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THE INFORMAL PROPERTY RIGHTS OF BOOMERANG CHILDREN IN THE HOME

SHELLY KREICZER-LEVY*

ABSTRACT

Adult children living with their parents represent an increasingly common social phenomenon in the United States that challenges the boundaries of both the family and formal property rights. What is the legal status of adult children living with their parents? Do parents have any additional duties when they rescind permission for their child to live with them? Property and family scholars have not addressed this important issue. This Article fills the void. Instead of treating people who live together as strangers, owing no legal obligations to one another, I argue that under certain conditions living with others creates a property community in the home. I call this community “home-sharing.” Conceptualizing living with others as a property community allows us to legally recognize the deep commitment between people who share a home. I urge scholars to reconsider the rule that allows an owner to unilaterally revoke permission to live in the home, and I argue that eviction law should stipulate additional responsibilities when the owner seeks to evict a cohabitee. I do not claim that the child should continue to live at home, but argue for remedies that recognize the child’s voice, for example, a duty to explain and justify the decision, to listen to the child’s arguments, and to respect a predetermined cooling-off period.

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TABLE OF CONTENTS

ABSTRACT	127
TABLE OF CONTENTS	128
INTRODUCTION.....	128
I. FAMILIAL RELATIONS AND CO-RESIDENCE.....	131
A. Parenthood.....	132
B. Partnership.....	133
C. Care for Dependent Relatives.....	134
D. Rent Control	135
E. Conclusion	136
II. HOME-SHARING.....	137
III. THE CATEGORIES OF LIVING WITH OTHERS.....	143
A. Roommates versus Home-sharing.....	143
B. Home-sharing versus Shared Lives	147
IV. HOME-SHARING IN CONTEXT: THE CASE OF ADULT CHILDREN AND THEIR PARENTS	150
V. RETHINKING THE LAW OF HOME-SHARING.....	153
A. The Argument: Entrance and Exit.....	155
B. Categories of Parents and Adult Children Cohabitation.....	158
C. Remedies	162
VI. HOME-SHARING: CHALLENGES AND OBJECTIONS	165
VII. CONCLUSION	168

INTRODUCTION

In the 2006 romantic comedy *Failure to Launch*, a thirty-five-year-old man who lives with his parents shows no intention of ever leaving home. His parents are frustrated by the situation but do not want to confront their child. Instead, they hire a female expert to become romantically involved with him and encourage him to move out. As this type of movie might lead one to expect, the happy ending arrives when the expert and the son fall in love and redeem each other's weaknesses. The banalities of the story aside, the movie attempts to tell the tale of a generation of late home-leavers and boomerang children. It fits well with a popular culture preoccupied with, and media frenzy over, adult children living with their parents.¹ This rela-

1. See, e.g., LINDA PERLMAN GORDON & SUSAN MORRIS SHAFFER, *MOM, CAN I MOVE BACK IN WITH YOU?: A SURVIVAL GUIDE FOR PARENTS OF TWENTYSOMETHINGS* (2004); Nancy Anderson, *Boomerang Children Living at Home May Not Be Such a Bad Thing*, FORBES (Aug. 16, 2012), <http://www.forbes.com/sites/financialfinesse/2012/08/16/boomerang-children-living-at-home-may-not-be-such-a-bad-thing/>; Ann Brenoff, *Boomerang Kids: 5 Things You Should Stop Doing for Your Adult Children*, HUFFINGTON POST (Apr. 26, 2013), <http://www.huffingtonpost.com/2013/04/26/boomerang-kids-5-things-you-should-stop->

tively recent residential pattern raises new questions. What is the legal status of adult children living with their parents in terms of property rights? Do parents have any additional duties when they rescind permission for their child to live with them?

Contrary to the phenomena of cohabiting couples or minor children living with their parents, which are both frequently discussed in the literature, this type of living arrangement has received little consideration from legal scholars.² This is a surprising fact considering the numbers that clearly show it has become an increasingly frequent pattern in the United States and worldwide.³ A recent Pew research report found that in 2012 thirty-six percent of America's young adults ages eighteen to thirty-one were living with their parents, a record number of 21.6 million young adults,⁴ which reflects a steady increase from thirty-two percent in 2007.⁵

Formal property rights lead to the inevitable conclusion that adult children live at home at the mercy of the home's owners, who happen to be their parents.⁶ Similarly, according to the basic premise of family law, parents are under no obligation to provide for their adult independent children.⁷

doing_n_3133244.html; *Bye Bye Boomerangs: How to Persuade Your Adult Offspring to Move out*, ECONOMIST (Aug. 17, 2013), <http://www.economist.com/news/united-states/21583712-how-persuade-your-adult-offspring-move-out-bye-bye-boomerangs>; Jim Reed, "Boomerang" Generation Back Home, BBC NEWSBEAT (May 20, 2009), http://news.bbc.co.uk/newsbeat/hi/the_p_word/newsid_8057000/8057167.stm. For movies, see LONESOME JIM (IFC Films 2005) and JEFF WHO LIVES AT HOME (Paramount Vantage 2011).

2. For cohabiting couples see Cynthia Grant Bowman, *Social Science and Legal Policy: The Case of Heterosexual Cohabitation*, 9 J.L. & FAM. STUD. 1 (2009); see also Shahar Lifshitz, *The External Rights of Cohabiting Couples in Israel*, 37 ISR. L. REV. 346 (2003); Eric P. Voigt, Note, *Reconsidering the Mythical Advantages of Cohabitation: Why Marriage Is More Efficient Than Cohabitation*, 78 IND. L.J. 1069 (2003). For cohabitation of minor children and their parents, see Pamela Laufer-Ukeles & Ayelet Blecher-Prigat, *Between Function and Form: Towards a Differentiated Model of Functional Parenthood*, 20 GEO. MASON L. REV. 419 (2013); see also Part I.A. For an exception, see Hilary B. Farber, *A Parent's "Apparent" Authority: Why Intergenerational Coresidence Requires a Reassessment of Parental Consent to Search Adult Children's Bedrooms* 21 CORNELL J.L. & PUB. POL'Y 39 (2011).

3. See *infra* notes 123–128 and accompanying text.

4. RICHARD FRY, PEW RESEARCH CTR., A RISING SHARE OF YOUNG ADULTS LIVE IN THEIR PARENTS' HOME 3 (2013).

5. *Id.*

6. In his influential work on the household, Robert Ellickson describes the home based on current property and contract law as "[h]ouseholds at-will." Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226, 240–42 (2006) (internal quotation marks omitted). According to this vision, each co-occupant can leave the home whenever she pleases, and the owner can exclude other (non-owner) co-occupants from the home. Ellickson further argues that the principle of private property and freedom of exit support this conclusion. See ROBERT C. ELICKSON, THE HOUSEHOLD: INFORMAL ORDER AROUND THE HEARTH 17–21 (2008); *supra* Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, at 240–42. For a more detailed account of his argument see *infra* text accompanying note 60.

7. Cf. Anna Stepien-Sporek and Margaret Ryznar, *Child Support for Adult Children*, 30 QUINNIPIAC L. REV. 359, 364 (2012).

This rather common analysis is flawed because it treats people who live together as strangers, owing no legal obligations to one another. Even though there are a number of legal rules that attribute meaning to the fact that people live or have lived together in shaping and defining familial obligations,⁸ there is no one clear dictum that justifies these rules. This Article fills this void in property and family law by providing such a justification. More concretely, it seeks to articulate the property implications of living with others. In particular, it maintains that eviction law should stipulate additional responsibilities when the owner seeks to evict a cohabitee. The test case for this argument is parents who seek to evict their adult children.

I argue that, under certain conditions, living with others creates a property community (a “home-sharing community”). A home-sharing community focuses on the relational aspects of living with others and the communal creation of the home⁹ by all the co-occupants. The claim is that an owner (in this case the parent) cannot unilaterally decide to rescind permission to live in the home.¹⁰ Instead, I argue that when a home-sharing community exists, parents are required to recognize the child’s voice in the process of ending the community in the home. Thus, for example, they might have a duty to explain and justify the decision or to listen to the child’s arguments, and the child may be entitled to the determination of a cooling-off period. When parents fail to adhere to these requirements and an eviction action is sought, the court must treat this type of eviction differently and award, in certain conditions discussed in Part V, remedies of voice.

The argument has three broader implications. First, it emphasizes the important role of sharing in property relations. Sharing occurs when parties join forces to engage in a collaborative property-centered project even when only one of the parties is the property owner. Indeed, this significant aspect of property law cannot be fully appreciated if one were to focus on ownership alone.¹¹ Second, the argument looks to expand the set of available remedies in property disputes. Remedies of voice focus on property governance,¹² the internal workings of property interactions, rather than simply on exclusion. Third, the argument supports a progressive vision of the family. Because it focuses on the home and relationships in it, and not on any preexisting definition of a family, the argument challenges assumptions and preconceptions about family formation. It allows us to think of the home not just as a locus for the nuclear family but also as a site for other mean-

8. See *infra* Part I.

9. I mean home, as opposed to a house.

10. JESSE DUKEMINIER ET AL., PROPERTY 773–74 (7th ed. 2010) (discussing permission to enter land as license and its revocability).

11. For the progressive property movement that rejects the exclusionary model of property rights see Alexander et al., *infra* note 47.

12. For property governance see Gregory S. Alexander, *Governance Property*, 160 U. PA. L. REV. 1853 (2012).

ingful relationships, including intergenerational relations and nonconjugal associations.

