have fallen by as much as 69% in the major metropolitan areas with older condominiums being most severely affected.").

4. U.N. Human Settlements Programme (UN-HABITAT), *The Role of Government in the Housing Market: The Experiences from Asia*, at 13, U.N. Doc. HS/1013/08E (2008) [hereinafter *Role of Government*] ("Land prices have continuously been declining since the beginning of the 1990s until now."); *id.* at 16 ("Housing prices have been continuously falling for the last decade."); see also Ray Forrest et al., *Homeownership and Economic Change in Japan*, 18 HOUSING STUD. 277, 284 (2003) ("By the end of 1991, however, prices in all metropolitan areas had begun to fall and have continued to do so."); Yosuke Hirayama, *Towards a Post-Homeowner Society? Homeownership and Economic Insecurity in Japan*, in HOUSING MARKETS AND THE GLOBAL FINANCIAL CRISIS: THE UNEVEN IMPACT ON HOUSEHOLDS 196, 199 (Ray Forrest & Ngai-Ming Yip eds., 2011) (citing "prolonged stagnation in the housing economy in smaller cities where house prices had continued to drop since the early 1990s.").

Today, a house bought in 1991 is worth as little as 30% of its original value.<sup>5</sup> Not surprisingly, this decline in house values has left hundreds of thousands of Japanese homeowners underwater, or owing more on their mortgages than their homes are worth.<sup>6</sup> By 1999, for example, an estimated 280,000 households in the Tokyo area alone were underwater on their homes—with an average of 12 million yen (\$147,874) in negative equity.<sup>7</sup> As of 2004, approximately 24% of Japanese homeowners had negative equity in their homes.<sup>8</sup>

The housing meltdown and the economic malaise of the 1990s also resulted in a significant number of involuntary mortgage defaults in Japan, mostly precipitated by unemployment.<sup>9</sup> However, voluntary mortgage default, also known as strategic default, was and continues to be rare.<sup>10</sup> Indeed, one finds no mention of strategic mortgage default in academic literature or in the popular

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5. See Hirayama, *supra* note 4, at 203 (noting “the value of condominiums purchased [in Tokyo] during the peak of the bubble has fallen sharply by some 70 per cent. This also holds true for the Osaka region.”).

6. See *Role of Government*, *supra* note 4, at 20 (“Japan at the beginning of the 21st century has been left with a mass of owner-occupied housing bearing huge capital losses, unmarketable ‘suburban bubble condominiums,’ and a large number of house-owners with heavy loans and insecure incomes.”).

7. Forrest, Izuhara & Kennett, *supra* note 3, at 50 (“Aggregate negative equity has been estimated at £7 billion for the Tokyo Metropolitan Area, with highly geared households which purchased in the period 1988–1994 being particularly affected.”); *id.* at 53 (“[A] particular cohort of purchasers bore the brunt of recession in the residential property market; those in their 30s and 40s with children who bought a house in the late 1980s and early 1990s . . .”).

8. See Hirayama, *supra* note 4, at 205 (noting that “increasing numbers of homeowners have become trapped in negative equity” and that “[f]rom 1989 to 2004, the percentage of owner-occupier households with negative housing equity rose from 8.0 per cent to 23.6 per cent for the 34-or-less age group, and from 3.6 per cent to 24.0 per cent for the 35–44 age group.”).

9. See, e.g., *id.* (“There has also been an increase in mortgage defaults . . .”); Yosuke Hirayama, *The Role of Home Ownership in Japan’s Aged Society*, 25 J. Hous. & BUILT ENV’T 175, 182–83 (2010) (“The number of GHLC [Government Housing Loan Corporation] mortgages in arrears for 6 months or more continued to increase from 3,340 in 1990 to 14,205 in 1995, and then to 50,417 in 2006, reflecting unstable economic conditions and an increase in those plunged into unemployment. . . . The Housing Finance Agency reported that of the total amount of outstanding GHLC mortgages, the percentage of defaulted mortgages plus those with a possibility of default rose from 1.8% in 2000 to as high as 8.4% in 2007.”); *Role of Government*, *supra* note 4, at 20 (“In the prolonged recession, an increasing number of households are finding themselves unable to repay their housing loans. The number of loans over 6 months in default for HLC loans increased from 14,205 to 33,306 and the total amount of these which were outstanding increased rapidly from 193.7 billion yen to 500.2 billion yen between 1995 and 2000.”).

10. A “strategic default” is any default where the homeowner could come up with money to pay the mortgage, even if at some significant sacrifice, but chooses not to do so. This is also called voluntary default. A forced default, or involuntary default, is one in which the homeowner simply does not have the resources to pay the mortgage, even after exhausting all available resources and assets.

media in relation to Japanese homeowners.<sup>11</sup> Strategic default by homeowners appears essentially unheard of in Japan—despite even more dramatic price declines than in the United States and despite the Japanese housing market’s failure to recover for over two decades.

A possible explanation for the rarity of strategic default in Japan might be that Japanese homeowners feel more anticipatory shame at the thought of mortgage default than U.S. homeowners. Indeed, this explanation may come immediately to mind, as most informed and uninformed observers of Japan alike generally view it as a shame-based culture.<sup>12</sup> In such a culture, one might expect that individuals would be less inclined to default on their mortgages. But to stop there is to cut the analysis short—and to fail to appreciate the other institutional and socio-economic differences that make strategic default rare in Japan.

It also fails to appreciate just how little anticipatory shame may actually have to do with the decisions of Japanese homeowners. Anticipatory shame works as a social control agent only at the point of anticipation.<sup>13</sup> In other words, it acts as a control on homeowners’ behavior at the point at which they begin to be distressed about their home’s negative equity and contemplate default as an attractive economic option.<sup>14</sup> Anticipatory shame could explain low mortgage default rates in Japan only if it prevented homeowners from defaulting when they otherwise would—and there is no evidence that this is actually the case. To the contrary, mortgage default is contained by a range of other socio-economic factors that prevent homeowners from ever seriously contemplating strategic default.

Before turning to these socio-economic and systemic factors, however, it bears noting that—unlike Japan—anticipatory shame has been, and may still be, the most powerful barrier to strategic default in the United States.<sup>15</sup> In the United States, the legal consequences of default are often minimal, and the economic case for default is compelling.<sup>16</sup> But, for at least the first several years of the U.S.

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11. See *Role of Government*, *supra* note 4, at 25 (“The risk associated with housing loans for individuals is comparatively small.”); Piyush Tiwari & Yoko Moriizumi, *Efficiency in Housing Finance: A Comparative Study of Mortgage Instruments in Japan*, 3 EUR. J. HOUS. POL’Y 267, 285–86 (2003) (noting that “lending institutions do not foresee defaults and prepayments as major risks”).

12. See generally George Bear et al., *Shame, Guilt, Blaming, and Anger: Differences Between Children in Japan and the US*, 33 MOTIVATION & EMOTION 229 (2009); Pauline Kent, *Shame as a Social Sanction in Japan: Shameful Behaviour as Perceived by the Voting Public*, 3 JAPAN REV. 97 (1992); David Matsumoto et al., *Antecedents of and Reactions to Emotions in the United States and Japan*, 19 J. CROSS-CULTURAL PSYCHOL. 267 (1988); Alexander Stille, *Experts Can Help Rebuild a Country*, N.Y. TIMES, July 19, 2003, at B7, available at [www.nytimes.com/2003/07/19/arts/experts-can-help-rebuild-a-country.html?pagewanted=all&src=pm](http://www.nytimes.com/2003/07/19/arts/experts-can-help-rebuild-a-country.html?pagewanted=all&src=pm).

13. See Brent T. White, *Underwater and Not Walking Away: Shame, Fear and the Social Management of the Housing Crisis*, 45 WAKE FOREST L. REV. 971, 992–95 (2010) (discussing the role of anticipatory shame in preventing default).

14. *Id.*

15. *Id.*

16. *Id.*

mortgage crisis, the vast majority of mortgage defaults in the United States were driven by unemployment, and strategic default was rare.<sup>17</sup> Today, strategic defaults, while no longer rare, still account for a minority of overall mortgage defaults.<sup>18</sup> This likely reflects the fact that the overwhelming majority of Americans still consider default immoral, and it also continues to carry significant social stigma.<sup>19</sup> Thus, if anticipatory shame were an important factor in preventing mortgage default in Japan, it would not be so different from the United States.

Not only is shame also a powerful constraint in the United States, it is possible to over-generalize the power of shame as a social constraint in Japan. For example, consumer bankruptcy, though less common than in the United States, still occurs with some frequency in Japan and sharply increased during the 1990s.<sup>20</sup> Additionally, unlike Japanese homeowners, Japanese corporations

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17. *Id.* at 977 (estimating the strategic default rate among underwater homeowners at 2.5% to 3.5%).

18. See Paola Sapienza & Luigi Zingales, *The Results: Wave 6*, FIN. TRUST INDEX, CHI. BOOTH/KELLOGG SCH. (April 30, 2009), available at <http://www.financialtrustindex.org/resultswave6.htm> (finding that the “percentage of foreclosures that were perceived to be strategic was 31% in March 2010, compared to 22% in March 2009.”). See generally Brent T. White, *Take This House and Shove It: The Emotional Drivers of Strategic Default*, 63 SMU L. REV. 1279 (2010); EXPERIAN-OLIVER WYMAN MARKET INTELLIGENCE REPORT: UNDERSTANDING STRATEGIC DEFAULT IN MORTGAGES, pt. 1, 4 (2009), available at [http://hofinet.org/upload\\_docs/Experian-OliverWyman2009OW\\_Strategic\\_Mortgage\\_Default\\_Study.pdf](http://hofinet.org/upload_docs/Experian-OliverWyman2009OW_Strategic_Mortgage_Default_Study.pdf) [hereinafter EXPERIAN-OLIVER WYMAN] (finding a 128% increase in the number of strategic defaults from 2007 to 2008 and that “from 2005 to 2008, the number of strategic defaulters went up by 68 times in California and by 46 times in Florida!”); David Streitfeld, *No Aid or Rebound in Sight, More Homeowners Walk Away*, N.Y. TIMES, Feb. 3, 2010, at A1, available at <http://www.nytimes.com/2010/02/03/business/03walk.html> (discussing this trend); *2010 Predictions from Shiller, Blinder, Rajan and More*, WALL ST. J. (Jan. 5, 2010, 5:00 AM), <http://blogs.wsj.com/economics/2010/01/05/2010-predictions-from-shiller-blinder-rajan-and-more/> (quoting Robert Shiller as predicting in 2010 that “[s]trategic default on mortgages will grow substantially over the next year, among prime borrowers, and become identified as a serious problem. The sense that ‘everyone is doing it’ is already growing, and will continue to grow, to the detriment of mortgage holders.”).

