

Contents

<i>Acknowledgements</i>	v
<i>List of Contributors</i>	ix

1. Introducing Precarisation: Contemporary Understandings of Law and the Insecure Home..... 1
Helen Carr, Brendan Edgeworth and Caroline Hunter

Part I: Understanding Precarisation

2. Precarious Homes: The Sharing Continuum 23
Sarah Blandy
3. Property, Well-being, and Home: Positive Psychology and Property Law's Foundations 47
Nestor M Davidson

Part II: Rental Security

4. The 'Affordable Alternative to Renting': Property Guardians and Legal Dimensions of Housing Precariousness..... 65
Caroline Hunter and Jed Meers
5. Public Housing Insecurity in New South Wales: An Historical Overview (1971–2014)..... 87
Brendan Edgeworth
6. The Tenant's Home and the Landlord's Property—The Polish Struggle to Achieve a Balance of Rights..... 109
Magdalena Habdas

Part III: The Home and Governmental Precarisation

7. Law and the Precarious Home: A Case Study of Thermal Inefficiency in English Homes..... 139
Helen Carr
8. Governing Risk and Uncertainty: Financialisation and the Regulatory Framework of Housing Associations 159
Richard Goulding

9. Safe and Sound: Precariousness, Compartmentation
and Death at Home 181
Edward Kirton-Darling

Part IV: Global/Local Precariousness

10. The UK as a Precarious Home 203
Richard Warren
11. Precarious Home and Institutional Ambiguity in China's
Urbanisation..... 227
Ting Xu and Wei Gong
12. On Shaky Ground: Homes as Socio-Legal Spaces
in a Post-Earthquake Environment 245
Ann Dupuis, Suzanne Vallance and David Thorns

Part V: Resistance and Strategies

13. Precarity and Defiance in Temporary Accommodation:
The King Hill Hostel Campaign, 1965–66..... 269
Laura Binger
14. Responding to the Precarisation of Housing: A Case Study
of PAH Barcelona 289
Gabriele D'Adda, Lucia Delgado and Eduard Sala
15. Returning Home? 317
Danie Brand

- Index*..... 331

1

Introducing Precarisation: Contemporary Understandings of Law and the Insecure Home

HELEN CARR, BRENDAN EDGEWORTH
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I. INTRODUCTION

PRECARIOUSNESS AND INSECURITY are provocative ideas and for many are key signifiers of our times. When juxtaposed with the security that is implicit in common understandings of ‘home’ they become particularly unsettling. The chapters in this collection explore aspects of that dissonance and the work that law does in ameliorating or intensifying it.

This introductory chapter has two purposes. First, it sets out the rationale for the book and explains our approach to the term ‘precarious home’ (sections II to IV). It outlines changes in the broader social, economic and political landscape that provide extensive evidence of contemporary ‘insecure times’. It will consider the various ways in which the home, and the legal framework by means of which it is defined and regulated, nationally and locally, formally and informally, have been affected by these changes, that we characterise as a growing ‘precarisation’. The chapter will situate the current position by reference to a constellation of recent changes across advanced industrialised societies that arguably render the home precarious, and to various socio-legal responses to the problem.

The sections V to IX of the chapter explores different dimensions of precarisation as analysed in the various chapters of the book. These dimensions are manifold. They include, first, a jurisdictional dimension, as different state regulatory regimes engage with insecurity of and in the home in different ways. Secondly, there is a political dimension, as groups across society experience highly divergent levels of precariousness of home. The role of government will be examined, for example, by reference to the conditions under which housing is provided by the state to the disadvantaged, and the ways in which the state seeks to balance the rights of private owners and tenants, as well as the state’s role in forcing populations to leave traditional

homelands or deciding if and when claims to home are recognised. Thirdly, a wide range of unpredictable events can operate to undermine the security that might otherwise characterise the home. Natural disasters, homelessness and death all contribute to the precariousness of home, highlighting the contingency of any security the home may be presupposed to offer. Law, in its broadest sense, may or may not help in mitigating this ‘precarity’, and—as our book shows—can contribute to it. Fourthly, there is a temporal dimension to the precarious home. Not only is a sense of enduring relationships arguably implicit in the meaning of home, for some home is replete with nostalgia, located somewhere in the past, while for others it is an aspiration and a future location. Fifthly, there is a spatial dimension, as Ferreri et al suggest: ‘Precarisation ... needs to be understood as a spatial process that generates and sustains a varied geography of insecurity, flexibility and temporariness, at once intensifying and normalising precarity.’¹

The potential of precarity as a focus for understanding the times in which we find ourselves notwithstanding, the contributions to this collection also acknowledge its limits. So, for instance it is clear that for many people, in many parts of the world, experiences of home have always been characterised by insecurity. The illustrations of this point in the chapters on South Africa, China and Poland in this collection are particularly important. Moreover, even within the arguably exceptional security offered by liberal welfare states there has been considerable variation both in the protections offered, and the people who are deemed worthy of protection. The rationale of the book then is not to offer without critique a contrast between a secure past and a precarious present, but to suggest that precarity might offer a useful starting point for socio-legal scholars questioning contemporary modes of governing. One further caveat: in identifying a new precariat, or new precarious ways of living, we wish to avoid equating the precarious with victimhood. Several contributors specifically focus on strategic responses to precarious homes, and the political potential of precarity.

II. THE HOME

This book focuses on ‘home’, an idea that is apparently universally understood. However, theorists have demonstrated that ‘home’ is a disputed and controversial notion. For some, the idea of home beyond its physical form is ‘purely phantasmal’, a ‘chimera’.² For others it is more complex. Mallett noted in 2004 that ‘research on the meaning and experience of home

¹ M Ferreri, G Dawson and A Vasudevan, ‘Living precariously: property guardianship and the flexible city’ (2016) 41 *Transactions of the Institute of British Geographers* 246.