This Article begins with a brief review of the various ways in which the law attributes legal meaning to cohabitation. Part I ends with the conclusion that although living with others is a meaningful experience endorsed by the law, the law lacks a consistent explanation to support such an endorsement. The remainder of the Article defines and explains the value of living with others and its implications for property law, in particular eviction law. Part II constructs the underlying values that co-residence promotes. It touches on the benefits and perils of sharing a home, and introduces the concept of a home-sharing community. Part III distinguishes between different categories of co-residence. It discusses the different legal rules that apply or should apply in each category. After the broader framework has been laid out, the Article moves on to discuss the particular context of adult children living with their parents. Part IV reviews the sociological research of this residential pattern, including the reasons for it, concerns, and long-term effects. These empirical works provide valuable data that lay the foundation for the legal structure outlined in Part V. As this Part demonstrates, the phenomenon of adult children living with their parents is by no means monolithic. Some children are deadbeats; others maintain a good relationship with their parents, pay bills, and contribute to the household; and yet others provide care for a disabled or elderly parent. Different cases deserve different legal treatment. Part VI responds to important objections and challenges to the concept of a home-sharing community as well as the particulars of the suggestions. Part VII concludes.

I. FAMILIAL RELATIONS AND CO-RESIDENCE

There is an intricate relationship between the family and the home. The law attributes meaning to the fact that people live or have lived together in shaping and defining familial responsibilities. There is no one clear dictum that explains when cohabiting with others generates obligations. Rather, there is a cluster of rules in different areas of the law that attribute various meanings to shared living arrangements. When scholars criticize the law's obsession with the home, they are usually thinking of spouses or cohabiting nonmarital partners.¹³ But the law envisions the family and the home as connected in more ways than that; the law sees the home as hosting intimate familial relations, including parent-child relations, elder care, or new families. This Part will demonstrate that living with others is al-

13. See, e.g., Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189 (2007); Steven K. Berenson, *Should Cohabitation Matter in Family Law?*, 13 J.L. & FAM. STUD. 289 (2011).

ready recognized by the law, but that this recognition is sporadic and not adequately justified.

A. Parenthood

Establishing a parent-child relationship does not depend on co-residence. People may get divorced or move to other countries, but they still remain legal parents of their children. However, co-residence is an important component in the definition of other parental roles. For example, the American Law Institute's ("ALI") principles propose two new legal statuses for parents: parent by estoppel and de facto parent.¹⁴ These statuses acknowledge people who function as parents without a biological or legal relation to the child. A de facto parent is an individual who has lived with the child for a period of at least two years.¹⁵ A parent by estoppel is either one that is obligated to pay child support or an individual who, among other things, has lived with the child for at least two years, or since the child's birth.¹⁶ There are other requirements, of course, but it is clear that in order to be considered an alternative form of parent, living with the child is, for the most part, essential. Co-residence is understood to strengthen relationship and reflect commitment.

In addition, opening one's home to a child can also be considered as accepting a commitment to care for him or her. According to the California Family Code, a man is presumed to be a child's natural father if "[he] receives the child into his . . . home and openly holds out the child as his . . . natural child."¹⁷ In *In re Nicholas*,¹⁸ the court emphasized the importance of co-residence by conflating love and home: "While his presumed father is providing a *loving home* for him, . . . his biological father, whose identity has never been judicially determined, has shown no interest."¹⁹ In addition, the Uniform Parentage Act Section 204(5) (2002) creates a presumption of paternity for an unmarried man who, for the first two years of the child's life, resided in the same household with the child and openly held out the child as his own.²⁰

The home therefore serves as a metaphor for accepting a child into one's most intimate space, providing him or her physical and emotional shelter, and thus signaling that one treats that child as one's own.²¹

14. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(1) (2002) [hereinafter LAW OF FAMILY DISSOLUTION].

15. *Id.* § 2.03(1)(c).

16. *Id.* § 2.03(1)(b).

17. CAL. FAM. CODE § 7611(d) (2010).

18. 46 P.3d 932 (Cal. 2002).

19. *Id.* at 933 (emphasis added).

20. Unif. Parentage Act § 204(5) (2002).

21. For other cases that emphasize co-residence, see *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) and *Kinnard v. Kinnard*, 43 P.3d 150 (Alaska 2002).

B. Partnership

The cohabitation of married or unmarried couples proves significant under the current legal regime. As Professor Steven Berenson explains, there are numerous doctrines that create rights and obligations between parties depending on whether or not a couple is cohabiting.²² Regarding married spouses, as *McGuire v. McGuire*²³ famously determined, courts will normally not enforce a financial support duty if the married couple is cohabiting. Also, in California, when spouses live together the husband is conclusively presumed to be the father of any child born during their cohabitation.²⁴ If a married couple is living apart at the time the child is born, the husband is only the presumed father of the child.²⁵ Therefore, as long as a married couple live together, the law regards their relationship as a working relationship, assuming that the relationship is good and functions well for the parties, at least well enough to be left alone.

Sharing a home becomes even more important when we move on to discuss unmarried couples. When a marriage ends, there are clear rules that distribute the property accumulated during the marriage. In the case of an unmarried cohabiting couple, the law is not entirely clear. A majority of states have adopted a rule that cohabitation alone is not reason enough to award one partner a share of the other partner's property accumulated during the cohabitation period.²⁶ But there is some disagreement over the issue. For example, according to the ALI's *Principles of Family Dissolution*, the division of property between domestic partners is the same as between a married couple unless it is proven that, despite living together, the couple did not "share a life together as a couple."²⁷ Scholars have also advocated for a legal recognition of cohabiting couples. Cynthia Bowman argues that many of the benefits awarded to married couples should be extended to unmarried cohabitants, if they lived together for more than two years and had a child together.²⁸

Sharing a residency becomes especially important when compared with a new form of relationship, termed by sociologists as "living apart to-

22. See generally Berenson, *supra* note 13.

23. *McGuire v. McGuire*, 59 N.W.2d 336 (Neb. 1953).

24. *Id.* at 345.

25. CAL. FAM. CODE § 7540 (2010). The presumption can be rebutted by scientific evidence. See Berenson, *supra* note 13, at 289 n.3.

26. See Berenson, *supra* note 13, at 29 (noting that a majority of states have followed "at least some aspects" of the California Supreme Court's conclusion in *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976), that implied contracts can be enforced between unmarried co-habitants).

27. LAW OF FAMILY DISSOLUTION, *supra* note 14, at § 6.04; see also Berenson, *supra* note 13, at 300.

28. CYNTHIA GRANT BOWMAN, UNMARRIED COUPLES, LAW & PUBLIC POLICY 223–24 (2010).

gether.”²⁹ Living apart together is a form of committed relationship that does not include a shared household. Some scholars consider it a new family form,³⁰ particularly suitable for older divorcees, widows, and widowers who wish to develop intimate relations but still maintain a significant degree of autonomy.³¹ Instead of living together, these relationships find intimacy outside of the home. However, the law does not recognize living apart together relationships. Even scholars that support legal recognition of cohabiting couples do not argue for similar relief for committed relationships that do not include cohabitation.³² As a matter of legal reality and calls for reform, cohabitation is a necessary condition for establishing legal partnership in the absence of marriage.

C. Care for Dependent Relatives

The state of Illinois has a unique rule that encourages family members to care for their elderly or disabled relatives. Under certain circumstances, a relative who has provided such care will be able to bring a claim against the estate upon the death of the disabled person.³³ In addition, the court may authorize and direct the guardian of the estate to make conditional gifts from the estate that will be distributed after the death of the disabled relative.³⁴

Generally, this provision allows family members to recover the “additional opportunity and emotional costs of committing their lives to disabled relatives.”³⁵ According to the Supreme Court of Illinois, “The legislature chose to encourage private . . . care by rewarding . . . immediate family members”³⁶ The provision does not deal with compensation for damages, but rather with awarding certain relatives for the “often unseen and intangible sacrifices made, and opportunities forgone” when a family member commits his life to “making the lives of disabled persons better.”³⁷

A caretaker, according to the rule, is someone who “dedicates himself or herself to the care of the disabled person by living with and personally

29. Irene Levin & Jan Trost, *Living Apart Together*, 2 COMMUNITY, WORK & FAMILY 279, 280 (1999).

30. Irene Levin, *Living Apart Together: A New Family Form?*, 52 CURRENT SOCIOLOGY 223 (2004).

31. Sofie Ghazanfareon Karlsson & Klas Borell, *Intimacy and Autonomy, Gender and Ageing: Living Apart Together*, 27 AGEING INT'L 11 (2002).

32. See, e.g., Berenson, *supra* note 13, at 317–19.

33. 755 ILCS 5/18-1.1 (2008). For a discussion of the provision, see Heather M. Fossen Forrest, *Loosening the Wrapper on the Sandwich Generation: Private Compensation for Family Caregivers*, 63 LA. L. REV. 381, 401–07 (2003).

34. 755 ILCS 5/11a-18.1(a).

35. *In re Estate of Jolliff*, 771 N.E.2d 346, 351 (Ill. 2002).

36. *Id.* at 356.

37. *Id.* at 350.

caring for the disabled person for at least 3 years.”³⁸ Illinois courts interpret these conditions strictly. In one case, two and half years of care were deemed insufficient.³⁹ The same court construed living with the disabled as requiring some sort of shared living arrangement, not just excessive visiting.⁴⁰

The rule reflects an assumption that caring for someone becomes more dedicated, committed, and beneficial when the caretaker resides with the disabled person. Sharing a home takes the relationship to another level of devotion and commitment, one worthy of compensation.