19. White, *supra* note 18, at 1285–89 (finding that the stigma against strategic default remains strong); see also Luigi Guiso, Paola Sapienza & Luigi Zingales, *Moral and Social Constraints to Strategic Default on Mortgages* 19 (Nat’l Bureau of Econ. Research, Working Paper No. 15145, 2009) (finding that 81% of Americans believed that it was “morally wrong to default on a mortgage”); Press Release, Fannie Mae, Inc., *New Nationwide Survey Provides Comprehensive Look at Sentiment Toward Housing* (Apr. 6, 2010), available at <http://www.fanniemae.com/portal/about-us/media/corporate-news/2010/4989.html> (reporting that 88% of Americans do not believe it is acceptable to stop making payments on an underwater mortgage, though 15% believe that financial distress makes stopping payments on an underwater mortgage acceptable).

20. See VAS KOSSERIS ET AL., *CRITERIA FOR RATING JAPANESE RESIDENTIAL MORTGAGE-BACKED SECURITIES 2* (1999), available at <http://www.securitization.net/pdf/Criteria-Japan-Resi-Mtge.pdf> (“As of year-end 1998, consumer bankruptcies were

defaulted on loans in large numbers in the 1990s,<sup>21</sup> saddling Japanese banks, and ultimately Japanese taxpayers, with billions of dollars in bad loans.<sup>22</sup> In that sense, Japan may be very much like the United States, where shame is not a significant constraint on the managers of corporations—at least when it comes to allowing corporations to default on their loan obligations.<sup>23</sup> In other words, shame is a socially conditioned response. It would thus be insufficient as an explanation for the lack of strategic default in Japan without some exploration of both the social and legal norms that normalize default by some actors and not by others.<sup>24</sup>

Nevertheless, shame, as it turns out, has little to do with the behavior of Japanese homeowners. Rather, the behavior of Japanese homeowners is mediated through different meanings attached to homeownership and shaped by divergent socio-economic realities than those experienced by U.S. homeowners. First, Japanese homebuyers view a home primarily as a consumable “use good” rather than as an investment.<sup>25</sup> This means that Japanese homeowners tend to be less distressed about declining home values than American homeowners and are thus unlikely to ever contemplate strategic default.<sup>26</sup> Moreover, as a consequence of

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approximately 800 per million of population . . . . This 1997 figure is up from less than 200 per million in 1991. When compared to the U.S., where consumer bankruptcies are roughly 4,700 per million of population, the rate of individuals filing for bankruptcy in Japan is relatively small . . .”).

21. Howard M. Felson, *Closing the Book on Jusen: An Account of the Bad Loan Crisis and a New Chapter for Securitization in Japan*, 47 DUKE L.J. 567, 567 (1997) (referring to the “billions of dollars of nonperforming debt held by Japanese banks and nonbank financial institutions, including the now-defunct *jusen*”); *id.* at 569 (“When Japan’s bubble economy burst in 1991, the *jusen* were saddled with a total of 8.1 trillion yen (then roughly \$81 billion) of nonperforming loans and other bad debts.”); *id.* at 572 n.30 (“Estimates of the total amount of nonperforming loans on Japanese balance sheets range from \$100 billion to \$972 billion.”); *id.* at 573–74 (noting that as “real estate values rose to unprecedented levels, *jusen* credit officers lent aggressively and, as it turned out, foolishly, to scores of unworthy borrowers”).

22. *Id.* at 582 (“Given the expected length and magnitude of the *jusen* bad loan clean-up, the Japanese public has responded vociferously to being told it must bail out the private sector for misguided investments during the bubble era.”).

23. See White, *supra* note 13, at 1007–12 (discussing norm asymmetry between corporate lenders and individual homeowners).

24. As a separate matter, the power of shame as a social control agent is likely attenuated in large cities like Tokyo, Osaka, and Nagoya, where most Japanese live and where real estate values experienced the steepest declines.

25. Richard Ronald & Yosuke Hirayama, *Housing Commodities, Context and Meaning: Transformations in Japan’s Urban Condominium Sector*, 43 URB. STUD. 2467, 2474–75 (2006) (“Built housing units, however, function more like consumer goods than investment goods especially considering the short life-span of the physical object at around 30–40 years.”); see generally *id.* at 2475–76.

26. See Hirayama, *supra* note 4, at 196 (“[W]ider economic changes do not necessarily produce the same outcome, but are mediated by the indigenous social, economic, political, institutional and policy contexts of particular countries and, thus, create diverging effects on housing and social transformations.”); Ronald & Hirayama, *supra* note

this mindset, Japanese have continued to buy homes even as prices have continued to decline and with the expectation that prices will continue to drop.<sup>27</sup> Second, a variety of socio-economic factors, including a lack of adequate rental housing and Japan's guarantee system for home mortgages, renders strategic default an impractical and ineffective response to negative equity—leaving little need to call upon shame as a means of social control.

## II. JAPANESE CONCEPTIONS OF HOMEOWNERSHIP

Before considering the particular meanings attached to homeownership in Japan, it bears noting that people in any culture are motivated to buy homes for a variety of reasons. On a basic level, a home may serve as a “use good” by providing shelter, warmth, comfort, privacy, and permanence—to name just a few. A home might also provide ontological security,<sup>28</sup> social status,<sup>29</sup> and access

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25, at 2468 (“The meanings attached to housing, however, are equally as important and often mediate other factors,” such as “the role of institutional policies, practices and contextual constraints. . . . Economic forces, welfare regimes, tenure systems, property rights and ideologies” also affect the development of housing systems.)

27. For example, despite sharply declining values, new condominium sales tripled between 1993 and 2000. Ronald & Hirayama, *supra* note 25, at 2473. Unlike Americans, Japanese have not sat on the sidelines en masse waiting for the housing market to recover. Indeed, the general expectation is that the Japanese housing market may never recover. See Hirayama, *supra* note 9, at 179. Yet, Japanese keep buying—even though new condominiums remain quite expensive relative to the average annual income of a full-time Japanese employee. See Miki Seko & Kazuto Sumita, *Japanese Housing Tenure Choice and Welfare Implications After the Revision of the Tenant Protection Law*, 35 J. REAL EST. & FIN. ECON. 357, 358 (2007) (“A typical 75 m<sup>2</sup> dwelling in the central districts of Tokyo costs more than eight times the average annual income of a 40-year-old full-time employee.”); Hirayama, *supra* note 9, at 179 (“Since the early 1990s, economic volatility and uncertainty have not been perceived as ‘abnormal’ but rather ‘normal.’); Ronald & Hirayama, *supra* note 25, at 2469 (“This will be implicated in considering the contradictory phenomenon of the expansion of the condominium sector even though condominiums, as owner-occupied properties, have become the poorest retainers of property value.”). Despite the two decade-long housing downturn, more than 60% of households own their own homes. See Hirayama, *supra* note 9, at 177; Tiwari & Moriizumi, *supra* note 11, at 269.

28. See Ray Forrest & Yosuke Hirayama, Paper Presented at the Int’l RC21 Conference 2011: Neoliberalism and the Reproduction of Home Ownership 7 (July 7–9, 2011), available at <http://www.rc21.org/conferences/amsterdam2011/edocs2/Session%204/RT4-1-Forrest.pdf> (discussing “the desire to have a place of one’s own, somewhere secure and stable—a key element of what [Christopher] Lasch referred to as a ‘haven in a heartless world’”); Ronald & Hirayama, *supra* note 25, at 2478 (discussing the sense of “community” and happiness that comes from homeownership).

29. See *Role of Government*, *supra* note 4, at 26 (“In post-war Japan, many families have felt that they cannot be accepted as a member of the social core group unless they buy a house.”); Ronald & Hirayama, *supra* note 25, at 2477 (“In interviews, informants in detached family houses regularly linked prejudices against rental housing, which

to good schools and other public goods.<sup>30</sup> Or it might function as an investment or exchange good, acquired as an accruable asset to be sold later at a profit.<sup>31</sup> Moreover, it can serve all of these functions simultaneously.

Nevertheless, different homeowners tend to emphasize different functions over others.<sup>32</sup> Ideological homeowners, for example, have a strong ideological attachment to the idea of homeownership that tends to emphasize personal identity and ontological security.<sup>33</sup> Pragmatic owners, on the other hand, focus on “use value,” such as shelter and access to good schools. Extrinsic homeowners focus on the social status that comes from homeownership.<sup>34</sup> Investors, or “petty tycoons,” are concerned primarily with the home’s investment potential and the ability to sell the house for a profit.<sup>35</sup>

While each type of homeowner may be represented within a given society and while many individual homeowners may be torn between competing meanings,<sup>36</sup> different modes of thinking about homeownership tend to predominate within different housing cultures. For example, homeowners in Hong Kong tend to be strongly motivated by investment rationales, as are homeowners in Great Britain and the United States.<sup>37</sup> This was particularly true in

functioned in discourse to necessitate house purchase, with prejudices against rental status and living in apartment buildings and small flats.”).

30. See Ronald & Hirayama, *supra* note 25, at 2478 (“Because we wanted a good school for our children, it was important to buy a house.”); *id.* at 2477 (“[L]iving in homeowner neighbourhoods was almost as important as being a homeowner in many cases. Essentially, neighbourhoods dominated by owner-occupiers are considered superior and are more sociable and stable.”).

31. Ronald, *supra* note 1, at 129.

32. *Id.* (discussing homeowner typologies).