² Stephen Merrett and Fred Gray, *Owner-occupation in Britain* (Routledge & Kegan Paul, 1982) 65.

has proliferated over the past two decades, particularly within the disciplines of sociology, anthropology, psychology, human geography, history, architecture and philosophy.³

These researchers approach the home in a ‘multitude of ways.’⁴ For Easthope what is common to many is that home is something other than the physical structure of the dwelling or the surrounding built environment. ‘While homes may be located, it is not the location that is “home”. Instead, homes can be understood as “places” that hold considerable social, psychological and emotive meaning for individuals and for groups.’⁵ This perspective on home suggests it provides security and a place from which to flourish.

Fox’s influential formulation of the ‘home = house + X’,⁶ with the conceptual challenge to ‘unravel [this] enigmatic “X factor”’ illustrates a socio-legal response to the concept of home. For her, law should give a specific value to ‘X’. However, the literature points consistently to the difficulty of defining or knowing what it is about the home that provides security, due to its complex, subjective construction.⁷ Is there a minimum that is globally pertinent, if home is dependent on the perceptions of both the individual and the society?

A different approach, which moves away from these problems, is to acknowledge the essentially contested⁸ nature of the concept. The focus moves to the question of how law and policy often require low-level administrative workers, legal actors, or even home occupiers themselves to ‘know’—and in some cases articulate—aspects of the meaning of home.⁹ This can allow subjective, ‘common sense’ understandings to be acknowledged.

It can also mean that the negative experience of the home can rest beside the often positive portrait of home in much of the literature. Feminist thinkers have long pointed to the home as a place of violence and abuse and they have had to be continually vigilant in efforts to persuade the state to acknowledge its role in protecting vulnerable people within the home.¹⁰

³ Shelley Mallett, ‘Understanding Home: A Critical Review of the Literature’ (2004) *Sociological Review* 62.

⁴ Hazel Easthope, ‘A place called home’ (2004) 21 *Housing, Theory and Society* 128, 135.

⁵ Ibid.

⁶ Lorna Fox, ‘The Meaning of Home: A Chimerical Concept or a Legal Challenge?’ (2002) 29 *Journal of Law and Society* 580, 590.

⁷ Lewin Fereshteh, ‘Elderly Migrants and the Concept of Home: A Swedish Perspective’ in GD Rowles and H Chaudhury (eds), *Home and Identity in Late Life: International Perspectives* (Springer Publishing Company, 2005) 135.

⁸ Walter Gallie, ‘Essentially Contested Concepts’ (1955) 56 *Proceedings of the Aristotelian Society* 167; John S Dryzek, ‘Can There Be a Human Right to an Essentially Contested Concept? The Case of Democracy’ (2016) 78 *The Journal of Politics* 357.

⁹ Jed Meers, *Reconceptualising Home: A study on the UK Bedroom Tax* (Unpublished PLO., University of York, 2018).

¹⁰ Molly Warrington, ‘“I Must Get out”: The Geographies of Domestic Violence’ (2001) 26 *Transactions of the Institute of British Geographers* 365.

For others, even without the reluctantly acknowledged violence of the home, home is a site of repression. Take for instance Rushdie's essay 'Out of Kansas'¹¹ where Rushdie berates the 'conservative homily' at the end of the *Wizard of Oz*, that there is no place like home:

Are we to believe that Dorothy has learned no more on her journey than that she didn't need to make such a journey in the first place? Must we accept that she now accepts the limitations of her home life, and agree that the things she doesn't have there are not loss to her? *Is that right?* Well excuse me, Glenda, but it isn't ...

Home can also be an exclusionary notion, particularly at a time of global movement. Telling migrants to go home or denying legal rights on the basis that the claimant's home is not here but somewhere else are useful examples. For Banky this points to a precarity of place, which relates to the possibility or impossibility of remaining in a specific place. For Banky,

the permission to remain in one's physical place is perhaps paradoxically at the core of a concept of national assignment of privileges and benefits. 'Precarity of place' describes the absence of such permission and can be defined as vulnerability to removal or deportation from one's physical location.¹²

In order to avoid the discriminatory consequences of a static notion of home, some scholars have written of home as a process, something that emerges over time, through practices, rituals and stories, independently of a fixed location.¹³ Migrants and others in transition can experience the opposite process, home *unmaking*, the '*precarious process* by which material and/or imaginary components of home are unintentionally or deliberately, temporarily or permanently, divested, damaged or even destroyed.' (emphasis added)¹⁴

In this collection we have not sought to limit the understanding of home, but we note that whatever approach to the meaning home is taken, the home can be—and is perhaps simultaneously—a place of security and insecurity, of fulfilment and repression, of inclusion and exclusion, of mobility and immobility. Law, once more broadly understood, is deeply implicated in these multiple experiences of home. What is interesting in our collection is how, for some of our contributors, the notion of the precarious home

¹¹ Salman Rushdie, 'Out of Kansas' in Rushdie, *Step Across This Line: Collected non-fiction 1992–2002* (Jonathan Cape, 2002) p 1.

¹² Susan Banky, 'Precarity of place: a complement to the growing precariat literature' in Matthew Johnson (ed), *Precariat: labour, works and politics* (Routledge, 2015).

¹³ Nigel Rapport and Andrew Dawson, 'Home and Movement: a polemic' in NJ Rapport and A Dawson (eds), *Migrants of Identity: Perceptions of Home in a World of Movement* (Berg, 1998) 3–38.

¹⁴ Richard Baxter and Katherine Brickell, 'For Home Unmaking' (2014) 11 *Home Cultures* 133–44, 134.

ceased to be productive. Instead inspired by Butler, they see ‘precarity’ as an ontological condition. As Butler notes,

[p]recariousness implies living socially, that is, the fact that one’s life is always in some sense in the hands of the other. It implies exposure both to those we know and to those we do not know; a dependency on people we know, or barely know, or know not at all.¹⁵

This framing raises difficult questions about the links between life and home—is home a construct to resist the precariousness of life? Is security therefore inevitably illusory? Can, in such cases, the home ever be seen as precarious itself, separated from life? How might an acceptance of precariousness as a condition of existence reshape or reconfigure accounts of home?—and these are themes which are explored throughout the collection.