D. Rent Control

When a tenant in a rent-controlled apartment has passed away or permanently vacated the premises, her family members who lived with her may be entitled to protection from eviction. This protection is particularly interesting, as its development reflects the changing definitions of family. The New York Rent and Eviction Regulations Section 2204.6 (d) formerly provided that upon the death of a rent control tenant, the landlord could not evict the surviving spouse of the deceased tenant or some other member of the deceased’s family who had been living with the tenant.⁴¹ The protection applied to people who lived with the tenant, but not to every person who resided with her. It required a particular relationship, one that could be termed familial, that involved co-residence.⁴² In *Braschi v. Stahl Associates Co.*, the court considered whether a same-sex lifetime partner of the deceased tenant falls under the definition of “family” in the regulation.

The *Braschi* court concluded that the term family should not be restricted to formal relations, but must take into account the reality of family life.⁴³ The court also offered guidelines to distinguish between nonfamilial and familial relationships in the home. Among these guidelines are “the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services.”⁴⁴

The New York Rent and Eviction Regulations have embraced these criteria. Current regulation stipulates that where a tenant has permanently vacated the housing accommodation and “such family member has resided with the tenant in the housing accommodation as a primary residence for a

38. 755 ILCS 5/11a-18.1(a).

39. *In re Estate of Riordan*, 814 N.E.2d 597, 600 (Ill. App. 2004).

40. *Id.* at 599; *see also In re Estate of Hoehn*, 600 N.E.2d 899, 900–01 (Ill. App. 1992).

41. N.Y. COMP. CODES R. & REGS. tit. 9 § 2204.6(d) (1984) (amended 1989).

42. *Braschi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 55 (N.Y. 1989).

43. 543 N.E.2d 49, 55 (N.Y. 1989).

44. *Id.*

period of no less than two years,” he or she will be protected from eviction.⁴⁵ The definition of “family members” is broad and includes formal relations, stepparents, in-laws, and unrelated persons, if there is an emotional and financial commitment and interdependence. I will return to the specific guidelines in Part IV.

E. Conclusion

This brief review of familial rights and obligations has revealed the centrality of the home in law, not just for the individual, but as a site that fosters meaningful relationships. Living together enriches the connection between individuals. It makes them more of a family and seems to justify legally imposed obligations.

When the relationship itself does not establish mutual rights and obligations, shared living may sometimes provide the added element that transforms its meaning. When relations bear a resemblance to traditional patterns of the family, shared residence can replace what the relationship lacks in formalities. De facto parenthood and the cohabitation of couples are good examples. The New York Rent and Eviction Regulations extend this conclusion to a wider range of relationships. Although the lack of co-residence does not undermine formal familial obligations, informal relations that do not include co-residence are viewed as merely friendship, not family.⁴⁶

Under certain conditions, then, living with others is a meaningful experience endorsed by the law. What the legal analysis is missing, however, is an explanation to support such an endorsement. In particular, the law needs to articulate how and in what way living with others enhances commitment and supports relationships. Furthermore, it also has to stipulate at which point co-residence creates the relational and communal goods it is aimed at fostering, and to distinguish between different types of shared housing. In particular, the property implications of living with others have yet to be explored. Since living with others enhances commitment, the rules of eviction should presumably reflect this commitment. Instead, the current rules defer to the owner’s authority to evict any unwanted cohabitant from his or her home. This rule falls in line with property law’s ethos of exclusion, the property owner’s wishes being held supreme.⁴⁷ As I argue in Part V, the premise of this rule demands rethinking.

45. N.Y. COMP. CODES R. & REGS. tit. 9 § 2204.6(d) (1984) (amended 1989).

46. See *supra* notes 29–32 and accompanying text; see also Rosenbury, *supra* note 13.

47. See Larissa Katz, *Exclusion and Exclusivity in Property Law*, 58 U. TORONTO L.J. 275, 278 (2008); Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1857–91 (2007). But see Gregory S. Alexander et al., *A Statement of Progressive Property*, 94 CORNELL L. REV. 743, 743 (2009) (providing an alternative and progressive vision for property law).

In what follows, instead of discussing familial obligations in the home, I alternatively ask whether the relationship between the parties, founded on sharing a home, should be a source of certain rights and obligations in terms of property rights.

II. HOME-SHARING

As previously demonstrated, relationships in the home are treated differently than relationships outside the home. The law ascribes meaning to co-residence in terms of the obligations between the parties. The goal of this Part is to construe and construct the underlying values that co-residence promotes. In doing so, it is important to distinguish between different types of shared living arrangements, and I will analyze and compare these different types in Part III.

American law has a strong ethos of protecting the home. Benjamin Barros has described how the home is treated more favorably than any other type of property.⁴⁸ This favorable treatment is embodied in a wide range of legal doctrines, including federal tax law, search and seizure law, post-foreclosure rights of redemption, and statutes that concern just cause eviction.⁴⁹ Barros organizes the relevant doctrines that protect the home in two categories. One concerns safety, freedom, and privacy in the home, and the other concerns possession.⁵⁰ The latter protects the interest of the individual to remain in the home she currently occupies.⁵¹ Protection of possession relies on Margaret Radin's influential work on property as personhood.⁵²

Radin argues that the home is closely connected to personhood because it is the "scene of one's history and future, one's life and growth."⁵³ It therefore deserves special protection. Even though Radin's argument has been significantly criticized,⁵⁴ it has proved to be particularly telling regarding American law's vision of the home.⁵⁵ The focus on privacy or posses-

48. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255 (2006).

49. *Id.* at 256.

50. *Id.*

51. *Id.* at 257.

52. *Id.* at 276–78.

53. Margaret J. Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 992 (1982).

54. Professor Stephanie Stern argues that there is little evidence from psychological research to support the argument that the home constructs identity. Instead, Stern argues that the home expresses and maintains identity, at best. Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1110–11 (2009). After all, in practice, people move from home to home all the time. More critically, Professor Stephen Schnably has claimed that "the ideal of the home is not one simply constructed by individuals, but is one that has been actively fostered by the state and other 'private' actors wielding significant social power." Stephen J. Schnably, *Property and Pragmatism: A Critique of Radin's Theory of Property and Personhood*, 45 STAN. L. REV. 347, 373–74 (1993).

55. *See* Stern, *supra* note 54, at 1100.

sion reflects an ethos of the home as a castle,⁵⁶ a sphere where one is left alone and is completely free. The law therefore protects the home from outside threats: the state, creditors, or landlords.⁵⁷ The home is thus perceived as a site of individuality, one that has to be protected from intrusion. Consequently, the law treats the home as a black box; its internal workings, the relationships between co-occupants, are insignificant. But alongside this individual dimension of the home as a refuge, the home is probably the most communal place there is. Most people do not live alone,⁵⁸ and for them a home is a site that hosts meaningful intimate relations.⁵⁹ If home is a communal spatiality, what are the respective rights and obligations of co-occupants? How should the law treat relationships in the home?

In his influential work on the household, Robert Ellickson provides a comprehensive analysis of the household and relationships in it.⁶⁰ The primary strategy of living with others, according to his analysis, is consorting with intimates in order to minimize the risk of opportunistic behavior. Decisions and rules in the home are formed in an informal way through gift exchange. Ownership rights are assigned, much like in a firm, to providers of equity capital; and owners hold decision-making power on use and occupancy in the home. The normative basis of this analysis is a liberal vision supported by property and contract law, according to which all the parties have the ability to exit the home, and the owner holds ultimate control over the premises.

This analysis indeed describes the internal workings of the home. It explains some of its unique features, such as negotiation strategies and the identity of co-occupants. Yet, it does not fully appreciate the relational and communal aspects of sharing a home. A home is more than a physical structure. Not every dwelling place is understood as a home. What we call a home is a composition of the human interaction and the physical space. Indeed, social science studies clearly show that relationships within the home are so tied up to the meaning of home that they often affect, for better or worse, people's choice to call a particular dwelling a home.⁶¹ The ongoing communication with others, whether positive or difficult, lies at the core of the experience of the home. The home, then, is a communal creation,

56. On privacy, see JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* 2–5, 55–57 (2009); see also Robert M. Rakoff, *Ideology in Everyday Life: The Meaning of the House*, 7 *POL. & SOC'Y* 85, 86 (1977); Barros, *supra* note 48, at 259; Stern, *supra* note 54, at 1100.

57. See, e.g., Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?* 29 *J. L. & SOC'Y* 580 (2002).

58. For some data on number of occupants and type of relationships see Ellickson, *supra* note 6, at 254, 255.

59. Lisa M. Austin, *Person, Place, or Thing? Property and the Structuring of Social Relations*, 60 *U. TORONTO L.J.* 445 (2010).

60. See *supra* note 6 and accompanying text.

61. Sandy G. Smith, *The Essential Qualities of a Home*, 14 *J. ENVTL. PSYCH.* 31, 39 (1994).

and, in many cases, it is not an individual achievement. The purpose of this Part is to articulate the nature of this common endeavor and of sharing a home.

Relationships in the home are uniquely close and intimate even if difficult at times. Other interactions, as meaningful as they may be, are limited in terms of the intensity of the relation, mostly because relations in the workplace, community, or at school are limited in scope and time. One can always escape from these locations to her shelter, the home. In all other relations, then, we still have some control and can retreat back to our home, but relationships within the home remain constantly intense. Despite recent trends that challenge geographical locations and emphasize the rise of virtual communities,⁶² the home has not lost its meaning.

In spite of the significant relational and communal dimensions of the home,⁶³ it is important to note that the goods arising from a home-sharing community are not merely communal goods. Home-sharing contributes to forming a personal identity and the construction of autonomy through the distinction between self and others. It creates a close and immediate community that supports the individual's need of shelter and repose. It unites the individual and the relational, and both aspects, with their resulting tension, represent the benefits of home-sharing.