33. *Id.* (identifying “lexic” owners as those “who have a strong ideological attachment to home ownership”).

34. *Id.* (identifying “pragmatic” owners as those “who focus on practical benefits (financial benefits, etc.) but do not celebrate self-actualising ownership practices”; and “extrinsic owners” as those “who see ownership as an achievement and take pride in improvement activities”).

35. *Id.* (identifying “petty tycoons” as those “for whom ownership is primarily a financial investment, and who focus on movement in market prices”).

36. Ronald, *supra* note 1, at 129 (identifying “conflictual” owners as those “who have no clear views on ownership and may see it as a source of conflict between household members”).

37. See Brent T. White, *The Morality of Strategic Default*, 58 UCLA L. REV. DISC. 155, 160 (2010) (“For many Americans, their home is their primary, and perhaps only, investment. With encouragement from the government and the financial industry, most Americans came to see investing in a home as the primary route to retirement security, as well as a means of sending their children to college.”); see also Ronald, *supra* note 1, at 132 (discussing Great Britain and finding that “owners view their tenure form as a rational economic choice with a likelihood of realizing monetary gains. Also, the possibility of financial gain is bound to home ownership within the context of building wealth rather than income”); *id.* at 135 (“The potential for wealth accumulation through housing speculation is thus highly salient to families as a means of welfare security and facilitating retirement.”).

the United States during the housing bubble, when many “petty tycoons” were motivated solely by the desire to make quick profits through real estate.<sup>38</sup> But it also remains true today, where speculation that U.S. home prices may be on the upswing<sup>39</sup> has begun to lure homeowner-investors back into the housing market.<sup>40</sup>

Moreover, even U.S. homebuyers who are not singularly motivated by investment rationales generally see homeownership as a reliable route toward building wealth and long-term financial security<sup>41</sup>—a view that has not changed significantly despite the housing collapse of the late 1990s.<sup>42</sup> For the majority of Americans, buying a home is their primary—if not only—investment strategy.<sup>43</sup> Homes may serve many functions in the United States, but, chief among them, homes are investments and repositories of savings to be drawn upon in old age or times of need.<sup>44</sup>

American homeowners have thus experienced great anxiety and acute financial distress as their homes have lost value—calling into question not only their long-term financial security, but also their ability to use home equity to pay for their children’s college or to finance their retirement.<sup>45</sup> Out of a sense that they are sinking financially—and in the face of seemingly dim prospects for a housing recovery—a not insignificant number of Americans have chosen to walk away from their mortgages.<sup>46</sup> Indeed, even some mainstream financial advisors now recommend that U.S. homeowners intentionally default if they are

See generally A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND. L.J. 189, 189–92 (2009).

38. Ronald, *supra* note 1, at 129; see Alan Greenspan, *We Need a Better Cushion Against Risk*, FT.COM [FIN. TIMES] (Mar. 26, 2009, 7:37 PM), <http://www.ft.com/intl/cms/s/0/9c158a92-1a3c-11de-9f91-0000779fd2ac.html#axzz27p8ZNIx7> (“Once a bubble emerges out of an exceptionally positive economic environment, an inbred propensity of human nature fosters speculative fever that builds on itself, seeking new unexplored, leveraged areas of profit. Mortgage-backed securities were sliced into collateralised debt obligations and then into CDOs squared. Speculative fever creates new avenues of excess until the house of cards collapses.”).

39. Press Release, Conference Bd., U.S. Housing Market Finally Reaches a Turning Point (May 15, 2012), <http://www.conference-board.org/press/pressdetail.cfm?pressid=4482>.

40. Motoko Rich, *Investors Are Looking to Buy Homes by the Thousands*, N.Y. TIMES (Apr. 2, 2012), <http://www.nytimes.com/2012/04/03/business/investors-are-looking-to-buy-homes-by-the-thousands.html?pagewanted=all>.

41. See White, *supra* note 37, at 160.

42. Carla Fried, *Survey: Americans Still Believe Homes Are a Better Investment Than Stocks*, CBS MONEY WATCH (May 16, 2011), [http://www.cbsnews.com/8301-505123\\_162-41142680/survey-americans-still-believe-homes-are-a-better-investment-than-stocks/](http://www.cbsnews.com/8301-505123_162-41142680/survey-americans-still-believe-homes-are-a-better-investment-than-stocks/); see also Ronald, *supra* note 1, at 131 (“[H]ousing through home ownership has come to signify a means of building an asset, nurturing an investment and making capital gains.”).

43. See White, *supra* note 37, at 160.

44. *Id.*

45. White, *supra* note 18, at 1291, 1294.

46. *Id.* at 1286.

significantly underwater and their lenders are unwilling to offer assistance.<sup>47</sup> This type of advice is grounded upon the commonly held and rarely questioned assumption that a home is, whatever else, an investment—and that individuals are right to be distressed when their investments turn out to be toxic.

This notion that a home is an accruable asset is largely absent in Japan—though Japanese homebuyers share many similar motivations to U.S. homebuyers in purchasing a home. Japanese consider owning a single family home to be the “Japanese dream”—and most Japanese not only aspire to homeownership, but actually achieve it, with over 60% of Japanese households owning their own homes. Like Americans, Japanese buy homes for stability,<sup>48</sup> status,<sup>49</sup> and the simple pleasure of having a place of their own.<sup>50</sup> And they buy homes for practical reasons such as access to good schools and public transportation.<sup>51</sup> Few Japanese, however, buy a home expecting to sell it later for profit.<sup>52</sup> Indeed, the market for existing homes in Japan is minuscule, comprising less than 2% of home sales.<sup>53</sup>

Japanese tend to view their homes as consumable goods, similar to other expensive commodities, such as cars, rather than investments.<sup>54</sup> Like a car, a home is purchased for its “use value,” such as space and comfort. And, like a car, a home is to be “consumed,” eventually discarded, and replaced by a new one.<sup>55</sup> Given this expectation, Japanese tend to be motivated almost solely by

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47. Maggy Patrick, *Tips for Surviving the Housing Market*, ABC NEWS (Sept. 21, 2011), <http://abcnews.go.com/US/housing-figures-offer-hope/story?id=14575419>; see also Christopher Matthews, *Building a Better Bailout: Can Fannie and Freddie Help American Homeowners?*, TIME (Apr. 17, 2012), <http://business.time.com/2012/04/17/building-a-better-bailout-can-fannie-and-freddie-help-american-homeowners/>.

48. *Role of Government*, *supra* note 4, at 25 (“Home ownership was not only defined in a material sense, but also as a place for the family, a keystone of a life plan and a middle class symbol.”).

49. See *supra* note 29 and accompanying text.

50. Forrest & Hirayama, *supra* note 28, at 7; Ronald, *supra* note 1, at 141; see also Ronald & Hirayama, *supra* note 25, at 2478.

51. See *supra* note 30 and accompanying text.

52. Misa Izuhara, *Shifting Trajectories of Homeownership in Japan*, 25 HOUSING STUDIES 301, 310 (2010) (“Japanese people tend not to consider housing as assets that can be turned into an income stream or investment.”); Ronald, *supra* note 1, at 144 (“[T]here are few expectations of market recovery and making ‘profits’ on housing.”); Hirayama, *supra* note 4, at 211 (“For the past two decades, most owner-occupied houses have consistently generated capital losses and an increasing number of homeowners have been trapped in negative equity. An owner-occupied home in today’s Japan holds no promise of capital gain.”).

53. Forrest, Izuhara & Kennett, *supra* note 3, at 51 (“The purchase of second-hand dwellings represented less than 2% of all transactions . . .”).

54. See Forrest & Hirayama, *supra* note 4, at 8 (“The purchase of housing has come closer to the purchase of other commodities.”).

55. Eiji Oizumi, *Transformations in Housing Construction and Finance*, in HOUSING AND SOCIAL TRANSITION IN JAPAN 47, 57–59 (Yosuke Hirayama & Richard Ronald eds., 2007) (discussing Japan’s “scrap and build spiral”).

noninvestment use rationales in buying a home.<sup>56</sup> And, unlike Americans, they thus tend not to feel significant distress when confronted with negative equity.<sup>57</sup>

This lack of distress over negative equity does not mean that economic rationales play no role in the decisions of Japanese homebuyers. To the contrary, Japanese typically express considerable confidence in the “economic stability of housing purchase.”<sup>58</sup> However, this confidence does not stem from the expectation of rising property values,<sup>59</sup> but rather from the desire for financial certainty, freedom from the vicissitudes of the market,<sup>60</sup> and the promise of rent-free living in old age.<sup>61</sup> In other words, the financial rationale for home ownership is linked directly to the fact of possession rather than the assumption that the home can be sold later at a profit.<sup>62</sup>

Additionally, even when Japanese individuals purchase multiple properties as “investments,”<sup>63</sup> which large numbers of upper-middle class Japanese do, they see the investment as a way to generate income in retirement from rent, rather than as an asset to be sold later for a profit.<sup>64</sup> Japanese tend to

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56. See Izuhara, *supra* note 52, at 313 (“In contemporary Japan, the use value of housing could be weighed higher than asset and investment values.”); Ronald, *supra* note 1, at 144 (“[T]he home ownership system has been largely maintained by use values such as the freedom to remodel, refurbish and improve the quality of housing, and it is easy to see why use values have become more salient in home owner’s discourses in this economic environment . . . .”); Ronald & Hirayama, *supra* note 25, at 2480 (“Furthermore, in the period of sustained recession, condominiums have had an important use value.”).

57. Ronald, *supra* note 1, at 142 (reporting that Japanese homeowners “play down” the diminishing values of property).

58. *Id.* at 143–44.

59. *Id.*

60. See *id.* at 142 (noting that “many households enter the housing market in order not to have to worry about its vicissitudes any more, rather than to engage in market investment speculation”).

61. See Hirayama, *supra* note 9, at 176 (“Since home ownership has not only provided a secure place to live but also economic security, a large majority of households has acquired their own homes before reaching old age. The outright owners of a house maintain property assets while simultaneously benefiting from minimal housing costs after completing mortgage repayments.” (citation omitted)).