III. INSECURE TIMES

One starting point for this book is an examination of what we mean by ‘insecure times’. What is it that makes current social arrangements and institutions apparently more marked by ‘insecurity’ today than at any other time? The question might seem to be particularly relevant to the legal sphere, characterised as it is by its aspirations for fixed and stable institutions, practices and norms, where security would appear to be among its inherent features. This notion of security is acutely pertinent to rights to the home, as these rights have traditionally been presumed to be the most secure of all rights. From William Blackstone’s characterisation of property as being a right of ‘sole and despotic dominion’ over things, and Bentham’s ‘property is security’ to Charles Reich’s formulation of property as providing a secure ‘zone of privacy’ for the individual,¹⁶ the home has been conventionally seen by legal theorists as the paradigm case of the individual property right.

Yet, a closer examination of legal history as well as the socio-legal reality of property rights, particularly in relation to the ‘home’, reveals pervasive insecurity and precariousness.¹⁷ Moreover, this insecurity is arguably increasingly evident. A burgeoning academic literature has begun to focus on the contemporary sociological phenomenon of ‘precarisation’ or ‘precarity’. This concept first emerged a decade or so ago in the sphere of

¹⁵ Judith Butler, *Frames of War: When is Life Grievable?* (Verso, 2009).

¹⁶ W Blackstone, *Commentaries on the Law of England*, Bk 2, Ch 1; Jeremy Bentham, *The Theory of Legislation* (Kegan Paul, 1931) ch 2; C Reich, ‘The New Property’ (1964) 73 *Yale Law Journal* 733.

¹⁷ See N Piska, *The Precarization of Real Property Law: an Essay on the Evisceration of Equity and Financial Capitalism* (unpublished, 2017) paper with author.

industrial relations to describe the effects of the broad changes consequent on the ‘deregulation’ of the economies of advanced industrialised societies from the 1980s onwards, and corresponding transformations of the post-war welfare state. More specifically, the deregulation of labour markets was central to the legal transformation of the post-war welfare state. As late modern economies shifted from Fordist to post-Fordist patterns of production, that is to say, where plant size is reduced, and mass production is less pronounced, union membership decreased and workforces became, or were forced to become, more ‘flexible’.

Further, the widespread political rejection by governments over the last three decades of collectivist solutions to social problems in favour of more individualist policies has progressively undermined the legal entitlements of employees in the workplace.¹⁸ Despite large differences across different states, the new model is manifested by principles that give greater primacy to *individual* rights in the workplace, and ‘the rediscovery of the individual in labour law’.¹⁹ These rights include the right of individual employees not to be members of unions, and the right to negotiate directly with an employer as to rates of pay and conditions of work without union collective bargaining over rights and obligations in the workplace; the labour contract takes on more of the characteristics of the traditional individual contract. The ‘freer’, contractual rights reflect the parties’ respective strengths, so tend to be accompanied by a reduced package of statutory rights in relation to such matters as redundancy payments, minimum wage requirements, rights to security of employment and protections against unfair dismissal. The general process that some writers referred to as ‘the death of contract’ that accompanied the rise of the regulatory and welfare state²⁰ has started to give way to ‘the rise’ of freedom of contract, as contract assumes an increasingly dominant place in the landscape of employment relations.²¹

In this changed landscape, the post-war process that Glendon referred to as the ‘occupational bonding’ reflecting the enhanced legal security given to many (but not all) employees in welfare-regulatory states started to wane. The growing bundle of rights of employees, which assumed the form of ‘new property’,²² has come to be progressively eroded with the incorporation of individualist market-oriented principles into labour law. Where once

¹⁸ Lord Wedderburn, M Rood, G Lyon-Caen, W Daubler and P Van der Heyden, *Labour Law in the Post-Industrial Era: Essays in Honour of Hugo Sinzheimer* (Dartmouth, 1994).

¹⁹ S Simitis, ‘The Rediscovery of the Individual in Employment Law’ in R Ragowski and G Teubner (eds), *Reflexive Labour Law: Studies in Industrial Relations and Employment Regulation* (Kluwer, 1994) 183.

²⁰ P Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press, 1979); G Gilmore, *The Death of Contract* (Ohio State University Press, 1974).

²¹ FH Buckley (ed), *The Fall and Rise of Freedom of Contract* (Duke University Press, 1999).

²² MA Glendon, *The New Family and the New Property* (Butterworths, 1981) 143–70.

labour unions, usually within a corporatist political framework, would offer nationwide representation to workers, in the newly disorganised environment, employment contracts, and therefore wages and conditions, reflect local, individual and increasingly insecure, conditions.²³ Similarly, the heavily due-process-driven ‘industrial justice’, widely institutionalised at the height of the regulatory welfare state,²⁴ has been progressively dismantled. The result is an increasingly precarious existence for workers. As Leah Vosko puts it: ‘In the early 21st century, precarious employment encompasses forms of work characterised by limited social benefits and statutory entitlements, job insecurity, low wages, and high risks of ill-health.’²⁵

Importantly, Vosko insists on examining the legal dimensions of this development in order to understand fully the way in which it operates:

Legal definitions are central to any conception of precarious employment. They relate to whether workers confront insecurity because of whom a given law or policy is designed to cover, the parameters around which it is framed, and how it is applied. They are critical to revealing how and in what ways law and policy on the books shape, mirror, or contrast law and policy in practice.²⁶

Although Vosko’s analysis is confined to the labour market, the phenomenon of ever more fragile workers’ rights in employment has come to be paralleled across society as a whole over the last four decades or so, as the central elements of post-war regulatory welfare states have been subjected to radical transformation. One manifestation of the change, closely inter-related to the changes in employment, is the transformation of welfare. Universal entitlements to social welfare, being the ‘cradle to grave’ rights characteristic of the fully-fledged social citizenship of post-war Keynesian welfare states, have been progressively pared back. Welfare rights have become increasingly curtailed, or made conditional, as social welfare safety nets have become less a policy priority for governments in recent decades, leading to lower levels of legal security.²⁷ While different jurisdictions experience these processes in widely divergent ways, some shared factors link them. For example, rights to many benefits are now harder to obtain, and harder to retain. Moreover, the administration of welfare increasingly places

²³ S Lash and J Urry, *The End of Organised Capitalism* (Polity, 1987); Ben-Israel, ‘From Collective to Individual Justice’ in J Beellace and M Rood (eds), *Labour Law at the Crossroads* (Kluwer, 1997) 27–34; Leah F Vosko, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen’s Press, 2006).