In fact, the home contains a paradox: the most personal place is also the most communal, deeply other-regarding.⁶⁴ When I share my home with another person, I share my most intimate space and at the same time I have to acknowledge the other's wants and needs and behave in a manner that is respectful of others.⁶⁵ In other words, the home is a complex concept that encompasses a dialectics between individuality and being other-regarding. Living together in the home allows the individual to shape the boundaries of the self and create a space that is completely personal and private (for example, a room, a closet, or drawers). On the other hand, living with oth-

62. For the growing importance of online communities, see Celene Navarrete A. & Esperanza Huerta, *Building Virtual Bridges to Home: The Use of the Internet by Transnational Communities of Immigrants*, 11 INT'L J. COMM. L. & POL'Y 7 (2006); Nicholas Suzor, *Order Supported by Law: The Enforcement of Rules in Online Communities*, 63 MERCER L. REV. 523 (2012).

63. For the relational and communal aspects of property in general see, e.g., Joseph W. Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611 (1988). For the communal aspects of property, see Gregory Alexander & Eduardo Peñalver, *Properties of Communities*, 10 THEORETICAL INQ. L. 127 (2009); Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L. J. 549 (2001); Amnon Lehavi, *How Property Can Create, Maintain, or Destroy Community*, 10 THEORETICAL INQ. L. 43 (2009).

64. For the relational, other-regarding characteristics of property, see Jennifer Nedelsky, *Law, Boundaries and the Bounded Self*, 30 REPRESENTATIONS 162, 162 (1991).

65. Compare this argument to Hegelian justifications for private property. The property is an external object, to use the Hegelian vocabulary, by which one expresses her will, and recognizes others' will, and through the recognition of others, one recognizes herself. See ALAN BRUDNER, *THE UNITY OF THE COMMON LAW: STUDIES IN HEGELIAN JURISPRUDENCE* 34–38 (1995); Dudley Knowles, *Hegel on Property and Personality*, 33 PHIL. Q. 45, 56–57 (1983).

ers forces the individual to open up to others, include them in her own vision of home, not merely exclude them.⁶⁶ As some philosophers have persuasively asserted, the home is a profoundly relational concept as it means acceptance, being with others.⁶⁷ In the home, friction arises among all the needs and wants, complementary or conflicting; and it is necessary to interact with others, whether one wants to or not, because the other is in one's most personal intimate space. This process at its best offers acceptance of the other despite occasional conflicts. Judith Sixsmith, a social scientist, eloquently explains:

[S]ocial networks built around a home and the relationships that create and are created in a home are of utmost importance.

. . . It is familiarity with other people, their habits, emotions, actions etc., indeed the very knowledge that they are there, which creates an atmosphere of social understanding whereby the person[']s own opinions, actions and moods are accepted, if not always welcomed.⁶⁸

All this suggests that living with others creates interdependency.⁶⁹ The degree of dependency varies in different contexts, but the experience requires each cohabitant to put herself in a vulnerable position because she has to consider the needs of others and accept the other's consideration of hers.

Home-sharing is thus a personal and a communal project at the same time. When I use the term "home-sharing community," I mean that living together creates a sense of cohesion and commitment among cohabitants⁷⁰ that requires rethinking their legal relationship. As property scholars have previously noted, the benefits of communal efforts and a sense of belongingness are an important part of a normative account of property law.⁷¹

66. For a critique on the centrality of exclusion in property law, see HANOCH DAGAN, PROPERTY: VALUES AND INSTITUTIONS 37–57 (2011); Gregory S. Alexander, *The Social Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009); Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889 (2005); Joseph W. Singer, *Democratic Estate: Property Law in a Free and Democratic Society*, 94 CORNELL L. REV. 1009 (2009).

67. Shelley Mallett, *Understanding Home: A Critical Review of the Literature*, 52 SOC. REV. 62, 83 (2004) (discussing the philosophical theories of Kuang Ming Wu and Martin Buber).

68. Judith Sixsmith, *The Meaning of Home: An Exploratory Study of Environmental Experience*, 6 J. ENVTL. PSYCHOL. 281, 291 (1986).

69. Cf. Alexander & Peñalver, *supra* note 63 (describing interdependence as a necessary condition for human flourishing); Gregory S. Alexander, *Unborn Communities*, 8 LAW & ETHICS HUM. RTS. (forthcoming 2014) (discussing mutual dependency between subsequent generations).

70. Cf. G. A. HILLERY, JR., THE MONASTERY 46–47 (1992) (discussing two meanings of community: a social organization that allows people to live together and the way people feel about a group that involves cohesion commitment and love).

71. See Carolyn Frantz & Hanoach Dagan, *Properties of Marriage*, 104 COLUM. L. REV. 75, 81 (2004) (defining marriage as a liberal egalitarian community); Dagan & Heller, *supra* note 63 (highlighting the benefits of cooperation to the liberal commons); Peñalver, *supra* note 66 (treating the family as a type of involuntary community).

But community also contains a risk of vulnerability and subordination. So does the home. Relationships in the home can be offensive and intrusive. The home, it has been argued, is a prison for women,⁷² the glorification of which pushes them to care for the family.⁷³ This criticism is inspired by a vision of the home as a patriarchal institution—a locus for the conjugal relationship. Yet, the concept of home can be more inclusive, and accept a wide variety of intimate associations. In addition, communities carry risks for freedom and autonomy. With community comes pressure, the oppression of minorities, and difficulties of exit.⁷⁴ Home-sharing entails similar risks. Living with others means compromise. Sometimes it does not succeed, resulting in miserable cohabitants.⁷⁵ At times, a cohabitant may experience home-sharing as a violation of her privacy and autonomy. When it comes to constructing rules regarding entrance to and exit from home-sharing, the law should support home-sharing and protect cohabitants from the sudden loss of this community, but at the same time be mindful of the risks of living with others when the relationship turns sour. This discussion will prove important in considering the appropriate remedies for exiting the community.

Another element of living with others is financial security. Under the current reality of recession, and in light of economic hardship, sharing a home clearly offers financial gain. This gain does not necessarily negate the communal and relational benefits of living with others, but rather complements them.⁷⁶ As long as the benefits of home-sharing are not purely economic, financial support can serve to strengthen mutual dependency.

In addition to the benefits of cohesion and commitment, people who live together create their home together. The home is a space where people interact that is shaped by the competing wants and needs of all cohabitants. The combination of space and unique interaction creates something new. The decoration and styling, the use of facilities, and the rules of conduct are all a product of the encounter between the self and others who live in the home. Each person who lives in the home influences, to some extent at least, the physical and relational spatiality. The nature of the shared space results from agreements or disagreements among all the people living in the

72. For the effect of domestic violence law on the concept of home, see Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006).

73. See Lorna Fox, *Re-Possessing "Home": A Re-Analysis of Gender, Homeownership and Debtor Default for Feminist Legal Theory*, 14 WM. & MARY J. WOMEN & L. 423, 435–51 (2008).

74. Dagan & Heller, *supra* note 63; Peñalver, *supra* note 66, at 1930. For a discussion of community and liberal values, see Ayelet Shachar, *Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation*, 6 J. POL. PHIL. 285 (1998).

75. Smith, *supra* note 61, at 41.

76. For property's role in creating communities and for the family as a type of community, see Peñalver, *supra* note 66.

home. Room allocation, the use of furniture and appliances, and standards of behavior are formed through direct or indirect negotiation.

Take, for example, adolescents. Sociological studies point to their difficulties in handling rules forced on them by parents.⁷⁷ Nonetheless, teenagers affect the home. Arguments and disagreements change the atmosphere in the home, and negotiation over the rules shapes standards of behavior even if the adolescent's success is limited; performing chores also contributes to the household. Because every cohabitant contributes to the creation of the home, she also has a stake in the home. Although this stake does not amount to a right to control the asset, it does require some protection of her interest, as Part V explains.

And yet, some people live alone.⁷⁸ Nothing in my argument suggests that one should avoid living alone or that it is an inferior choice. Moreover, not every group of people living together creates a home-sharing community. Occasionally people live together because it saves resources and it is convenient, such as when roommates share a living space. People can and should choose different arrangements along the continuum between individuality and communal life. The relationship between roommates is still characterized by immediate interaction and mutual consideration, but the parties purposefully limit their interaction to the minimum required. The law should offer different categories of shared living arrangements, each with its own set of legal responsibilities and rights.⁷⁹ In the next Part, I offer three main categories of co-residence, based on the intensity of the community created in the home. Recognizing home-sharing does not oblige others to choose this option. Yet if people decide to share their home in a way that creates a home-sharing community, then the law should improve the rules that define their respective rights and obligations.

One may argue that legal recognition of a home-sharing community interferes with intimate relations by regulating the realm of emotions. Relationships in the home, according to this argument, mean more when they are unfettered by legal incentives. Yet, the concept of a home-sharing community does not seek to regulate an ongoing relationship. Rather, it informs parties of the commitment they take upon themselves when they choose to enter a home-sharing community and asks them to terminate the community in a respectful way. As I will further demonstrate, the set of

77. Naomi Rosh White, *Not Under My Roof: Young People's Experience of Home*, 34 *YOUTH & SOC'Y* 214, 217 (2002).

78. In 2007, thirty-one million American households "consisted of one person living alone." ROSE M. KREIDER & DIANA B. ELLIOTT, U.S. CENSUS, *AMERICA'S FAMILIES AND LIVING ARRANGEMENTS*: 2007, at 2 (2009). For a sociological analysis, see Dieter Demey et al., *Pathways into Living Alone in Mid-Life: Diversity and Policy Implications*, 18 *ADVANCES LIFE COURSE RES.* 161 (2013).