62. See Ronald, *supra* note 1, at 143.

63. See Hirayama, *supra* note 9, at 185 (“A new phenomenon in Japan’s mature home-owning society is an increase in multiple-property owners, particularly among older homeowners. . . . The percentage of households who own one or more housing properties besides the home they live in was 35.0% for elderly households who earned 10 million yen or more annually but the figure was only 10.6% for those who earned less than 2 million yen. Second properties are mainly acquired by inheritance or as investments.” (citation omitted)); Izuhara, *supra* note 52, at 309 (“‘One-room mansions’ [medium- to high-rise buildings largely consisting of one-room units] are, however, often built for private rental or buy-to-let purposes.”).

64. Hirayama, *supra* note 9, at 185 (“Where additional properties are rented out, multiple-property owners supplement their total incomes by obtaining rental incomes. Of all multiple-property-owning elderly households, 39.2% received rental incomes.”).

see “investment” properties as income generators, not wealth accumulators. By providing a steady income stream in retirement, “investment” properties provide economic security—and only secondarily do they act as intergenerational assets. In short, Japanese buy to hold, accept that their homes may depreciate, and thus experience minimal distress from negative equity.<sup>65</sup> They are thus quite different from Americans, many of whom have defaulted on their mortgages due to acute anxiety, distress, and hopelessness precipitated almost exclusively by negative equity.<sup>66</sup>

The fact that Japanese homeowners tend to discard rather than resell their homes raises many questions, the first of which is why. One looking for endogenously Japanese explanations, as some have, might argue that “the practice of regular replacement of dwellings derives from cultural tradition, the perceived nondurability of housing materials, and the lack of availability of land.” In the alternative, it could be that “the frequency of natural disasters like typhoons and earthquakes, as well as levels of heat and humidity, also provide a historical basis for the traditional use of cheap wooden housing which could be easily repaired or replaced.”<sup>67</sup> But such explanations, while “peculiarly Japanese,”<sup>68</sup> miss a more mundane force in the shaping of Japanese conceptions of homeownership: government housing policy.

In the post-war period, the Japanese government focused on housing construction as a primary engine of economic growth,<sup>69</sup> a policy it pursued with

65. Second-hand home purchases comprise a mere 2% of housing transactions in Japan, suggesting that Japanese don’t generally sell their homes as second-hand properties, and when they do, few Japanese want to buy them. See Forrest, Izuhara & Kennett, *supra* note 3, at 51.

66. White, *supra* note 18, at 1291–308.

67. Ronald & Hirayama, *supra* note 25, at 2475.

68. See John Owen Haley, *The Myth of the Reluctant Litigant*, 4 J. JAPANESE STUD. 359 (1978) (noting that commentators at the time almost unanimously viewed the Japanese as nonlitigious because of deep rooted cultural preferences); J. MARK RAMSEYER & FRANCES MCCALL ROSENBLUTH, JAPAN’S POLITICAL MARKETPLACE 2 (1993) (“Not so long ago, scholars began their accounts of Japanese politics by invoking the peculiarities of Japanese culture. One anthropologist made a minor splash when she ‘explained’ all of Japanese politics (all of Japanese society, really) by positing that Japanese shared an obsessive need to organize themselves hierarchically into cliques.”); Frank K. Upham, *Privatized Regulation: Japanese Regulatory Style in Comparative and International Perspective*, 20 FORDHAM INT’L L.J. 396, 401 (1996) (discussing distinctive aspects of the Japanese regulatory style). See generally Andrew Feenberg, *The Problem of Modernity in the Philosophy of Nishida*, in RUDE AWAKENINGS: ZEN, THE KYOTO SCHOOL & THE QUESTION OF NATIONALISM 151 (James W. Heisig & John C. Maraldo eds., 1995).

69. *Role of Government*, *supra* note 4, at 9 (“Mass construction of owner-occupied housing was considered an engine to stimulate economic growth.”); *id.* at 21 (“Single-family housing was located at the top of the ladder and regarded as the ‘Japanese dream.’”); Forrest & Hirayama, *supra* note 28, at 6 (“The promotion of home ownership was believed, and clearly stated by many politicians and academic analysts, to encourage social stability, social responsibility, political conservatism and a stronger sense of territorial attachment. Home ownership was presented as essentially a social project.” (citations omitted)).

increasing vigor in the 1990s in a failed attempt to revive the Japanese economy.<sup>70</sup> The Japanese government thus not only promoted homeownership as the “Japanese dream,”<sup>71</sup> it also instituted policies designed to favor the construction and purchase of new homes over the purchase and renovation of existing homes. For example, the government provided more favorable lending terms and larger tax breaks for those who purchased new homes or sought to “demolish and rebuild on site” compared to those who purchased second-hand homes.<sup>72</sup> In addition, until the 1990s, the government—which was the primary supplier of home mortgages—simply would not finance second-hand single home residences over twenty-five years old<sup>73</sup> or condominiums over eighteen years old.<sup>74</sup> Such policies were specifically designed “to accelerate the construction of more new housing”<sup>75</sup> and became known as Japan’s “scrap and build” housing policy.<sup>76</sup> As a direct result of this policy, most Japanese “prefer” to purchase new homes. After purchasing, they are most likely to “trade up” by “rebuilding *in situ* rather than moving to another site.”<sup>77</sup>

Given this policy, and out of a desire to ensure future business, Japanese builders tend to use pre-fabricated building materials of limited durability.<sup>78</sup> As such, Japanese “[h]ouses [are] said to be in a constant state of decline from the moment they [are] built in terms of condition and use value.”<sup>79</sup> By the time they are twenty to thirty years old, Japanese houses are “practically worthless.”<sup>80</sup> In other words, the Japanese “preference” for new homes—and the corollary expectation of declining home values—are rational responses to the economic realities created by the government’s scrap-and-build housing policy. This policy

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70. See Hirayama, *supra* note 4, at 197–98.

71. See Forrest & Hirayama, *supra* note 28, at 3 (“In both Japan and Britain, home ownership has been a centerpiece of the post war social contract and the spread of middle class lifestyles. The Japanese Dream and the British Property Owning Democracy have in the past contained similar ingredients of stability, security and belonging.”).

72. See Ronald & Hirayama, *supra* note 25, at 2472 (For example, the government offers a loan of “35 years for a new property compared with 25 years for a second-hand one.”).

73. *Role of Government*, *supra* note 4, at 17 (“The HLC does not finance those who purchase second-hand housing which is over 25 years old. The taxation system also gives an advantage to purchasers of new housing.”).

74. Ronald & Hirayama, *supra* note 25, at 2472 (“Furthermore, until the 1990s, GHLC loans on condominiums were only available on stock not more than 18 years old.”).

75. *Id.*

76. Ronald, *supra* note 1, at 140–41 (“Modern owner-occupation is dominated by ‘scrap and build’ approaches, where land is purchased with existing housing usually demolished to make way for a new structure, in order to modernise or improve the living environment. The lifespan of the built unit is between 30 and 50 years, thus land is considered a permanent commodity while the house itself has ephemeral qualities.”).

77. Forrest, Izuhara & Kennett, *supra* note 3, at 51.

78. Oizumi, *supra* note 55, at 61 (discussing the growth of prefabricated houses and the normalization of scrap-and-build housing).

79. Ronald & Hirayama, *supra* note 25, at 2476.

80. *Id.*

may, in turn, reinforce certain “cultural traditions,” such as the building of housing that can be easily repaired and replaced,<sup>81</sup> over other “cultural traditions,” such as the passing of homes from generation to generation.<sup>82</sup>

More critically, the Japanese case highlights the fact that a homeowner’s emotional reaction, and behavioral response, to negative equity depends largely on expectation and motivation at the time of purchase. Just as a car buyer does not panic when her new car suddenly loses 30% of its value the moment she drives it off the lot, a homebuyer who buys a home for its subjective “use value”—and/or who buys it expecting depreciation—is unlikely to panic when home prices suddenly fall. The homebuyer might experience regret that she purchased at the wrong time—just as one might experience regret for buying any expensive good that then goes on sale for 30% off the next week. But such a homebuyer is more likely to write off the mistake as bad timing, or bad luck, rather than see it as evidence that the purchase was a poor investment that should be shed in favor of better investment opportunities.

### III. SOCIO-ECONOMIC FACTORS PREVENTING STRATEGIC DEFAULT IN JAPAN

Of course, one might still expect that at least some Japanese homeowners would be tempted to default on their mortgages if they could purchase substantially better homes for significantly less than they owe on their underwater homes. In other words, if they could, a rational homeowner might be tempted to buy-and-bail in the face of steeply declining real estate prices, possibly upgrading in the process to a much nicer and more spacious home. A minority of American homeowners have done just that.<sup>83</sup> But few Japanese homeowners have done the same.

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81. *Id.* at 2475.

82. See Izuhara, *supra* note 52, at 311 (“The continuous importance of Japanese cultural practices regarding family wealth accumulation and intergenerational asset transfer is indicated by the fact that a guarantor, often an adult child, is pre-requisite for an older homeowner in joining the scheme.”); Hirayama, *supra* note 4, at 210 (“Older households also maintain homeownership partly to bequeath property assets to their children. According to the Survey on People’s Consciousness about Land Issues in 2008, approximately half the respondents who wished to own land and housing expressed the intention to bequeath assets to their offspring as the main reason they wanted to own real-estate properties.”); Ronald & Hirayama, *supra* note 25, at 2476 (“In interview discourses, families were considered to hold land for generations, tying them to both community and place.”); *id.* at 2478 (“The privately owned family house has become the symbolic basis through which reciprocal family obligations are defined, the physical space where welfare services are exchanged and the main financial commitment and reservoir of family wealth, the economic basis for future household welfare.” (citation omitted)).

83. Kathleen M. Howley, “Buy and Bail” Homeowners Get Past Fannie, Freddie Loan Hurdles, BLOOMBERG (Aug. 9, 2010, 9:00 PM), <http://www.bloomberg.com/news/2010-08-10-buy-and-bail-homeowners-get-past-mortgage-hurdles-from-fannie-freddie.html>.