²⁴ P Selznick, *Law, Society and Industrial Justice* (Transaction Books, 1969).

²⁵ LF Vosko, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen’s Press, 2006) 11.

²⁶ *Ibid.*, 12. See also N Kountouris, ‘Legal Determinants of Precariousness in Personal Work Relations: A European Perspective’ (2013) 34 *Comparative Labor Law & Policy Journal* 21.

²⁷ C Pierson, *Beyond the Welfare State* (Polity Press, 1991).

in jeopardy the rights of recipients, as states seek to rein in welfare expenditure, a process that fuels greater insecurity of income.²⁸

These reforms have not only entailed the retraction of many welfare programmes, they are accompanied by the imposition of more restrictions and obligations on the receipt of social security, particularly unemployment benefits, and the establishment of ever harsher and more punitive compliance regimes.²⁹ These reforms reflect an accelerating global trend of withdrawal of support for the Keynesian welfare state, and the forms of economic and financial security that went with it, as a newly-configured ‘workfare’ state comes into being.³⁰ But this novel state form begins to insinuate itself into increasing domains of social life. The overall result, according to Isabell Lorey, is that

precarization is not a marginal phenomenon, even in the rich regions of Europe ... Precarization means more than insecure jobs, more than the lack of security given by waged labour. By way of insecurity and danger, it embraces the whole of existence, the body, whole modes of subjectivation. It is threat and coercion, even as it opens up new possibilities of living and working. Precarization means living with the unforeseeable, with contingency.³¹

The welfare-regulatory state’s universalised social rights effected a significant reversal of class inequality.³² By contrast, as Kosonen concludes, in summarising trends in Europe, the former capacities of welfare states to ameliorate class disadvantage have faded where ‘unemployment rates and poverty rates have increased, public social security has weakened, and a shift toward private arrangements has occurred’.³³ This point was made over two decades ago; more recent studies reveal even more acute levels of inequality and poverty.³⁴ It may be that in some cases the new regimes reverse a debilitating dependency by encouraging a more active citizenry

²⁸ P Henman and M Fenger, ‘Introduction’ in Paul Henman and Menno Fenger (eds), *Administering Welfare Reform: International Transformations in Welfare Governance* (Policy Press, 2006) 1.

²⁹ Ibid. See also, L Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press, 2009); KS Gustafson, *Cheating Welfare: Public Assistance and the Criminalization of Poverty* (New York University Press, 2011).

³⁰ *Social Citizenship and Workfare in the United States and Western Europe: The Paradox of Inclusion*, JF Handler (Cambridge University Press, 2004); G Esping-Andersen, ‘After the Golden Age? Welfare State Dilemmas in a Global Economy’ in G Esping-Andersen (ed), *Welfare States in Transition: National Adaptations in Global Economies* (Sage, 1996) 1; B Kus, ‘Neoliberalism, Institutional Change and the Welfare State: The Case of Britain and France’ (2008) 47 *International Journal of Comparative Sociology* 488.

³¹ I Lorey, *State of Insecurity: Government of the Precarious* (Verso, 2015) 1.

³² T Marshall, *Sociology at the Crossroads* (Heinemann, 1963).

³³ P Kosonen, ‘European Welfare State Models: Converging Trends’ (1995) 25 *International Journal of Sociology* 81, 99.

³⁴ See generally, J Stiglitz, *The Price of Inequality* (Penguin, 2010), Thomas Piketty, *Capital in the Twenty First Century* (Harvard University Press, Arthur Goldhammer (trans), 2014).

to participate productively in labour markets; but much of the empirical evidence suggests that the primary consequence of getting claimants off the register leads to a substantial growth in the number of the working poor.³⁵ Overall, the combination of privatisation, deregulation and diminishing welfare rights lead to a growing insecurity of the more vulnerable citizens in the emergent contracting state. For the political philosopher Nancy Fraser these recent changes, in combination, have the effect of, to some extent, displacing the notion of the ‘poor’ as a social category, insofar as the latter term tends to obscure the factors that cause poverty. A far better term, she suggests, ‘is the “precariat”’. This expression suggests multiple degrees and forms of inclusion/exclusion ... it stresses their shared vulnerability and the ease with which those in the relatively favoured categories can slip back into the disfavoured ones.³⁶

At this moment it might be useful to consider the relationship between vulnerability³⁷ and precariousness. Berg, in her study of global labour migration, places the precariousness engendered by immigration law in the closely connected frames of ‘precariousness’, ‘vulnerability’ and ‘dependency’ developed in feminist legal and political theories. These take a more holistic approach to precariousness, recognising that insecurity is inherent in human life.³⁸

Similarly, the chapters in this volume use this ‘wider lens of precariousness’ to consider the current position of particular housing situations in a range of advanced industrialised societies.

IV. THE HOME AND INSECURE TIMES

This creeping, society-wide precarisation can be argued to be evident not only in the context of workers’ rights, but also in the context of housing provision. Many western liberal democracies following the Second World War attempted to advance general security by increasing housing security across each of the various forms of tenure, by increasing levels of traditional home ownership, increasing protection for tenants in private residential

³⁵ M Matsuda, ‘Were You There? Witnessing Welfare Retreat’ (1997) 31 *University of San Francisco Law Review* 779.