79. For plural choices in property institutions, see Hanoch Dagan, *Pluralism and Perfectionism in Private Law*, 112 *COLUM. L. REV.* 1409 (2012).

remedies targets the owner's decision-making process and encourages discussion between the parties, leaving the specific content of the agreement for the parties to figure out.

III. THE CATEGORIES OF LIVING WITH OTHERS

Not all patterns of co-residence are the same. It is important to distinguish between mere co-residence, which factually references a number of people sharing a home, and home-sharing, which normatively defines a property community that creates a home together. Under the broad definition of co-residence, I identify three distinct categories. Although in real life not all cases will be so easily classified, the categorization serves the analytical and normative function of defining home-sharing communities.

The first category includes cases of common residence that are based on comfort and individuality. In these cases, all legal responsibilities between the parties depend on their explicit contractual obligations. The second category concerns cases where a home-sharing community has been created. This category represents the core of the argument and will be discussed at length in Part V. Typically, such arrangements concern formal right holders and occupants that have no formal property rights. The test case for the article is intergenerational home-sharing, in particular adult children living with their parents in a home owned by the parents. The third category concerns home-sharing cases that include an additional element: the sharing of financial resources. In certain circumstances, such cases may justify the acknowledgment of a proprietary interest in the home through legal rules of constructive trust or equitable lien. In what follows, I explain the distinctions between these categories and their normative significance. I will begin with the first and third categories, and then turn to the main argument that deals with home-sharing in Part V.

A. *Roommates versus Home-sharing*

There are two main guidelines that support a distinction between mere co-residence and a home-sharing community. The first guideline concerns the nature of sharing, while the second guideline involves the nature of the commitment. The main query is whether living together in the home serves a primarily individual motivation and practice, and whether everyday life at home reveals a commitment to the wellbeing of co-occupants.

Andrew Mason's distinction between a mere association and a community is useful here.⁸⁰ A mere association consists of people who interact with one another on a contractual basis. The typical roommates may care for each other but at the end of the day, they live together in order to further

80. ANDREW MASON, COMMUNITY, SOLIDARITY, AND BELONGING: LEVELS OF COMMUNITY AND THEIR NORMATIVE SIGNIFICANCE 22 (2000).

their self-regarding interests. A community, by contrast, is a group of people with goals that cannot be reduced to the goals of each individual member.⁸¹ Home-sharing is not just about sharing a common space; it is profoundly other-regarding. Mason's moralized community clarifies this point. It requires solidarity or mutual concern—members must give each other's interests some non-instrumental weight—and permits no systematic exploitation or systematic injustice.⁸² A home-sharing community is other-regarding, while mere co-residence is self-regarding. Other-regarding behavior and communal efforts may include shared use of the home, common decision-making mechanisms, and shared rules of conduct.

The second guideline concerns long-term commitment. The main question is whether the parties experience the arrangement as merely temporary or as long-term and possibly permanent. The longevity of the arrangement is important because it affects the willingness of the parties to invest in the home in a variety of ways, including emotional investment, sacrifices, and contribution to the household, as well as their willingness to cooperate in the space and enter a mutually dependent relationship.

Let me clarify by using an example. In *Borough of Glassboro v. Valorosi*,⁸³ the main issue was a restrictive zoning ordinance that limited residence in certain districts to families only. The ordinance defined family as “one or more persons occupying a dwelling unit as a single non-profit housekeeping unit, who are living together as a stable and permanent living unit, being a traditional family unit or the functional equivalency [sic] thereof.”⁸⁴

The New Jersey Supreme Court had to decide whether a group of ten college students that shared a home together constituted a family according to the ordinance. Seven of the students were sophomores at the time they started living in the house. The students each had a separate, renewable lease for a semester-long period. At the end of each semester, each resident could renew the lease if the house was found to be in order. The students shared a kitchen, ate together in small groups, and shared the household chores. They opened a common checking account to pay for food and other bills. All of them planned to live in the house until graduation.⁸⁵

The court decided that these ten college students living together did constitute a family, but this decision clearly reflected the court's criticism of

81. Mason's full definition of an ordinary community is not applicable to the home. It requires identifying with the group, recognizing each other as members of the group, sharing values, and experiencing a common way of life. *Id.* at 21.

82. *Id.* at 27.

83. 568 A.2d 888 (N.J. 1990).

84. *Id.* at 889.

85. *Id.* at 890.

the ordinance.⁸⁶ Since zoning law is not the topic of investigation here, let us analyze the facts from a different perspective, one that focuses on home-sharing. First, we need to evaluate whether the co-residence appears to be other-regarding. The students lived together because it was a convenient arrangement. The atmosphere appeared to be pleasant and friendly, but the whole arrangement was founded on individual motivations. It is important to note, however, that the fact that the students meant to save money by living together does not necessarily imply a home-sharing community did not exist. Rather, it depends on whether that consideration was dominant and shaped the home environment.

Second, there appears to have been no long-term commitment between the ten roommates. The students committed to a short period of four months at a time. Their overall plan was to share a home for three years until they graduated from college. In addition, they did make several decisions together, but these decisions dealt with the day-to-day running of the household and not with long-term planning. To sum up, these ten college roommates did not constitute a home-sharing community.

Even though I conclude that *Borough of Glassboro* does not portray a home-sharing community, this does not mean that the court's decision is mistaken. The concept of home-sharing highlights legal obligations between the parties. In particular, it is meant to provoke lawyers and scholars into rethinking the current rules of exit from a home-sharing community. Nevertheless, the concept of living together in the home can indeed serve to illuminate some of the difficulties this type of case raises.

This does not mean, of course, that all zoning cases deal with mere co-residence. In the case of *Moore v. City of East Cleveland, Ohio*,⁸⁷ the zoning ordinance narrowly defined family.⁸⁸ The ordinance did not recognize the Moore family, which included Mrs. Inez Moore, her son, and two grandsons, Dale and John. John came to live with his grandmother following his mother's death when he was a baby, and he was a ten-year-old child at the time the case was decided.⁸⁹ The court held that the ordinance was

86. *Id.* at 894–95 (detailing the history of New Jersey court review of zoning ordinances, and concluding “our cases preclude municipalities from adopting zoning regulations that unreasonably distinguish between residential occupancy by unrelated persons in comparison with occupancy by individuals related by blood, marriage, or adoption. Our decisions permit zoning regulations to restrict uses in certain residential zones to single housekeeping units”).

87. 431 U.S. 494 (1977).

88. *Id.* at 496 (noting the ordinance decree that “[f]amily’ means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following: (a) Husband or wife of the nominal head of the household. (b) Unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them. (c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household.”).

89. *Id.* at 496–97; *id.* at 506 (Brennan, J., concurring).

unconstitutional as it violated the due process clause of the Fourteenth Amendment. Although the judgment did not provide details regarding the decision-making procedures, or behavior and everyday practices in the home, the facts indicated a long-term, ten-year commitment to caring for minor children.⁹⁰ In addition, in his concurrence, Justice Brennan pointed out that intergenerational bonds are an important source of emotional and financial support in certain communities.⁹¹ His words remain true today, as intergenerational home-sharing continues to be a rising phenomenon.⁹²

The courts in zoning cases tend to search for characteristics of family as broadly as they can define it. They therefore use criteria such as “cohesiveness and permanence”⁹³ or “stable and permanent living unit.”⁹⁴ These criteria bear some resemblance to the guidelines suggested here as defining a home-sharing community. Yet zoning cases are not about the commitments of the parties to one another. They deal with public interventions in people’s choice of home. A home is more than a physical dwelling; it is shaped by the relationships in it. People should be able to choose not only whom to live with, but also their desired level of commitment, cohesiveness, or cooperation. Therefore, restrictions of these choices should be interpreted narrowly and occasionally struck down regardless of the long-term cohesiveness of the relationships within the home. Restrictive regulation contradicts the plural understanding of home.

People should be able to choose their home. There is a variety of options along the continuum between individuality and communal life in the home. Living alone is one option; living with others while preserving the individual’s commitment-free lifestyle is another. The communal creation of home is a third possibility. People have different preferences at different points in their lives, and they should be allowed to choose from a spectrum of available options.⁹⁵

90. *Id.* at 506.

91. *Id.* at 508.

92. *See infra* notes 122–125 and accompanying text.

93. *See, e.g.*, *Penobscot Area Hous. Dev. Corp. v. City of Brewer*, 434 A.2d 14, 22 (Me. 1981).

94. *See, e.g.*, *Borough of Glassboro v. Vallorosi*, 568 A.2d 888, 894 (N.J. 1990) (quoting the ordinance requirements) (internal quotation marks omitted).

95. *See Dagan, supra* note 79, at 1423.

*B. Home-sharing versus Shared Lives*⁹⁶

The “shared lives” category has a home-sharing community as its basis, but includes an additional element: the sharing of financial resources. This discussion will help clarify what a home-sharing community is, and then distinguish it from the more committed form of shared lives. The shared life metaphor is intuitively appropriate for the relationship between spouses or informally committed couples. Indeed, couples usually live together and share financial resources. Yet once we focus on the relationship within the home, more complex forms of social interaction arise.