This reluctance is remarkable if one considers the fact that one effect of the housing price collapse in Japan has been to leave many Japanese stuck on the “housing ladder.” The Japanese “housing ladder”—which was at the core of post-war housing policy—assumed that most middle-class Japanese would move over time from rentals, to owner-occupied condominiums, to owner-occupied single family homes.<sup>84</sup> This “housing ladder” was premised on the notion that although the house itself would lose value over time, the land itself would hold its value or appreciate. As a result of the real estate bust and declining land values, many Japanese are now trapped in undesirable suburban condominiums that they bought at the peak, that are now practically worthless, and that they cannot sell or rent.<sup>85</sup> But they don’t buy-and-bail, even though many could likely trade their cramped condominiums in the distant suburbs for more spacious and more convenient single-family homes closer to the city.<sup>86</sup>

Here again, one might be tempted to look for explanations in Japan’s shame-based culture or argue that the average Japanese is simply more responsible, more conscientious, or more risk-averse than the average American.<sup>87</sup> Such reductive explanations may hold some appeal—and some truth. But the Japanese are also susceptible to economic incentives, just like others. And a close examination suggests that economic factors do most of the remaining work in preventing voluntary mortgage default in Japan.

### **A. More Skin in the Game**

As an initial matter, Japanese may default less because they have more “skin in the game” because they tend to make larger down payments on their homes than Americans. For example, one study found that “overall, institutional loans account for around 57% of the purchase price” of home purchases in Japan and that “savings represent[ed] a third of the required finance.”<sup>88</sup> Moreover,

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84. See Yosuke Hirayama, *Reshaping the Housing System: Home Ownership as a Catalyst for Social Transformation*, in *HOUSING AND SOCIAL TRANSITION IN JAPAN* 15, 18 (Yosuke Hirayama & Richard Ronald eds., 2007) (discussing Japan’s housing ladder).

85. *Id.* at 38–39 (discussing the prevalence of middle-income families stuck in unmarketable small condominiums in the suburbs that are rapidly declining in value).

86. *See id.* at 38.

87. Tiwari & Moriizumi, *supra* note 11, at 279 (“Traditionally, Japanese borrowers are risk-averse and the default rates have been very low.”).

88. Forrest, Izuhara & Kennett, *supra* note 3, at 52 (reporting “[a]ggregated data for 1990 to 1996”); *see also* Tiwari & Moriizumi, *supra* note 11, at 271–72 (“The average share of mortgage finance in the total cost of housing is around 40%. Sources of down-payment are own savings (around 70%), selling previously owned real estate (22%), inheritance (around 4%) and others (4%).”); *id.* at 277 (“Generally the limit of the maximum loan amount is set at 80%. The GHLC used to provide mortgages with amounts more than 80% of the cost of property; however, this system has changed in accordance with the reform proposed by the current cabinet and GHLC has now put an 80% limit on the loan-to-cost ratio.”); Miki Seko & Kazuto Sumita, *Japanese Housing Tenure Choice*

“[m]ost households take between 15 to 25 years to save enough money for a down payment.”<sup>89</sup> These numbers would explain why, in the aggregate, Japanese are less likely to default in the face of falling home values than Americans, who generally put down much smaller down payments and thus have both less skin in the game and a shorter distance to fall before ending up with negative equity.<sup>90</sup>

However, looking only at aggregate differences in down payments obscures the fact that, during the Japanese housing boom, 100% financing was actually quite common<sup>91</sup>—as were ARM-like loans that started with low payments that ramped up over time.<sup>92</sup> According to a survey by the Japan Housing Finance Agency in 2006, 21% of “higher income” individuals and 39% of “lower income” individuals “borrowed all the necessary principal without making a deposit in purchasing a house.”<sup>93</sup> Moreover, the same survey revealed that 32% of those who made no down payments also took out variable rate loans.<sup>94</sup> These statistics paint a picture that is not so dramatically different than mortgage financing during the U.S. housing boom<sup>95</sup>—and suggest that larger down payments cannot completely explain the difference in strategic default rates in Japan and the United States.

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*and Welfare Implications After the Revision of the Tenant Protection Law*, 35 J. REAL ESTATE FIN. & ECON. 357, 362 (2007) (“In Japan in 2005, the average value of a residential unit was ¥36,360,000, the average down payment was 31.8% of the purchase price, and the annual loan repayment ratio was 19.3% of the purchasing household’s income.”).

89. Seko & Sumita, *supra* note 88, at 362.

90. See Ann-Margret Westin et al., *Housing Finance and Financial Stability—Back to Basics?*, in GLOBAL FINANCIAL STABILITY REPORT: DURABLE FINANCIAL STABILITY: GETTING THERE FROM HERE 111, 121 (2011).

91. Forrest, Izuhara & Kennett, *supra* note 3, at 54 (“The easy availability of 100% mortgages contributed to the growth of the bubble economy and 80% borrowing is now the norm.”); KOSSERIS ET AL., *supra* note 20, at 3 (“Most borrowers are able to fund home purchases up to 100% using a combination of the sources listed above. Borrowers tend to fund loans through their employers in combination with a commercial bank or the GHLC.”).

92. *Role of Government*, *supra* note 4, at 15 (“The amount of repayment for the first five years in the Step Repayment System was lowered in 1993 and 1994.”).

93. Hirayama, *supra* note 4, at 205–06 (“According to a survey of those who procured a mortgage in 2006, which was carried out by the Japan Housing Finance Agency, the percentage of those who borrowed all the necessary principal without making a deposit in purchasing a house was 21 per cent among higher-income people who earned 8 million–20 million yen annually, and 39 per cent for lower-income people who earned 4 million yen or less.”).

94. See *id.* at 206 (“The survey revealed that the percentage of borrowers without deposits was 20 per cent for those who chose a fixed-rate housing loan but higher at 32 per cent for those who took out a variable-rate loan.”).

95. Anthony Sanders, *The Subprime Crisis and Its Role in the Financial Crisis*, 17 J. HOUS. ECON. 254, 255–57 (2008).

## **B. No Need to Move**

Japanese also might be less inclined to strategically default because they move less frequently than the average American. Americans tend to move relatively frequently, with approximately 40% of home purchasers moving within eight years.<sup>96</sup> This tendency to buy and sell a home within a relatively short time frame is driven by the desire to move up from a starter home to a larger home, but also the tendency of American workers to relocate across the country.<sup>97</sup> Underwater homeowners in the United States are thus frequently faced with the choice of forgoing a job opportunity or defaulting on their underwater mortgage.<sup>98</sup> Some choose to default.

An underwater Japanese homeowner is less likely to face this dilemma. As an initial matter, the fraying, but still comparatively robust, lifetime employment system in Japan means that many more Japanese than Americans work for the same company in the same location for their entire lives.<sup>99</sup> These individuals never face the need to sell their underwater homes. In addition, even those workers (particularly men) who are required to move for work—either to take a new job or due to a transfer within their existing company—are typically offered employee housing, with the expectation that they will commute home to their families on the weekends.<sup>100</sup> This system is workable because of Japan's relatively small size and efficient transportation system, including bullet trains

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96. See Paul Emrath, *How Long Buyers Remain in Their Homes*, HOUSINGECONOMICS.COM (Feb. 11, 2009), <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=110770&channelID=311>; see also *Why Do Americans Move So Often?* (interview by Stephen Frazier with Fred Goodwin), CNN.COM (Aug. 5, 2001, 5:47 PM) <http://transcripts.cnn.com/TRANSCRIPTS/0108/05/sun.10.html> (suggesting that Americans move every five to seven years on average).

97. Haya El Nasser & Paul Overberg, *Millions More Are Changing States: Immigrants and Young Fuel Trend*, USA TODAY, Nov. 30, 2007, at A1, available at [http://www.usatoday.com/news/nation/2007-11-29-Mobility\\_N.htm](http://www.usatoday.com/news/nation/2007-11-29-Mobility_N.htm).

98. See Alicia Sasser Modestino & Julia Dennett, *Are American Homeowners Locked into Their Houses? The Impact of Housing Market Conditions on State-to-State Migration*, (Fed. Reserve Bank of Bos., Working Paper No. 12-1, 2012), available at [www.bos.frg.org/economic/wp/wp/2012/wp1201.pdf](http://www.bos.frg.org/economic/wp/wp/2012/wp1201.pdf). See generally Colleen Donovan & Calvin Schnure, *Locked in the House: Do Underwater Mortgages Reduce Labor Market Mobility?* 20 (last revised Sept. 1, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1856073](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1856073) (discussing factors limiting mobility of mortgagors).

99. See YOSUKE HIRAYAMA & RICHARD RONALD, HOUSING AND SOCIAL TRANSITION IN JAPAN 20 (2007) (discussing Japan's lifetime employment system); Ronald, *supra* note 1, at 140 ("The lifelong employment system (Shuushin Koyou) and seniority pay system (Nekoujoretsu) have ensured an unusually secure relationship between company and employee. Moreover, companies have historically provided temporary housing and housing loans for employees directly.").

100. See Ronald, *supra* note 1, at 140 ("The disruptiveness of staff transfers has been alleviated by the temporary provision of company housing, which facilitates the maintenance of a family home elsewhere. Essentially, the need to sell up or move, often encouraged by Western employment systems, has been minimized.").

between major cities, and because of traditional gender expectations within most Japanese families.

This situational difference between Japanese and American underwater homeowners might well account for some part of the difference in behavior among them in relation to strategic default. But it does not offer a full, or even significant, account of the stark difference in tendencies toward strategic default. First, only a portion of American homeowners who strategically default do so as a result of a job transfer or other need to relocate.<sup>101</sup> Second, the lifetime employment system has significantly disintegrated in the years since the bursting of the housing bubble and in the lost decade(s) that followed.<sup>102</sup> Significant and growing numbers of Japanese, including significant numbers of underwater homeowners, exist and work outside the lifetime employment system—often working part-time jobs or sporadically.<sup>103</sup> And yet significant numbers of Japanese are not voluntarily defaulting on their mortgages.