³⁶ N Fraser, ‘Social Exclusion, Global Poverty, and Scales of (In)Justice: Rethinking Law and Poverty in a Globalising World’ in S Liebenberg and G Quintot (eds), *Law and Poverty: Perspectives from South Africa and Beyond* (Juta, 2012) 19. See also, and generally, G Standing, *The Precariat: the New Dangerous Class* (Bloomsbury, 2011).

³⁷ See, for example, MA Fineman, ‘The Vulnerable Subject and the Responsive State’ (2010) 60 *Emory Law Journal* 251–75; Emory Public Law Research Paper No. 10–130. Available at SSRN: <https://ssrn.com/abstract=1694740>.

³⁸ L Berg, *Migrant Rights at Work: Law’s Precariousness at the Intersection of Immigration and Labour* (Routledge, 2015) 9.

markets, and providing much greater levels of social housing. There were always those who were excluded or at best conditionally included: women, the disreputable working class, the vagrant and the migrant. Nonetheless these efforts were important in democratising the legal security of the home, although housing has been characterised as the ‘wobbly pillar’ of the welfare state.³⁹ Just as labour rights have been eroded, these attempts to provide housing security have been measurably weakened in recent years.⁴⁰

For example, the rights of tenants have been widely reduced in a manner generally consistent with the precarisation of employment and welfare provision, as market principles have increasingly intruded. First, state provision of public housing has been significantly curtailed. In contrast to the post-war boom in public housing provision for the poor at heavily state-subsidised rents, states now have reduced or even reversed these policies. The most dramatic example is the United Kingdom where a comparatively large public housing stock has been sold off in recent years so that tenants’ rights in the nature of public rights against the state, based on need, have become private rights of ownership in the property market.⁴¹ At the same time, this shift in the direction of the market has been complemented by greater reliance on market rents by public housing authorities in many countries.⁴² Furthermore, in the private sector, the former redistributive features of laws that gave tenants security of tenure and rights to affordable rents have been diluted. Increasingly, security of tenure is measured not by legal rules limiting landlord’s rights to terminate, based on a tenant’s long-term need, but simply by contractual agreement between landlord and tenant.⁴³ Equally, rents increasingly are determined by market pressures, as mechanisms for rent control are gradually dismantled.⁴⁴

The growing resort to market-based solutions—to what some have referred to as a ‘neoliberal’ approach to economic and social problems that originated in the 1970s—has been further accentuated by the onset of the

³⁹ Ulf Torgersen, ‘Housing: The Wobbly Pillar under the Welfare State’ (1987) 4 *Scandinavian Housing and Planning Research* 116; Peter Malpass, ‘Housing and the New Welfare State: Wobbly Pillar or Cornerstone?’ (2008) 23 *Housing Studies* 604. However, see Binger’s contribution (Chapter fourteen below) for an argument that the wobbly pillar may be more positively understood.

⁴⁰ See, for example, in England: Suzanne Fitzpatrick and Beth Watts, ‘Competing visions: security of tenure and the welfarisation of English social housing’ *Housing Studies* On-line: <http://dx.doi.org/10.1080/02673037.2017.1291916> (2017).

⁴¹ R Forrest and A Murie, *Selling the Welfare State: The Privatisation of Housing* (Routledge, 1988).

⁴² J Kemeny, *From Public Housing to the Social Market: Rental Policy Strategies in Comparative Perspective* (Routledge, 1995) 114–25.

⁴³ R Cranston, *Legal Foundations of the Welfare State* (Weidenfeld and Nicolson, 1985) 116; A Bradbrook, ‘Residential Tenancies: The Second Stage of Reforms’ (1998) 20 *Sydney Law Review* 402–34.

⁴⁴ R Cranston, *Legal Foundations of the Welfare State* (Weidenfeld and Nicolson, 1985) 116–17.

global financial crisis in 2008. The responses of governments across the world has largely been to adopt ‘austerity’ packages, which have had the effect of shifting bulk of the burden of restoring state finances, and paying off corporate debt, onto the most disadvantaged members of the community. The result has generally been to reduce further levels of social security and social housing provision, while leaving the incomes and property rights of the most advantaged largely intact, with enormous subsidies or tax breaks now available for middle-income home-owners or real estate investors. Yet, pro-poor housing assistance policies struggle on meagre budgets, and concern with evictions in the public and private sector has lessened. The overall result of these legal reforms is that housing has become the especially ‘wobbly pillar’ under the welfare state.⁴⁵

For Marcuse and Madden⁴⁶ something else, closely connected, has happened, that is global in extent. Their starting point is that housing is a precondition both for work and leisure. But because the home has become commodified there is a ‘conflict between housing as lived, social space and housing and housing as instrument for profitmaking—a conflict between housing as *home* and as *real estate*.’⁴⁷ This commodification exacerbates precarity.

In these respects, the growing ‘precarity’ reflects broader tendencies of contemporary societies to exhibit greater extremes of poverty and inequality, actively supported or at least tolerated by their governments and legal systems.⁴⁸ Precarisation, both in general, and specifically in relation to the home, is an agent of inequality, a phenomenon that affects only certain groups in society. The increasing insecurity of the home impacts differentially: women, migrants, the poor, ethnic minorities and others who are socially excluded suffer disproportionately from increasing domestic insecurity.

While the more recent forms of legal insecurity represent a novel historical phenomenon, or perhaps the reappearance in novel forms, of older patterns of employment insecurity, there are aspects of insecurity that have always beset what might otherwise be the security offered by the home. In particular, various social, economic and environmental factors produce different types of insecurity for home-dwellers. The various chapters in the book below examine the many aspects of this broad, if uneven, trend of historical, sociological and legal change. They measure the extent of precariousness of the contemporary home, but they also consider the theoretical

⁴⁵ Torgersen, n 39 and Malpass, n 39 above.