Let us consider the *Frambach v. Dunihue* case.⁹⁷ Mr. Dunihue was a widower with seven children.⁹⁸ The Frambachs lived nearby with their four children. The relationship between these two families began when Mrs. Frambach babysat for Mr. Dunihue’s children on occasion for a few months. Later, the Frambachs and the Dunihues waited out a hurricane together in the Frambachs’ home. This arrangement was so enjoyable that the two families decided to live together in the Frambachs’ home and did so for nineteen years. During that period, Mr. Dunihue made some improvements to the house, which was small and had no indoor plumbing. Each family had a separate bank account, but Mrs. Frambach had access to both accounts and decided which account would be used to pay a particular bill. The three also shopped together for clothes, furniture, and automobiles. Mr. Dunihue characterized the arrangement as “one family.”⁹⁹ One day Mrs. Frambach called Mr. Dunihue at work and told him he had thirty minutes to move out.¹⁰⁰

Mr. Dunihue argued that “the Frambachs had promised him a place to live for the rest of his life in exchange for his work,”¹⁰¹ and he requested that an equitable lien be imposed on the property. The trial court concluded that they were all a single family unit, that the separation should be treated as a divorce, and that the fair result would be to “make them tenants in common right down the middle.”¹⁰² The appellate court reversed the decision. It found “no evidence of a promise or agreement to deed a portion of the Frambachs’ property to Dunihue in return for the improvements.”¹⁰³

96. The term “shared life” is borrowed from *Principles of the Law of Family Dissolution: Analysis and Recommendations*. LAW OF FAMILY DISSOLUTION, *supra* note 14, § 6.03. The *Principles* discuss factors that are considered in determining whether a couple “share[s] a life together.” My use of the expression is not limited to couples, but extends to all relationships in the home that have an additional element of sharing resources.

97. 419 So.2d 1115 (Fla. Dist. Ct. App. 1982).

98. *Id.* at 1116.

99. *Id.* The court approved of this characterization. *Id.*

100. *Id.*

101. *Id.* at 1116–17.

102. *Id.* at 1117 (quoting the trial court) (internal quotation marks omitted).

103. *Id.*

The only relevant question was whether Dunihue's "contributions exceed[ed] the value of the benefits received by him from the Frambachs,"¹⁰⁴ and the court suspected the contributions would prove equal.

If we look at the case from the perspective of relationships in the home, it is quite clear that the parties lived in a home-sharing community. The arrangement was other-regarding. Each adult had a role that contributed to the household, and all were committed to the creation of the home. As opposed to the facts in *Borough of Glassboro*, neither the Frambachs nor Mr. Dunihue had a deadline in mind for ending the arrangement. They all allowed the relationship to develop naturally over time. It was a permanent, cohesive relationship, not a temporary one. Moreover, decisions regarding the home structure, its functionality, and use were made together. The students in *Borough of Glassboro* also made decisions together. But the students' decisions dealt with day-to-day management of the house, while the three adults in *Frambach* also dealt with long-term planning.

In *Frambach*, the home-sharing community ended abruptly. The Frambachs made their decision unilaterally. They did not allow Dunihue to respond, nor did they give him an opportunity to change their mind. He was ordered to move out immediately, and had no time to come to terms with the end of his home and the relationships in it. In short, the property's formal owners decided to exclude him from his home.¹⁰⁵

But the parties were not only sharing a home; they also shared financial resources and acted as a single family unit. Dunihue invested funds and labor in improving the Frambachs' home. The parties also had intermingled finances and relied on each other's earnings for the common necessities of life.¹⁰⁶ This additional element takes us beyond the home into a more committed relationship that includes the pooling of resources. As the trial court reasoned, a committed couple seems to be the best analogy for this shared-lives community that functions as a single economic unit.¹⁰⁷

104. *Id.*

105. I argue in the Part V that exit rules should allow for the voice of the excluded resident.

106. For similar criteria, see N.Y. COMP. CODES R. & REGS. tit. 9 § 2204.6(d) (3) (b-c) (1984) (amended 1989).

107. Another esoteric set of facts can be found in *In re Marriage of Bauder*, 605 P.2d 1374 (Or. Ct. App. 1980). The case dealt with a married couple that owned a home together and took in a roomer, Mr. Hart. The couple and Hart lived together and shared resources. They had a three-way joint checking account. At one point, Hart was the only one employed and contributed more than half the deposits. *Id.* at 1375. When the husband suspected Hart of intending to leave, he asked the wife to present herself sexually to the roomer. *Id.* at 1376. The wife became pregnant following this sexual relationship. As part of a divorce proceeding, Hart claimed that he was promised a one-third interest in the house. The court held that the evidence did not support an express agreement. The court then asserted that "the fact that an unmarried person cohabits with a married couple should not give rise to any inference that the parties agreed to share incomes or property acquired during cohabitation." *Id.* If the couple had promised an interest in property in return for the deposits and Hart had acted in reliance on said promise, then a constructive trust

There are a number of rules that recognize informal relations that function as a familial economic unit. The New York Rent and Eviction Regulations protect from eviction a family member of a tenant who has permanently vacated the apartment.¹⁰⁸ The definition of family member is broad. In addition to sharing a home, the rules emphasize financial interdependence¹⁰⁹ and intermingling of finances.¹¹⁰ The ALI's principles concerning the determination of domestic partnership include similar criteria.¹¹¹ In Canada, domestic partnership focuses on economic interdependence regardless of conjugality.¹¹²

Although a detailed account of the single economic unit exceeds the scope of this article, these cases help highlight the conceptual boundaries of the home-sharing community. Financial interdependence and pooling of resources contribute to the commitment of the parties. Combination of economic efforts implies a willingness to share a life together.¹¹³ I previously distinguished home-sharing from mere co-residence. It is equally critical to distinguish between shared lives and home-sharing. The former may justify, under certain conditions, a distribution of property or contribution-based restitution.¹¹⁴ The latter does not. This Article deals with home-sharing cases that do not amount to shared lives, focusing specifically on adult children living with their parents. It is these cases that are most challenging to contemporary legal thought because they cannot be definitively analogized to any existing legal institution.

could have been established. But under these circumstances, the court concluded “[f]or all that appears, he got what he bargained for.” *Id.*

108. N.Y. COMP. CODES R. & REGS. tit. 9 § 2204.6(d)(1).

109. *Id.* § 2204.6 (d)(3) (defining a family member as “any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant”).

110. Evidence of such commitment includes, for example, the longevity of the relationship, reliance on each other for the payment of expenses or common necessities. *Id.*

111. LAW OF FAMILY DISSOLUTION, *supra* note 14, at § 6.03. These criteria include, for example:

The extent to which the parties intermingled their finances . . . [t]he extent to which their relationship fostered the parties’ economic interdependence, or the economic dependence of one party upon the other; . . . [t]he extent to which the parties engaged in conduct and assumed specialized or collaborative roles in furtherance of their life together; . . . [t]he extent to which the relationship wrought change in the life of either or both parties; . . . [and t]he extent to which the parties acknowledged responsibilities to each other

Id.

112. See Rosenbury, *supra* note 13, at 221–22; see also LAW COMMISSION OF CANADA, BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL ADULT RELATIONSHIPS 114 (2001).

113. Adilson José Moreira, *We Are Family! Legal Recognition of Same-Sex Unions in Brazil*, 60 AM. J. COMP. L. 1003, 1016 (2012).

114. See HANOCH DAGAN, THE LAW AND ETHICS OF RESTITUTION 167–68, 178 (2004).

IV. HOME-SHARING IN CONTEXT: THE CASE OF ADULT CHILDREN AND THEIR PARENTS

In the previous Part, I defined the boundaries of a home-sharing community. Here I move on to consider the particulars of the concept. Sharing a home is a contextual concept; the social background defines its contours. Because the law conflates the home and the family,¹¹⁵ a discussion of home-sharing is especially productive in the face of changes in family structure. The social context is important because different relationships entail different risks and benefits. Cohabitation of adult children with their parents is different from cohabitation of unmarried couples or cohabitation of elderly parents living with their adult child in a home owned by their child. The possibility that the parties will continue to have a close relationship, the economic consequences of ending the community, and the risk of exploitation are all affected by the type of relationship and the social context. I therefore turn to discuss the widespread phenomenon of adult children living with their parents.

In previous decades, sociological common wisdom pointed to a decline in the importance of the modern nuclear family as a social institution.¹¹⁶ More recent scholarship stresses the increasingly important multi-generational bonds, at times at the expense of the nuclear family.¹¹⁷ Two processes are particularly significant: The aging of the population results in “longer years of shared lives” between different generations.¹¹⁸ In addition, grandparents and other kin play an increasingly important role in supplying care for children.¹¹⁹ High divorce rates and births out of wedlock make women more likely to be single mothers and rely on the assistance of their extended kin, especially their own mothers.¹²⁰

Parents help their adult children in a variety of ways, including financial assistance and the provision of their time, as in taking care of grandchildren. One of the ways to assist adult children is through shared living arrangements, either for married children who move in with their entire family, or for single adults.¹²¹ In fact, adult children living with their par-

115. See *infra* note 198 and accompanying text.

116. David Popenoe, *American Family Decline, 1960–1990: A Review and Appraisal*, 55 J. MARRIAGE & FAM. 527 (1993); Linda J. Waite, *Does Marriage Matter?* 32 DEMOGRAPHY 483 (1995).

117. Vern L. Bengtson, *Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds*, 63 J. MARRIAGE & FAM. 1 (2001).

118. *Id.* at 1 (internal quotation marks omitted).

119. *Id.* at 4.

120. Suzanne M. Bianchi et al., *Intergenerational Ties: Alternative Theories, Empirical Findings and Trends, and Remaining Challenges*, in INTERGENERATIONAL CAREGIVING 3, 6 (Alan Booth et al., eds. 2008).