### C. Nowhere to Go

A perhaps more powerful motivational factor for Japanese homeowners in continuing to pay their underwater mortgages is the lack of adequate alternatives to continued home ownership. While concern over being able to find a place to live due to poor credit is often cited as a reason that Americans do not—or should not—default on their mortgages,<sup>104</sup> the reality is that many strategic defaulters in the United States find that they are in fact able to rent much nicer homes than their underwater homes, often for much less.<sup>105</sup> Indeed, many Americans who strategically default are motivated primarily by a sense that they are paying too much for a place to live; they can rent comparable homes for much less than their mortgage.<sup>106</sup> In addition, concerns about the limitations of poor credit typically turn out to be overblown and are easily circumvented by renting a home before defaulting on one's mortgage.<sup>107</sup>

The practical problems that would confront a hypothetical Japanese strategic defaulter in finding a new place to rent would be of a different order

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101. See White, *supra* note 18, at 1282.

102. Richard Ronald, *Home Ownership, Ideology and Diversity: Re-evaluating Concepts of Housing Ideology in the Case of Japan*, 21 HOUS. THEORY & SOC'Y 49, 58 (2004).

103. Yosuke Hirayama & Richard Ronald, *Baby-boomers, Baby-busters, and the Lost Generation*, 26 URB. POL'Y & RES. 325, 328–29 (2008) (discussing housing market volatility and the increase in part-time workers in Japan).

104. See White, *supra* note 13, at 1001–03.

105. David Streitfeld, *No Help in Sight, More Homeowners Walk Away*, N. Y. TIMES (Feb. 2, 2010), <http://www.nytimes.com/2010/02/03/business/03walk.html?pagewanted=all>; Mark Whitehouse, *American Dream 2: Default, Then Rent*, WALL ST. J. (Dec. 16, 2009), <http://online.wsj.com/article/SB126040517376983621.html>.

106. See White, *supra* note 18, at 1314.

107. See White, *supra* note 13, at 985.

entirely. Japanese rental housing is notoriously cramped and small.<sup>108</sup> According to a government survey in 1998, the average owner-occupied unit was approximately 1302 square feet with 5.2 rooms, whereas the average rental housing unit was 473 square feet with 3.4 rooms.<sup>109</sup> This discrepancy has also grown over time.<sup>110</sup> It has been argued that the reason that rental units tend to be small in Japan is that very favorable tenancy laws essentially give tenants a life tenancy<sup>111</sup> and make it difficult for landlords to raise rent.<sup>112</sup> Landlords thus prefer to build smaller units in which people are unlikely to wish to live in long term, particularly if they intend to raise a family.<sup>113</sup> In addition, while the Japanese government heavily subsidizes the building and finance of owner-occupied properties, it has provided no such subsidies for the building of rental housing.<sup>114</sup> This has resulted in a housing supply that is heavily tilted in favor of owner-occupied units, a scarcity of well-maintained rental units,<sup>115</sup> and rental units that are “substandard in terms of floor area and amenities.”<sup>116</sup> Nevertheless, rent remains high, particularly for larger rental units.<sup>117</sup> Japanese thus buy of

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108. Seko & Sumita, *supra* note 88, at 358.

109. *Role of Government*, *supra* note 4, at 11 (“According to the Housing and Land Survey in 1998, there was a difference in floor space—121 square meters for an owner occupied housing unit and 44 square meters for a rental housing unit.”); Seko & Sumita, *supra* note 88, at 364 (“Owned housing has 5.2 rooms, general rental housing has 3.4, and rental housing with fixed rental terms has 2.9.”).

110. *See* Seko & Sumita, *supra* note 88, at 358 (“Between 1968 and 2003, the average floor space of owned housing increased by 42.5%, while that for rental housing increased by 28.3% during the same period.”).

111. *Id.* at 359 (“As a result, it is almost impossible for landlords to evict tenants . . . . Landlords have a duty to renew rental contracts when they expire unless they can provide evidence for evoking the ‘just cause’ to the satisfaction of the courts.” (citation omitted)).

112. *See id.* (explaining that “rent increases must go through the courts if the tenant does not accept the rent increase” and that “[i]t has been very rare for the court to rely on the ‘just cause’ and rule in favor of landlords, in practice, tenants can live in rental housing for the same rent on an open-ended basis”).

113. *See id.* at 358 (“As a result, landlords prefer to rent smaller units to singles or tenants with smaller families because there is a relatively high-turnover rate among such tenants.”); *id.* at 359 (“One of the unintended and undesirable consequences of the JTPL [Japanese Tenant Protection Law] was the prevalence of cramped and small rental housing in the Japanese housing market.”).

114. *See* Tiwari & Moriizumi, *supra* note 11, at 271 (“The funding for rental houses by the GHLC is negligible compared to the volume of lending for ownership houses.”).

115. *See* Seko & Sumita, *supra* note 88, at 358 (“In addition, many landlords have been reluctant to provide or adequately maintain rental properties because of legal protections for tenants that restrict landlords’ control over their property.”).

116. Hirayama, *supra* note 4, at 208; *see also id.* at 207 (discussing renters’ experiences with “disadvantages in terms of physical conditions and housing costs”).

117. *See id.* at 208.

necessity as their families grow,<sup>118</sup> as evidenced by the fact that they are much more likely to own homes than rent if they have children.<sup>119</sup>

A Japanese homeowner who defaulted on his mortgage would face the likely prospect of moving his family into a cramped, substandard rental unit<sup>120</sup>—or paying an exorbitant amount for a larger rental unit. In addition, he would likely have to relocate his family to a less desirable and less stable neighborhood with poorer quality schools.<sup>121</sup> In other words, for most Japanese, an underwater home represents a better alternative than a rental—even if the home was purchased at an inflated price during the bubble and is rapidly declining in value.<sup>122</sup>

#### **D. Security in Old Age**

Another likely socio-economic factor preventing strategic default in Japan is the need for the security of an owner-occupied home in old age. This need is driven by two factors: 1) lack of welfare support for the elderly, and 2) widespread discrimination against the elderly in the rental market. As to the first, the Japanese government promotes home-centered care of the elderly under a social insurance scheme that strongly emphasizes de-institutionalization and through policies that otherwise provide little support for the elderly.<sup>123</sup> These policies are “a significant aspect in accounting for the understandings of Japanese homeowners,”<sup>124</sup> who use their homes as a primary source of welfare in old age and as the locus of family-centered care for the elderly.<sup>125</sup>

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118. See Seko & Sumita, *supra* note 88, at 369 (“The average number of members . . . in owned housing households is 3.7, the highest among the three tenure categories. The average number of household members living in general rental housing is 2.7 . . .”).

119. See *id.* at 369 (“For households living in their owned housing units, 93% are married, 74% have children, and 15% live with their grandparent(s). For households living [in] general rental housing units, 82% are married, 46% have children, and none live with their grandparent(s).”).

120. See Ronald, *supra* note 1, at 130 (referring to “[r]enters . . . occupying qualitatively different types of dwelling”).

121. See Ronald & Hirayama, *supra* note 25, at 2477 (finding that for Japanese, “living in homeowner neighbourhoods was almost as important as being a homeowner in many cases. Essentially, neighbourhoods dominated by owner-occupiers are considered superior and are more sociable and stable.”); *id.* at 2478 (reporting that Japanese purchase homes for access to better schools).

122. *Id.* at 2477 (finding that Japanese in “detached family houses regularly linked prejudices against rental housing, which functioned in discourse to necessitate house purchase, with prejudices against rental status and living in apartment buildings and small flats.”).

123. Izuwara, *supra* note 52, at 312; see Hirayama, *supra* note 9, at 178.

124. Ronald, *supra* note 1, at 145.

125. Izuwara, *supra* note 52, at 312.

Second, the elderly face significant discrimination in the rental market, as many landlords refuse to rent to older tenants.<sup>126</sup> Though there have been some recent attempts to identify landlords willing to rent to the elderly,<sup>127</sup> living conditions in available rental units for the elderly are often “wretched.”<sup>128</sup> Most Japanese are aware of this reality and thus experience anxiety at the thought of not having a place of their own in old age.<sup>129</sup> Not only does this need for security play a role in driving most Japanese to buy homes,<sup>130</sup> but one can surmise that it likely serves as a salient barrier to contemplating strategic default as well.

### E. Government Assistance

In the wake of Japan’s economic collapse, the Japanese government launched a series of new schemes to assist borrowers with “the difficulties faced by some groups in repaying their housing loans.”<sup>131</sup> These programs included: 1) extending loan repayment terms for as much as ten years for those whose salaries had been reduced;<sup>132</sup> 2) allowing deferments of mortgage payments for up to three years in addition to the ten-year extension;<sup>133</sup> 3) extending the tax-reduction period for homeowners from six to fifteen years;<sup>134</sup> and 4) offering low-interest negative equity mortgages, consisting of a combination of public and private loans, to assist in paying off existing mortgages and purchasing another home for employment-related moves.<sup>135</sup> While these measures seem significant on the surface, only 1% of borrowers actually took advantage of need-based programs such as extending repayment periods and deferments.<sup>136</sup> On the other hand, a government policy that has widely benefited underwater homeowners is the provision of loans with extraordinarily low interest rates of around 2%.<sup>137</sup> These

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126. See Hirayama, *supra* note 9, at 188.

127. See Masayuki Nakagawa, *Why Is There Discrimination Against the Elderly? Experimental and Empirical Analyses for the Rental Housing Market in Japan* 3 (March 2003), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=397881](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=397881) (discussing the Act for the Stable Living of the Elderly).

128. See Hirayama, *supra* note 9, at 188.

129. Ronald, *supra* note 1, at 145.

130. Hirayama, *supra* note 9, at 188 (finding that “nearly nine-tenths of households with elderly people are owner-occupiers”).

131. Forrest, Izuhara & Kennett, *supra* note 3, at 53.

132. *Id.* at 54; Hirayama, *supra* note 4, at 205 (reporting that “increasing numbers of borrowers have been permitted to extend mortgage-repayment periods”).

133. Forrest, Izuhara & Kennett, *supra* note 3, at 54.

134. *Role of Government*, *supra* note 4, at 15–16.