⁴⁶ D Madden and P Marcuse, *In Defence of Housing* (Verso, 2016).

⁴⁷ *Ibid.*, 4.

⁴⁸ See generally, Joseph Stiglitz, *The Price of Inequality* (Penguin, 2010), Thomas Piketty, *Capital in the Twenty First Century* (Harvard University Press, Arthur Goldhammer (trans), 2014).

potential of re-imagining the home in precarious times. The authors suggest that an understanding that the home is precarious could lead to much more imaginative engagements with the notion of home. In doing so, different strategies might be considered to deal with this emerging condition.

We now turn to provide an overview of how the chapters in the book address these issues.

V. UNDERSTANDING PRECARISATION

Responding to the theme of the ‘precarious home’, the collection starts with Sarah Blandy’s focus on home ‘sharing’. Her chapter uses sharing as a lens for interrogating the idea of the precarious home. She explores a range of risk factors associated with sharing the home, starting with a consideration of how ‘home’ is conceptualised in contemporary Western culture and specifically in the United Kingdom. First, the chapter explores three distinct meanings of the concept of sharing. At its simplest, it means a ‘one-off allocation’ as when there is a grant of property rights in a building used as a home. It may also mean ‘to possess or use a resource in common with others’. Finally, it may mean ‘to participate or contribute to’, which suggests a more active and wider meaning that can be applied to housing issues more generally. The chapter then moves on to examine different tenure types, from owner-occupation to squatting, which determine the extent of the property rights a resident enjoys in their home and therefore their degree of security. In the final section of the chapter, the specific meaning of to ‘share’ that expresses the idea of collaboration and participation and collaboration will come to the fore in an exploration of political and protest alliances around housing issues. The continuum of sharing identified sheds light on the home’s precariousness, and the precarity of different groups in relation to the home.

This chapter is followed by Nestsor Davidson’s exploration of psychological aspects of property in general, and how these might bear on a sense of insecurity. Like all legal institutions, property requires justification. One dominant set of normative justifications emphasises the relationship between property and the self. Another related approach invokes Aristotelian virtue ethics⁴⁹ to emphasise the role played by property in human flourishing. Both approaches appear to have psychological elements to them. But what if those psychological underpinnings were empirically suspect? Might a more grounded, empirically validated set of findings about human nature yield a different type of property law? To rely on psychological realism can open

⁴⁹ See generally, Gregory S Alexander and Eduardo Penalver, *An Introduction to Property Theory* (Cambridge University Press, 2012).

new possibilities for understanding the normative underpinnings of property. In the case of home, the insights of positive psychology would highlight the nature of home, less as a source of individual attachment, and more as a locus for positive experiences and a forum for the development of human relationships. Home in this view is a means to an end, and less a question of individual identity than a resource for what might connect and add meaning to people's lives. Accordingly, when the home becomes insecure, it generates very specific forms of psychological harm. The chapter argues that we can add to our existing normative understandings of property law's foundations a grounding generally in empirical psychology and more specifically in what has been shown in the research to support flourishing. This more realistic approach adds important nuance to prescriptions for the structures of property law in general, and for secure rights to the home in particular.

VI. RENTAL SECURITY

The next Part focuses on the rented home. Continuing the theme of 'insecure times', Caroline Hunter and Jed Meers examine an emergent form of particularly precarious housing in Western Europe; namely property guardianship. The growth in property guardians may be seen as 'a form of unregulated, semi-formal housing in the context of the growing shift of many housing practices from marginal to mainstream.'⁵⁰ They use the example of property guardians to examine the legal determinants of housing precarity for non-owners (tenants and those with less security), mirroring the work of Nicola Kountouris⁵¹ on the legal determinants of precariousness in work relations. Using a framework of immigration status, tenure/time, control, cost, and conditions, they illuminate the elements that can exacerbate precarity. They highlight how two intersecting dimensions of precariousness—'organisational precariousness' and 'legal uncertainty'—can be useful in highlighting how the legal dimensions can compound precariousness. The third section of their chapter focuses on the role of local authorities as a particular organ of the state, using some empirical data. They conclude that it is clear that the state is less concerned in the tenure/time dimension, whether by local authorities using property guardian firms for their own empty properties or at a national level stripping away that dimension for tenants. The position in terms of conditions is more ambivalent.

In the second chapter of this Part Brendan Edgeworth, using the State of New South Wales in Australia as a case study, points to a decisive shift in

⁵⁰ Mara Ferreri et al, n 1 above.

⁵¹ Nicola Kountouris, 'Legal Determinants of Precariousness in Personal Work Relations: A European Perspective' (2013) 34 *Comparative Labor Law & Policy Journal* 21.

legal regimes which have unfolded, from the 1970s onwards, in the sphere of social housing. He shows how the formerly secure legal framework of tenancy law in favour of tenants, reflecting the ‘politics of redistribution’ characteristic of welfare states,⁵² has been progressively stripped away. As a result, tenants face increasing insecurity as the state more vigorously polices tenant behaviour, rendering tenants more vulnerable than ever. A core change in the legal framework has been the move from decision-making in the courts to a residential tenancies tribunal. The tribunal’s more informal mechanisms for dispute resolution, far from reducing the impact of law on the resolution of conflict, actually increase it, and in ways that render public housing tenancies more, rather than less, insecure.

The final chapter in this Part is a provocation. It suggests that not only may the relentless pursuit of owner-occupation be counterproductive, but also the legislative insistence on security for tenants. By taking the Polish residential market as a case study, Magdalena Habdas argues that the lack of long-term housing policies, promoting only owner-occupation, and disregarding the need to strike a balance between the general and the individual interest of landlords, have hampered the development of the residential tenancy market and have left many housing issues, specifically issues of supply and quality, unresolved. The courts both nationally and particularly internationally (in the guise of the European Court of Human Rights) have ensured a different balance.