121. *Id.*

ents is a rising phenomenon not only in the United States;¹²² it has become a global trend.¹²³ American adults in their twenties and early thirties are more likely to be living with their parents than in previous generations.¹²⁴ Hilary Farber points out that even though there are relatively high rates of co-residence among non-white racial and ethnic groups, recent trends in living arrangements suggest intergenerational co-residence is a much more pervasive phenomenon.¹²⁵ According to the United States Census Bureau population report from 2007, six percent “of all family groups contained a householder and his or her adult children.”¹²⁶ A recent Pew Research Center report found that in 2012, thirty-six percent of America’s young adults ages eighteen to thirty-one were living with their parents, a record number of 21.6 million young adults.¹²⁷ Younger adults (eighteen to twenty-four) are much more likely to live with their parents than older ones (twenty-five to thirty-one).¹²⁸

The reasons for this new household structure include the economic downturn and housing crisis.¹²⁹ As the recession deepens, the economic climate makes it harder for college graduates to become financially independent, and they therefore need their parents’ assistance.¹³⁰ In addition, homeowners in their thirties and forties are sometimes forced to move back in with their parents due to foreclosure.¹³¹

This new structure of the home has raised much concern for children and parents alike, as several empirical studies have demonstrated. Children often experience an inability to influence decisionmaking in the home and the loss of privacy and autonomy.¹³² Parental rules regarding sexual rela-

122. Jennifer Reid Keene & Christine D. Batson, *Under One Roof: A Review of Research on Intergenerational Coresidence and Multigenerational Households in the United States*, 4/8 SOCIOLOGY COMPASS 642, 643 (2010).

123. See Clara H. Mulder et al., *A Comparative Analysis of Leaving Home in the United States, the Netherlands and West Germany*, 7 DEMOGRAPHIC RES. 565, 586–87 (2002). For Israel, see Shelly Kreiczer-Levy, *Intergenerational Relations and the Family Home*, 8 LAW & ETHICS HUM. RTS. 131 (2014). For Canada, see Barbara A. Mitchell et al., “*There’s no Place like Home*”: *An Analysis of Young Adults’ Mature Coresidency in Canada*, 54 INT’L J. AGING & HUM. DEV. 57 (2002).

124. Sharon Sassler et al., *Are They Really Mama’s Boys/Daddy’s Girls? The Negotiation of Adulthood upon Returning to the Parental Home*, 23 SOC. F. 670 (2008).

125. Farber, *supra* note 2, at 43, 65.

126. KREIDER & ELLIOT, *supra* note 78, at 6. The report explains that “[e]veryone living in a housing unit makes up a household. One of the people who owns or rents the residence is designated as the *householder*.” *Id.* at 2.

127. RICHARD FRY, PEW RES. CTR., *A RISING SHARE OF YOUNG ADULTS LIVE IN THEIR PARENTS’ HOME 1* (2013).

128. *Id.* The former accounts for fifty-six percent of all children living with their parents, the latter for sixteen percent.

129. Keene & Batson, *supra* note 122, at 642.

130. Farber, *supra* note 2, at 68–69.

131. *Id.*

132. White, *supra* note 77, at 228–29.

tionships at home, requirements concerning information on children's whereabouts, and control of domestic spaces by parents are all indicative of loss of autonomy and independence.¹³³ Young adults may feel not at home in their parents' home. On the other hand, children who return to live with their parents often talk about "coming home."¹³⁴ There is a constant tension between the need for independence and the need for emotional support and guidance provided by parents.¹³⁵ The literature shows that when the child contributes to the household, he or she will feel more independent, in control, and consequently at home.¹³⁶ In general, the more voice a child gets in decisions about the household, and the more he or she contributes to the household or assumes responsibility in familial roles, the more that child will feel at home, or part of the family.¹³⁷ The nature and quality of the relationship with the parents are also important parameters.

Empirical research has also examined parents' attitudes towards cohabitation with their adult children. The findings reveal a complex picture. Some scholars argue that living with adult children encourages conflict and leads to a strained relationship.¹³⁸ Other scholars emphasize positive experiences of shared living arrangements.¹³⁹ The most significant indicator for parental satisfaction from cohabitation is the relationship between the child and the parent.¹⁴⁰ In addition, reciprocity is a significant indicator, manifested either by paying rent or board, or offering emotional support.¹⁴¹ Spending time together and sharing enjoyable activities are also associated with parental satisfaction. To sum up, parents can enjoy certain goods from co-residence with their adult children. Among these goods are affection, companionship, and a sense of a family.¹⁴² On the other hand, children with

133. *Id.* at 218. Cf. Evie Kins et al., *Patterns of Home Leaving and Subjective Well-Being in Emerging Adulthood: The Role of Motivational Processes and Parental Autonomy Support*, 45 DEVELOPMENTAL PSYCHOL. 1416 (2009) (examining the role of autonomous motivation in choosing a living arrangement).

134. White, *supra* note 77, at 225 (internal quotation marks omitted).

135. *Id.* Some research shows that a close relationship with parents during adolescence increases the chances of an adult child living with her parents. See Mitchell et al., *supra* note 123, at 64. For a position that views adult children living with parents as needy, see Inge Seiffge-Krenke, *Leaving Home or Still in the Nest? Parent-Child Relationships and Psychological Health as Predictors of Different Leaving Home Patterns*, 42 DEVELOPMENTAL PSYCHOL. 864 (2006).

136. White, *supra* note 77, at 222–23.

137. *Id.*

138. See the literature reviewed in Barbara A. Mitchell, *Too Close for Comfort? Parental Assessments of "Boomerang Kid" Living Arrangements*, 23 CANADIAN J. SOC. 21, 23 (1998).

139. *Id.*; see also William S. Aquilino & Khalil R. Supple, *Parent-Child Relations and Parent's Satisfaction with Living Arrangements When Adult Children Live at Home*, 53 J. MARRIAGE & FAM. 13, 17 (1991).

140. Aquilino & Supple, *supra* note 139, at 20–22.

141. Mitchell, *supra* note 138, at 40.

142. *Id.* at 35–37.

a difficult personality or negative lifestyle and the lack of privacy are associated with negative experiences of co-residence.¹⁴³

A recent study conducted in Europe exposes a correlation between late leaving of the parental home and a close relationship with parents in later stages of life, including living in proximity to the parents' home and high frequency of contact.¹⁴⁴ This finding suggests that home-sharing by parents and children can be part of a stronger connection built upon long-term reciprocity. Nonetheless, although the study did not explore elder care and focused on the relationship itself, it did indicate that the late leavers continue to rely on parental assistance.

Clearly the research in this field is constantly developing and to some extent contingent. However, identifying the factors that enhance the goods and risks of home-sharing will contribute to the construction of legal rules. Empirical research sheds light on home-sharing in context because it targets a specific relationship and alerts us to particular risks that this relationship entails. The most prominent conclusion from the research is that the child's contribution to the household appears to be significant to both the parent and the child. It allows the child to achieve a greater degree of independence and autonomy, and the reciprocity is foundational for parents. The quality of the relationship is also important. These principles are supported by empirical analysis, but might just as well have been deduced from a more abstract inquiry into the goods of parents' and children's co-residence.

V. RETHINKING THE LAW OF HOME-SHARING

This new residential pattern raises new legal problems. What is the correct characterization of the child's interest in the home? The parents own the house and the child lives with them based on their permission. Formally, the child is a mere licensee and her license can be revoked at will. This formalistic analysis does not account for the relational and communal aspects of the home. In many cases, the child contributed to the community in the home and was an inseparable part of it. He was not only a member of the home-sharing community but a real participant in its creation. There is an important difference between a child who lives in a house owned by his parents and a child that actually lives with them and contributes to the formation of a home.

To illustrate the difficulties, think of New York eviction law. In New York, a licensee can be evicted through a summary proceeding in a swift procedure after a ten-day notice.¹⁴⁵ This rule presumably applies to adult

143. *Id.*

144. Thomas Leopold, *The Legacy of Leaving Home: Long-Term Effects of Co-residence on Parent-Child Relationships*, 74 J. MARRIAGE & FAM. 399 (2012).

145. N.Y. REAL PROP. ACTS. § 713(7) (2010).

children who pay no rent or board and cannot be considered tenants. However, a group of cases gradually developed a family exception. When the occupant has shared a home with the owner and was a member of her family, she cannot be characterized as merely a licensee. In *Sirota v. Sirota*, two adult children lived with their parents all of their lives. After the father moved out, they stayed in the home and cared for their mother.¹⁴⁶ Upon her death, the father sought to evict his children as mere licensees, but the court refused, requiring him to bring an ejectment action. This case and others underscore that sharing a home with family is a deeper and more permanent commitment than one based on mere convenience.¹⁴⁷ Even in the absence of a clear rule and theoretical support, these seemingly procedural cases recognize the fallacy of treating people who have shared a home together as having no legal commitment to one another.

Now, let us assume instead that the mother in *Sirota* miraculously recovers and asks her children to move out immediately. This unilateral decision fails to account for the children's interest in the home. It does not allow them to explain their position, nor does it give them an opportunity to address the mother's concerns. In addition, treating the children as mere licensees and subject to eviction on ten-day's notice is to disregard their contribution to the home and the community in it. A more nuanced characterization of their interest is required. Note, however, that the fact that the children took care of their mother is not the foundation of their interest. It only goes to show that the relationship was not one-sided. In order to establish a home-sharing community, there can be no systematic exploitation of either of the parties.

This Article's specific test-case of boomerang children represents a challenge to common perceptions of the family. The law typically does not recognize familial obligations between independent adults that are not bounded by marriage or a marriage-like relationship. Therefore, when a parent allows her adult child to live in her home, it is a matter of her benevolence and can be revoked at any given time. Moreover, parents often wish to encourage their children to become independent and self-sufficient.¹⁴⁸ Leaving the parental home is associated with both emotional and physical maturity.¹⁴⁹ Boomerang children and late home leavers are usually perceived as immature and infantile. Yet, this judgment already assumes a particular residential pattern that centers on the nuclear family. Encouraging children to leave the parental home is a culture specific phenomenon, relevant mostly to white, middleclass families. Among certain racial and ethnic

146. 626 N.Y.S.2d 672, 673 (1995).