135. Forrest, Izuhara & Kennett, *supra* note 3, at 54.

136. *Id.*

137. Forrest, Izuhara & Kennett, *supra* note 3, at 53; see also KOSSERIS ET AL., *supra* note 20, at 3–4 (“The fixed-rate convertible loans are fixed for a given number of years (i.e., two, three, five[,] seven, or 10) and then allow the borrower to extend the fixed rate for the same number of years or, in some cases, up to 35 years. Alternatively, after the

low interest rates have not only mitigated the economic pain of declining equity by reducing monthly payments, but in doing so have also reinforced the desirability of an underwater home to a rental unit.<sup>138</sup>

### **F. No Escape**

The above socio-economic factors all help explain why Japanese homeowners, unlike some Americans, would be unlikely to see strategic default as a practical solution to negative equity if renting were the only alternative. But they do not explain why a significant number of Japanese homeowners have not chosen to move up the housing ladder by buying a more desirable home and then defaulting on their underwater mortgage—a practice known as buy-and-bail in the United States. The answer lies in Japan’s lender-friendly guarantee system for home mortgages, which allows guarantors of home mortgages easy recourse to a homebuyer’s assets without the need to foreclose.<sup>139</sup>

As a matter of standard practice, mortgage loans in Japan must be “unconditionally guaranteed by a designated guarantor.”<sup>140</sup> While a bank will sometimes accept a guarantee from a borrower’s employer or other individual, more typically the borrower must secure a guarantee from a mortgage guarantee company.<sup>141</sup> Mortgage guarantee companies will issue a guarantee if the borrower “meets the guarantor’s underwriting guidelines and upon the payment of a fee to the guarantor.”<sup>142</sup> Unlike the U.S. mortgage insurance system, which allows the lender to collect on mortgage insurance if the lender is unable to cover its cost after foreclosure on the subject property, the Japanese guarantee system allows the lender to collect the full balance of the loan immediately, typically within two weeks of a borrower’s default, from the guarantor.<sup>143</sup> The lender thereafter does not participate in the mortgage settlement process.<sup>144</sup>

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initial fixed period expires, the borrower had the option to convert from a fixed-rate to an adjustable-rate loan indexed to the short-term prime rate.”).

138. See White, *supra* note 18, at 1313–16 (advocating a “rent-based” loan modification program and arguing that owners with negative equity feel less distress and have no economic incentive to default if their mortgage payments are comparable to rent for a similar home).

139. See KOSSEKIS ET AL., *supra* note 20, at 5 (“If the guarantor makes payment under the guarantee, it automatically receives the right of indemnity. The right of indemnity is secured by a mortgage on the property and includes the right to pursue other assets from the extent the mortgage is insufficient to cover the borrower’s obligations.”).

140. *Id.* at 4.

141. *Id.*

142. *Id.*

143. See *id.* at 7 (“Once the borrower is considered to be in default (or if the borrower declares bankruptcy), the guarantor is called on to perform subrogation of the loan payment. Again, depending on the guarantor, this occurs in approximately two weeks.”); *id.* at 5 (“The definition of default varies by lender, but it is typically between three to

Instead, the guarantor is granted a right of indemnity against the borrower that does not require the guarantor to foreclose on the property to collect.<sup>145</sup> First, the guarantor may collect against the borrower's unencumbered assets,<sup>146</sup> including the borrower's bank accounts without the need for a court order.<sup>147</sup> Then, if the borrower's unencumbered assets are insufficient, the guarantor may foreclose to try to cover any outstanding balance.<sup>148</sup> Under such a system, it is almost never in a homeowner's economic interest to default on a home mortgage if the borrower has any unencumbered assets that he would lose as a result. In short, if a borrower can pay the underwater mortgage, he will almost always be better off doing so.<sup>149</sup> Moreover, if he cannot pay the mortgage, he is better off selling the home for a loss on the market than letting it go into foreclosure and suffering a larger loss.<sup>150</sup> The end result of this system is that borrower defaults are rare, and strategic defaults basically nonexistent.<sup>151</sup>

However, Japan's lender-friendly loan recourse system imposes a heavy burden on Japanese homeowners, including not only the unemployed, but also those whose homes were destroyed by the Kobe earthquake in 1991<sup>152</sup> and the

seven months."); Tiwari & Moriizumi, *supra* note 11, at 279 ("If the borrower remains delinquent for six months, the loan is considered as default . . .").

144. See KOSSERIS ET AL., *supra* note 20, at 4, 7; Tiwari & Moriizumi, *supra* note 11, at 279 (reporting that when a loan is in default for longer than six months, "the loan is transferred to loan insurance companies and taken off the books of the bank").

145. See KOSSERIS ET AL., *supra* note 20, at 5.

146. See Miki Seko, Kazuto Sumita, & Michio Naoi, *Residential Mobility Decisions in Japan: Effects of Housing Equity Constraints and Income Shocks under the Recourse Loan System*, 45 J. REAL ESTATE FIN. & ECON. 63, 65 (2012) ("[B]orrowers have to surrender any unencumbered assets to cover the loan outstanding."); KOSSERIS ET AL., *supra* note 20, at 8 ("Even for unsecured consumer loans in Japan, there are recoveries of approximately 10%–15% because all the assets of the borrower secure its obligations.");

147. See KOSSERIS ET AL., *supra* note 20, at 5–6 ("The banks are permitted to set off the mortgage loan against deposits of the borrower if the borrower is unable to cover his obligations to the guarantor.");

148. *Id.* at 7.

149. If the borrower cannot sell the home, it is typically in the guarantor's interest to work out a repayment plan rather than pursue foreclosure, as the foreclosure process is time-consuming and costly. See *id.* ("At this point, the guarantor will either work out a payment schedule with the borrower or file petition to foreclose."); Tiwari & Moriizumi, *supra* note 11, at 280 ("Enforcement of mortgage through a court judgment is very time consuming and costly. It takes about two to three years from the start of legal action to the court judgment and the foreclosure sale of the mortgaged property.");

150. KOSSERIS ET AL., *supra* note 20, at 8 ("The borrower will certainly have less incentive to sell if the property value is below the amount of the outstanding mortgage, but, in either case, he will be worse off if he allows the home to be foreclosed on and sold in a public sale."); Tiwari & Moriizumi, *supra* note 11, at 279 (describing Japan's "costly and time-consuming foreclosure procedures");

151. See KOSSERIS ET AL., *supra* note 20, at 8 ("Historical mortgage defaults have been extremely low in Japan . . .");

152. *Id.* at 13 (commenting on the rarity of default after the Kobe earthquake).

tsunami in Fukushima in 2011.<sup>153</sup> Because most households cannot acquire earthquake or tsunami insurance, they have been left paying mortgages on homes that have been destroyed<sup>154</sup>—and Japan's loan recourse system offers them no tenable way out of this financial burden.

The lender-friendly recourse system also has allowed lenders to largely escape financial responsibility for the Japanese housing sector boom and bust, which, like in the United States, was largely driven by irresponsibility in the financial sector—and was not caused by individual homeowners. In addition, to the extent that Japan's harsh recourse system has mired Japanese homeowners in debt and tied them to their sinking homes, it has likely depressed consumer spending, hindered worker mobility, and thus contributed to Japan's long economic malaise. Japan's recourse system is thus not particularly worthy of emulation (and nor is its neglect of adequate rental housing or its lack of welfare support for the elderly).

Nevertheless, the juxtaposition of Japan's loan recourse system highlights the leverage given to borrowers by mortgage recourse systems in most U.S. states—not to mention the leverage given to borrowers in nonrecourse states. By forcing lenders to foreclose before seeking a deficiency judgment, most U.S. state systems afford defaulting borrowers the ability force lenders into a choice between taking some losses in a short sale or taking even bigger losses in a costly and time-consuming foreclosure process. This leverage has enabled large numbers of U.S. homeowners to force their lenders' hands through strategic default, to negotiate a short sale, and to protect their unencumbered assets in the process.<sup>155</sup> This option is not available to underwater homeowners in Japan.

### III. CONCLUSION

The sting of Japan's lender-friendly mortgage recourse system is mitigated by the reality that most Japanese do not seem overly distressed about negative equity and thus never contemplate strategic default in the first place. Because most Japanese purchase homes as places to live and not as investments,

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153. See Yasuyuki Sawada & Satoshi Shimizutani, *How Do People Cope with Natural Disasters? Evidence from the Great Hanshin-Awaji (Kobe) Earthquake in 1995*, 40 J. MONEY, CREDIT & BANKING 463, 470–71 (2008) (discussing the remaining financial burden on Japanese homeowners should their homes be destroyed in a natural disaster).

154. See Robert B. Leflar, Ayako Hirata, Masayuki Murayama & Shozo Ota, *Human Flotsam, Legal Fallout: Japan's Tsunami and Nuclear Meltdown*, 27 J. ENVTL. L. & LITIG. 107, 114, 121 (2012). See generally John W. Schoen, *Ins. Indus. Well Shielded from Japan Quake*, MSNBC.COM (Mar. 16, 2011, 5:59 PM) [http://www.msnbc.msn.com/id/42095196/ns/business-world\\_business/t/insurance-industry-well-shielded-japan-quake/#.T7rXR8127ZM](http://www.msnbc.msn.com/id/42095196/ns/business-world_business/t/insurance-industry-well-shielded-japan-quake/#.T7rXR8127ZM).

155. See generally Andra C. Ghent & Marianna Kudlyak, *Recourse and Residential Mortgage Default: Evidence from U.S. States*, 24 REV. FIN. STUD. 3139–86; White, *supra* note 18, at 1296–98.

they need not worry that declining home values will undermine their future financial security. To the contrary, most Japanese buy their homes to hold and with a view toward securing a rent-free place to live in old age. Moreover, even those Japanese who buy multiple properties as investments do so in order to generate income in retirement—not to sell later at a profit. Both of these goals (security and income in old age) are not substantially undermined by declining home values. As such, declining values do not generate panic among Japanese homeowners the way that declining home values have done in the United States, where most individuals buy their homes with the expectation of selling them for a profit or of using the equity in their homes to finance important life events, such as college and retirement.