VII. THE HOME AND GOVERNMENTAL PRECARISATION

In this Part of the collection the contributors examine the contemporary socio-legal landscape of the home by focusing more carefully on governmental precarisation in the context of the home. By ‘governmental precarisation’ we mean laws and policies specifically enacted and implemented by states that bear directly on the capacities of citizens to remain secure in their homes.⁵³

In the first chapter of this Part Helen Carr suggests a long and complex history to the precarious home and expands the notion of security beyond the right not to be evicted. Her examination of the interrelationship between the precarious home and ‘thermal comfort’ notes how the English home appears to be peculiarly vulnerable to the characteristic cold and damp of the local climate and that this porousness to the weather impacts particularly on the poor and the vulnerable. ‘Excess winter deaths’ because of governmental failure do not appear to have been given priority by governments,

⁵² Nancy Fraser, ‘From Redistribution to Recognition: Dilemmas of Justice in a “Postsocialist” Age’ (1995) 212 *New Left Review* 68–93.

⁵³ Lorey, n 31 above, 13.

which have either sought to solve other housing problems such as limited supply or chosen to prioritise the privatisation and affordability of domestic energy supplies. The chapter uses the thermally precarious home as a lens through which to challenge accounts of the emergence of social problems which fail to interrogate the role of power and ideology.

In the next chapter in this Part, Richard Goulding examines another recent phase of UK social housing policy, at odds with the organising presumptions of earlier decades. Specifically, he looks at the reshaping of social housing providers as an example of financialisation through the imposition of housing insecurity, drawing on contemporary debates in critical urbanism. Financialisation of housing is an inherently spatial and temporal process, and recent years have seen growing calls for research into the specific connections between states, real estate actors and financial markets in structuring patterns of accumulation.⁵⁴ This has been facilitated by neoliberal reforms through which the state actively restructures both itself and other arenas of social life along market and quasi-market lines.

De-municipalisation of public housing and reforms to social housing development finance from the 1980s onward facilitated the spread of new commercial models and the use of derivatives for larger, predominantly London-centred housing associations—non-government organisations registered with the state's housing regulator and able to provide social housing. The adaptability of financialisation following the 2008 crisis can be seen in how a renewed housing bubble, centred on London, has allowed capital markets to become a new source of finance, while state-implemented urban austerity policies have restricted non-commercial provision through weakened tenant protections and slashed welfare incomes. This has entailed uneven development, exposed the sector to new sources of risk as it becomes dependent on real estate markets tied into global capital flows, and increased the precariousness of everyday life as growing numbers of people are excluded from accessing social housing.

Written in the immediate aftermath of the fire at Grenfell Tower in West London, Edward Kirton-Darling's chapter examines the accounts of precarity and precarisation in the work of Lorey⁵⁵ and Butler⁵⁶ through an in-depth analysis of the deaths of three women and three children in a fire at Lakanal House, South London, in 2009. The analysis unpicks the responses of government to concerns set out by the Coroner in letters following the conclusion of the inquests into those deaths, and focuses on the way in which these deaths at home and the role of law and ownership

⁵⁴ Manuel B Aalbers (ed), *Subprime Cities: The Political Economy of Mortgage Markets* (Wiley-Blackwell, 2012).

⁵⁵ Lorey, n 31 above.

⁵⁶ Butler, n 15 above and Judith Butler, *Precarious Life: the Powers of Mourning and Violence* (Verso, 2004).

in those deaths reveal aspects of the governance of contemporary life. The discussion highlights that a general account of precariousness risks glossing over important nuances, including the importance of distinguishing different approaches by 'the state'. In addition, the case study demonstrates the importance of examining the relationship of space and law in efforts to compartmentalise life and property, and argues that Lorey's emphasis on the hegemony of governmental precarisation misses the ways in which liberal protection continues to exist as a strategy of governance.

VIII. GLOBAL/LOCAL PRECARIOUSNESS

This Part of the collection contains chapters that reflect on the precariousness which is the consequence of global events or conditions which are, or appear to be, outside of local control.

So, Richard Warren examines the United Kingdom's increasingly restrictive approaches to resettlement of migrants. The chapter considers, through a legal lens, what home might mean in contemporary times for the migrant to the UK. The argument is that there has been a shift from an understanding that the UK seeks to integrate migrants and provide them with a secure and permanent home, to a position where migrants enjoy, at best, institutionalised insecurity and a highly conditional 'home'. This shift is not productive, but contradictory and destabilising and with serious consequences for the indigenous, as well as the migrant population.

The chapter reflects on the etymology of precariousness, suggesting that its original meaning reveals a connection with the exercise of arbitrary power, which usefully illuminates the migrant's encounters with the law. It then provides some examples of how the law works to create the new migrant precariat, and how, contrary to the argument by Habdas, legal counter-narratives, such as those deriving from Article 8 of the European Convention on Human Rights, have failed to protect migrants. The author then considers recent policy shifts from social integration to conditionality, before focusing on the prevailing neoliberal rationalities which underpin these shifts. In the final section of the chapter Warren argues not only that we should resist the creation of a migrant precariat but points to the contradictions and broader consequences.

Another instance of precariousness of home arises where migration is not from one country to another, but from one part of one country to another. So, in contemporary China, mass migration from the country to the city has been occurring for many decades. To address the problem of housing the rural migrants, in many areas in China a *de facto* property market is emerging that consists of affordable properties called 'minor rights properties'. This does not constitute a formal legal concept. These sorts of properties are

built by farmers on collectively owned land that is reserved for agricultural purposes or farmers' residential use, and which cannot be commodified in the sense of being transferred on the formal property market according to relevant provisions of the Land Administration Law (2004) and the Property Law (2007). Buyers of such properties can obtain an ownership certificate issued by the township government. However, the legality of such ownership certificates is highly questionable, as according to the law, only governments at the county level or above have the authority to issue these ownership certificates and register these properties. Ting Xu and Wei Gong's chapter explores the nature of the minor rights properties and the ways in which it is linked to the inequality embedded in the urban-rural divide, the government and property developers' pursuit of profits, and the manner in which central and local government wrestle for power. Specifically, it adopts a legal pluralist analysis, examining the interplay of legal and extra-legal property rights, and of state law and informal norms, and their implications for the understanding of informality and extra-legality in perceiving the idea of property. It argues that we should recognise extra-legal property as legitimate, drawing upon the continuum of land rights approach adopted there.