This critical difference is not an accident or culturally determined, but rather the result of deliberate policy choices at the governmental level. The Japanese government has subsidized and encouraged homeownership as a substitute to a robust social security system for its elderly population. It thus rationalizes homeownership to Japanese citizens as a path to middle-class stability and security in retirement, but not as a path to wealth.

In contrast, the U.S. government—in tandem with the U.S. media and real estate industry—has relentlessly promoted homeownership as an asset-based investment that appreciates with time. This was particularly true in the years leading up to the housing collapse, when the Bush administration pushed an aggressive agenda to expand homeownership by promoting it as a reliable means of building wealth and as giving families borrowing power to finance important needs.<sup>156</sup> The Federal Reserve Board, at the time, publicized estimates that “homeowners have a net worth nearly 36 times more than that of renters.”<sup>157</sup> Later, in an effort to shore up the collapsing housing market, the administration sought to assure potential homebuyers that “owning a home remains the best long-term investment a family can make.”<sup>158</sup> These sentiments were echoed in turn by the media and the real estate industry, which promoted real estate as a “can’t miss” investment.<sup>159</sup>

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156. See PRESIDENT GEORGE W. BUSH, A HOME OF YOUR OWN: EXPANDING OPPORTUNITIES FOR ALL AMERICANS (2002), available at <http://georgewbush-whitehouse.archives.gov/infocus/homeownership/toc.html>.

157. Kristin McAllister, *New Wave of Home Buyers Is Entering the Market*, CHI. TRIB., Aug. 13, 2006, at C58, available at [http://articles.chicagotribune.com/2006-08-13/business/0608130463\\_1\\_echo-boomers-buyers-market-annual-appreciation-rate](http://articles.chicagotribune.com/2006-08-13/business/0608130463_1_echo-boomers-buyers-market-annual-appreciation-rate).

158. See Alphonso Jackson, *Ask the White House*, THE WHITE HOUSE (Sept. 6, 2007), <http://georgewbush-whitehouse.archives.gov/ask/20070906.html> (in which HUD Secretary Alphonso Jackson proclaimed that “owning a home remains the best long-term investment a family can make”).

159. See Scott Reeves, *Why Home Ownership Makes Sense*, FORBES.COM (July 27, 2004, 6:00 AM), [http://www.forbes.com/2004/07/27/cx\\_sr\\_0727ownership.html](http://www.forbes.com/2004/07/27/cx_sr_0727ownership.html). (“Home ownership rewards most buyers and, barring a severe economic downturn, it’s as close as it gets to a ‘can’t miss’ investment.”); *Why Rent When You Can Buy?*, HOUSTON ASS’N REALTORS, <http://www.har.com/usearealtor/disWhyRent.cfm> (last visited Aug. 3, 2012) (posing the question, “Are you worried about whether homebuying is a good

With this type of encouragement from the government and the financial industry, most Americans have come to see buying a home as the primary route to building wealth, to retirement security, and as a repository of savings to be drawn against in times of need.<sup>160</sup> Because of this mindset during the housing boom, many homebuyers were willing to commit to paying two to three times more in monthly payments to purchase a home than they would have had to pay to rent the same house. Homebuyers made these decisions out of a belief that while rent was throwing away money, mortgage payments were an investment. Many homebuyers thus viewed the extra monthly outlay as a form of forced savings.<sup>161</sup> These homebuyers' calculations assumed that their homes would appreciate and that this would compensate for the additional monthly expense of homeownership.<sup>162</sup> This belief received wide-spread support from "experts" in government, the real estate industry, and academia who argued that prices were not inflated because one had to discount for future appreciation in calculating the true cost of ownership.<sup>163</sup>

This expert advice turned out to be badly wrong, of course, and with the bursting of the housing bubble, many U.S. homeowners found themselves pouring all or most of their disposable income into a home that they no longer saw as a good investment, but rather as a threat to their families' financial security.<sup>164</sup> A not insignificant number of these homeowners decided to shed what they saw as toxic investments.<sup>165</sup> But this view of their homes as toxic and the act of strategic default that follows stem directly from the expectation at the time of purchase.

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INVESTMENT?" and answering, "For the majority of Americans, their home is their largest financial asset and a major player in their investment portfolio. It's a good thing, too . . . . The NATIONAL ASSOCIATION OF REALTORS® estimates that home value rises, on average, by 4.5 percent a year. That's a steady return on investment; one's own home is a much less volatile asset than stocks, bonds, or mutual funds.").

160. Dennis Jacobe, *Americans Still See Buyer's Market in Housing: More Expect Home Prices in Their Area to Decrease (27%) than Increase (21%)*, GALLUP (Jan. 17, 2011), <http://www.gallup.com/poll/145616/americans-buyer-market-housing.aspx>; Doug Lebda, *Taking the Plunge: Considerations for First-Time Homebuyers in Today's Housing Market*, HUFFINGTON POST (May 18, 2012, 6:47 PM), [http://www.huffingtonpost.com/doug-lebda/buying-a-house-first-time-buyer\\_b\\_1528522.html](http://www.huffingtonpost.com/doug-lebda/buying-a-house-first-time-buyer_b_1528522.html) ("A recent survey by the National Association of Realtors (NAR) found that almost seven of 10 Americans believe buying a house is a good financial decision.").

161. See White, *supra* note 18, at 1314 ("As long as homeownership felt like a good investment, many homeowners didn't mind paying much more in mortgage payments than they would to rent the same home. Indeed, the notion that homeownership was a good investment convinced many individuals to stretch to purchase homes during the housing boom in the first place.").

162. *Id.*

163. Christopher C. Williams, *Bubble? What Bubble?* BARRON'S, Apr. 10, 2006, at L10.

164. See White, *supra* note 18, at 1293.

165. *Id.*

If a home is purchased primarily or in significant part as investment, a homeowner will naturally be distraught if his home loses significant value. Moreover, if a homebuyer is convinced at the time of purchase that the home will significantly appreciate, the homebuyer is likely to be willing to pay more for the home than he would if simply comparing the net cost of ownership to the net cost of renting. Conversely, if the prospect of appreciation is central to the purchasing decision, potential homebuyers will sit on the sidelines in a down market waiting for the market to improve before purchasing, even with the net cost of owning is significantly less than the net cost of renting. In other words, when homebuyers view a home as an investment rather than a place to live, it distorts the bedrock economic calculation in determining a home's market value: what it could rent for on the current market.<sup>166</sup>

Moreover, when most homebuyers are “petty tycoons” rather than “pragmatic” purchasers, housing market booms will tend to be exacerbated—because, as prices rise, more homebuyers will be willing to pay large “investment premiums” on the expectation of appreciation. In contrast, down markets will be prolonged because potential homebuyers will resist buying homes as long as they expect further depreciation—or, if they buy, they will discount expected depreciation from home prices, further depressing prices. And, as prices decline, “petty tycoons” will tend to look for a way to shed their investments, including strategic default, further feeding the downward spiral. Markets dominated by homebuyers concerned only with a home's “use value” should be less susceptible to these tendencies.

The Japanese conception of homeownership thus offers a window toward understanding the consequences of the home-as-investment mindset that predominates in the United States, with the explicit encouragement of the government, the media, and the real estate industry. This mindset not only helped stoke the housing boom, it also has caused Americans much anxiety in the wake of the housing bust, has led to a significant number of strategic defaults, and has kept homebuyers on the sidelines despite extremely low interest rates, attractive price-to-rent ratios, and historically high affordability measures.<sup>167</sup> In contrast,

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166. See HYE JIN RHO, DANILO PELLETIERE & DEAN BAKER, THE CHANGING PROSPECTS FOR BUILDING HOME EQUITY: AN UPDATED ANALYSIS OF RENTS AND THE PRICE OF HOUSING IN 100 METROPOLITAN AREAS 3 (2008), available at [http://www.cepr.net/documents/publications/Changing\\_Prospect\\_for\\_Building\\_Home\\_Equity\\_2008\\_10.pdf](http://www.cepr.net/documents/publications/Changing_Prospect_for_Building_Home_Equity_2008_10.pdf) (explaining that a textbook premise of economics is that the value of a home—even an owner-occupied one—is “the current value of the rent payments that could be earned from renting the property at market prices”).

167. Suzy Khimm, *If Buying a House is Such a Good Deal, Why Aren't More People Doing It?*, EZRA KLEIN'S WONKBLOG (Mar. 21, 2012, 11:50 AM), [http://www.washingtonpost.com/blogs/ezra-klein/post/if-buying-a-house-is-a-such-a-good-deal-why-arent-more-people-doing-it/2012/03/21/gIQAAtwtsRS\\_blog.html](http://www.washingtonpost.com/blogs/ezra-klein/post/if-buying-a-house-is-a-such-a-good-deal-why-arent-more-people-doing-it/2012/03/21/gIQAAtwtsRS_blog.html); Derek Kravitz, *Americans Look to Rent, Not Buy, as Home Sales Continue to Dip*, NBC-17 (Dec. 27, 2011), <http://www2.nbc17.com/news/2011/dec/27/home-sales-continue-dip-demand-rental-properties-s-ar-1754516/>; Derek Thompson, *The End of Ownership: Why Aren't Young People Buying More Houses?*, ATLANTIC (Feb. 29, 2012, 10:47 AM),

Japanese homeowners have experienced less anxiety about falling prices, and new homebuyers have continued to enter the Japanese housing market at a steady pace—despite much sharper and sustained price declines than in the United States. Unfortunately, the Japanese housing market has, nevertheless, continued to decline because of Japan’s shrinking population and government-subsidized overbuilding of new owner-occupied housing, which have together resulted in very high vacancy rates and continued depressed prices.<sup>168</sup> But one can imagine a very different scenario in the United States if, as in Japan, homebuyers had been encouraged to purchase homes only as places to live and not as investments. In short, the bubble might not have happened, and—if it had—the bust might have been much shorter lived and a much less painful experience for homeowners.



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<http://www.theatlantic.com/business/archive/2012/02/the-end-of-ownership-why-arent-young-people-buying-more-houses/253750/>.

168. Oizumi, *supra* note 55, at 68 (discussing the supply side problems caused by subsidizing additional housing construction to revitalize the economy).