In the final chapter of this Part, Ann Dupuis, Suzanne Vallance and David Thorns consider how trust and certainty in social institutions can be rebuilt after a natural disaster such as New Zealand's Canterbury earthquakes in order that people can recreate and maintain their sense of ontological security. The chapter raises further challenges to the notion of ontological security in circumstances of a 'natural', rather than a 'human-made' disaster. Their suggestion is that the home is better understood, not as a haven, but rather as a socio-legal space and they argue that the earthquakes have exposed new vulnerabilities that were previously almost unimaginable. As a consequence the notion of the home takes on new meanings. Because of the many complex insurance issues to do with damage and remediation, this chapter presents a new framing of 'the home' as a site co-constituted in and through socio-legal processes. This view has implications for the way the home is secured and serviced and raises major questions of where responsibility lies in these processes.

IX. RESISTANCE AND STRATEGIES

This final Part of the collection concentrates on strategies that the precarious use in order to manage or reduce their precarious status.

In the first chapter, Laura Binger takes us back to a period which may be seen as the 'golden age' of the welfare state, where nonetheless a group of homeless families were housed in an isolated and bleak hostel (King Hill) in the south of England in the 1960s. The residents started a campaign, and

negotiated with local government for a charter of rights. Using Lorey's⁵⁷ framework for thinking about precariousness, Binger analyses the King Hill Hostel Campaign in raising questions about the conditions of life at the hostel and the relationships in which that precariousness existed. She argues for a shift away from assuming that a precarious welfare state only leads to its erosion; rather it allows for an analysis of the power relationship between the institutions of the welfare state and the people who encounter it in their everyday lives, and that shift is important to understanding struggles like the Campaign and more generally to allowing us to see the agency of the residents of the hostel.

Gabriele D'Adda, Lucia Delgado and Eduard Sala take us to the mortgage crisis in Spain and the work of PAH (*Plataforma Afectados por la Hipoteca*) to help owner-owners to avoid evictions and to negotiate directly with banks to obtain a resolution of their cases through different strategies. Using empirical evidence from the Barcelona PAH, they argue that PAH challenges the system by rejecting the public blame of people affected and instead involving them in a process of awareness and empowerment. By-passing Spanish mortgage law, which exclusively protects the creditors, PAH has successfully promoted thousands of individual and direct negotiations between owners and creditor banks. These negotiations are preceded and accompanied by a collective awareness and empowerment process developed through the weekly welcome assembly but also during the actions, the interventions to block evictions and the mobilisations promoted by PAH. The affected people gradually lose their sense of guilt and the fear of losing their home that often accompanies them when they first arrive at PAH. At the same time, they realise that they are not alone and, listening to other people's situations, they learn strategies that they can use in their own negotiation. Furthermore, by taking part in actions and mobilisation, affected people feel a sense of community and they become aware that, being part of the PAH, they can count on other people and on the forces of the movement. It is a tale of resistance outside of the law.

The collection finishes with Danie Brand's chapter. He uses a South Africa Supreme Court of Appeal case—*The Baphiring Community v Tswaranani Projects CC*⁵⁸—to focus on the contentious issue of restitution of land rights in post-Apartheid South Africa. This process is intended to rebalance the scales of justice. Successful restitution claimants may be awarded either the rights to the actual land that they lost, rights to alternative land, or monetary compensation. In a growing number of cases before South African courts, claimants who were seeking returned access to the actual land they had lost—their erstwhile homes—have been awarded alternative land, as

⁵⁷ Lorey, n 31 above.

⁵⁸ *The Baphiring Community v Tswaranani Projects CC* [2013] ZASCA 99.

return to the original land was held not to be 'feasible'. On offer was a different tract of land roughly of the same size and productive capacity.

Against their claim, arguments were raised that their return to the land would not be economically feasible or desirable—not in the sense that it would be too expensive to acquire the land, but that it would in a more macro-economic sense be detrimental to national food and general agricultural production. The chapter argues that the notion of restoration of home and of the spiritual, historical, communal and emotional links to a certain physical place has been progressively elided by the courts in favour of supposedly ideologically empty notions of efficiency and 'feasibility'. This development can be seen as part of a broader development in the local jurisprudence dealing with access to basic resources, of regarding rights as that which is possible rather than as ideals, and regarding justice as efficiency. The chapter concludes with a critique of the notions of efficiency, feasibility and the possible, and problematises the idealistic notions of home, community and history.

X. CONCLUSION

This collection does not aim to provide a definitive analysis of precarity and the home. Indeed, when the editors are all too conscious of gaps and limitations in the approaches taken to precarity, particularly the insufficiency of attention paid to feminist analysis of the home, and to the relationship between race, home and precarity, it would be foolish to make any such claim. Instead, the collection has a much more limited aim: it seeks to suggest that the notion of the precarious home offers socio-legal scholars a particular perspective that is worth interrogating, and that the theoretical insights developed in the context of labour relations may be worth applying to the home, whether understood as a space or a form of entitlement. Moreover, at a time when those of us who are United Kingdom-based are in shock about the tragic loss of life at Grenfell Tower, in the Royal Borough of Kensington and Chelsea, one of the wealthiest boroughs in the world, we would also suggest that socio-legal scholarship has an important role in revealing that the security inherent in the concept of home may be illusory. The anger and sense of betrayal resulting from the failure of the state to provide secure homes for some of its most vulnerable citizens are significant. But so too are suggestions that there may be progressive possibilities within the concept of precarity. If the collection stimulates thoughtful responses to the interface of home, precarity and law we will consider that it has succeeded.