147. See, e.g., *Kakwani v. Kakwani*, 967 N.Y.S.2d 827 (2013).

148. Cf. Gaia Bernstein & Zvi H. Triger, *Over Parenting*, 44 U.C. DAVIS L. REV. 1221 (2011) (addressing claims regarding over parenting).

149. Sessler et al., *supra* note 124, at 670.

groups, multigenerational co-residence is common.¹⁵⁰ Moreover, as sociological research has shown, the multigenerational family, including the relationships between adult children and their parents, is increasingly important in everyday life.¹⁵¹ These recent trends may reflect a gradual shift in family structure and dynamics. The concept of home-sharing allows us to acknowledge obligations between individuals even when they are not formally perceived as a family. I now turn to developing the argument and explaining its normative implications.

A. *The Argument: Entrance and Exit*

A community of property is often defined along two central lines: the rules of entering the community and rules of exit.¹⁵² Entrance rules raise the question of whether an adult child who left home, and is interested in returning home because of economic or emotional hardship, may do so even without his parents' consent. Because at this particular point a home-sharing community has yet to be formed, I would suggest that there is no legal obligation to let an adult child into a home. Other principles of family law may justify such an obligation, but sharing a home is not one of them. Entrance to a home-sharing community should remain at the discretion of its already existing members; people should be allowed to decide whether they want to allow their child, parent, or any other person to live with them.

Adult children who have always lived with their parents present a more complex case. It is hard to pinpoint a clear date that marks the entrance to a home-sharing community. As long as the child is a minor, legal rules and social conventions encourage parents to share their home with the child.¹⁵³ These conventions change, however, when the child matures. Yet it would be artificial to consider an eighteenth birthday as an entrance condition to a new community based on the will of the parties. Instead, we have a quasi-entrance rule.¹⁵⁴

This brings us to exit rules. The legal analysis of relations in the home relies almost entirely on formal property rights. I argue that when a home-sharing community is already formed, mutual obligations arise. My argument is not that the adult child is attached to the physical structure of the home as an expression of his personality,¹⁵⁵ or as a symbol of roots or con-

150. Farber, *supra* note 2, at 65.

151. See text accompanying notes 114–118.

152. See, e.g., Peñalver, *supra* note 66.

153. ALICE S. ROSSI & PETER H. ROSSI, OF HUMAN BONDING: THE PARENT CHILD RELATIONS ACROSS THE LIFE COURSE 159 (1990).

154. In every family, there are implicit or explicit understandings regarding coming of age and independence, economic support of children, the expected timeframe of sharing a home, and that these understandings change through time.

155. Radin, *supra* note 53.

tinuity.¹⁵⁶ Unlike prior conceptualizations of the home, this Article stresses its sharing aspect: the composition of intimate physical spatiality and close human interactions. Involuntary loss of a home-sharing community injures the adult child, not only because he or she has lost a physical shelter, but also because of the loss of the relationship and safety net it affords. The parents and the child may continue to have a warm relationship, but she or he is no longer part of their home, of their “live-in family”; they no longer share their lives together, with their habits, emotions, and actions. She or he is no longer part of the parents’ everyday life, their interactions, even their conflicts. Living with someone represents a unique form of connection, and the loss of the home is coupled with the loss of this relationship and the acceptance and support it offers.

Acknowledging all the parties to a home-sharing relationship does not necessarily mean enforcing cohabitation when the parties (or some of them) do not want to live together anymore. Instead, I argue that the voice of the child cannot be ignored when the home-sharing community ends. Acknowledging voice can be done in a number of ways, including imposing a duty to explain and justify the decision, or to listen to the child’s arguments, and the setting of cooling-off periods. Openly discussed understandings are important because they allow the parties to contract out of the suggested rule (whether formally or informally). The discussions that precede such understanding are also a manifestation of the child’s voice. One may wonder, however, why an exit rule requires parties to contract out of a home-sharing community rather than contract into the community. This is a penalty rule,¹⁵⁷ or, to be exact, what I call a “deliberative accountability rule.”¹⁵⁸ The rule changes the way parties understand their relationship in the home and encourages them to share their expectations of the community. It fosters dialogue and mutual consideration in shaping legal obligations. Moreover, it provides an incentive for the stronger party, the owner, to inform other cohabitantes of her intentions and views. As the owner currently controls both the entrance to and exit from the community, the proposed penalty rule will encourage the owner to reveal her preferences regarding the community in the home.

156. Fox, *supra* note 57.

157. In contract law, penalty rules are purposely set at what the parties would *not* want in order to encourage them to reveal information to each other. See Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 *YALE L.J.* 87, 91 (1989).

158. In earlier work I suggest the concept of “deliberative accountability rules” (“DAR”) to describe intent-defeating rules whose purpose is to foster accountability in family property (giving of reasons, allowing a voice, consideration of other options and so on). In addition, deliberative accountability rules are relational and acknowledge parties that are not normally considered part of the bargaining process. Shelly Kreiczer-Levy, *Deliberative Accountability Rules in Inheritance Law: Promoting Accountable Estate Planning*, 45 *MICH. J. L. REFORM* 937 (2012).

Recognizing the voice of the child, a non-owner resident, will alter the way the parties understand their interaction and the way they negotiate around the interaction and agreed upon rules while still living together. Even when litigation is not involved, recognizing the voice of the child will affect the way children and parents think about their cohabitation. Relying on the expressive function of the law,¹⁵⁹ voice-inducing exit rules will change the way the parties negotiate even when the conflict is resolved amicably. Parents will begin to consider their children's position and discuss their mutual expectations and concerns from a non-unilateral position.

Nonetheless, home-sharing for adult children is typically temporary. The general social expectation is still that the child will eventually leave the nest and start her own home. Yet, associating leaving the parental home with maturity and independence is definitely culture specific. In some minority communities intergenerational home-sharing is a norm.¹⁶⁰ However, for the sake of argument let us accept the general social expectation that the child will eventually leave the nest and start her own home. One could argue that because the living arrangement is essentially temporary, it bears a resemblance to the college students in *Glassboro* and thus does not truly represent a home-sharing community.¹⁶¹ However, there are significant differences between college roommates and adult children living with their parents. Parents and children typically enjoy a strong emotional bond and have lived together for considerable amounts of time in the past. The commitment to the relationship and the community in the home are thus stronger. Both parents and children think of their relationship as a long-term attachment and are willing to invest time and emotional resources in the living arrangement. Home-sharing in itself is an investment in the long-term effects of the relationship.¹⁶² In most cases, we will be able to find joint activities and other-regarding behavior.

But what if it is the child who wants to leave home and the parents who object? Perhaps they rely on the child's board payments or value her company. Should this type of exit be treated any differently? Should the law protect the parents in this case? My answer is a definite "no." Forcing a person to stay in a dwelling she does not consider home is a severe violation of her autonomy. To the extent that the home stands for personality or spatial identity, roots and continuity, as previous scholarship has so vigorously argued,¹⁶³ then chaining a person to a home could be devastating.

159. Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022 (1996); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 910 (1996). For a philosophical theory, see Elizabeth S. Anderson & Richard H. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503 (2000).

160. See Farber, *supra* note 2, at 65.

161. See *supra* notes 82–83 and accompanying text.

162. See Leopold, *supra* note 144 and accompanying text.

163. See Fox, *supra* note 57, at 590.

From the standpoint of the person who wants to exit a home-sharing community, it is a question of degree and intensity. Forcing a person to allow her child to live with her violates autonomy to a lesser extent (though in these cases, a consideration of autonomy will lead to remedies of voice and not enforcement of the community) than forcing her to live in a particular home with particular people. In the latter case, the coercion not only includes the choice of cohabitants, but additionally ties the person to a physical space. From the standpoint of the person who wants to preserve a home-sharing community, it is also a matter of degree. When she is forced to leave her home she loses both the physical spatiality and the relationship in it. When the child leaves the home, the physical dwelling remains the parents' home. A parent therefore has a better starting point to recreate her home. Furthermore, because a home often contains more than two people, the person who stays in the home still has a home-sharing community. The community may go through a change, but there is a good foundation on which it can be restored. On the other hand, when a child is forced to move out, she exits the community and has to build her home anew.

B. Categories of Parents and Adult Children Cohabitation

I turn now to examining three categories of cohabitation by parents and children and to reviewing the applicable legal rules for each category: the child who provides exceptional care for her parents in exchange for living in the home, the child that maintains a good relationship with her parents, and the deadbeat child.

The first category includes a child that lives with and looks after a parent who needs assistance. The child cares for the parent and believes she will have a place to live so long as she continues to provide care. At some point, however, the parent asks her to move out. This category is characterized by a high level of reciprocity. An implied contract might even be held to exist. The agreement is not formal, but the expectation of the daughter appears justified.¹⁶⁴ Informal sources of property rights, such as estoppels and irrevocable license, therefore come into play.

Let me clarify with an example. In *Griffiths v. Williams*,¹⁶⁵ an English case, a daughter lived in her mother's home for most of her life. Her mother always professed her intention of leaving her daughter a life interest in the house. The daughter looked after her mother in her later years and spent money on repairs and improvements to the house. She did so because she believed she would be able to live in the house for the rest of her life. However, the mother wrote a will and left the house to her granddaughter,

164. On justified expectations and informal sources of rights, see Joseph W. Singer, *The Rule of Reason in Property Law*, 46 U.C. DAVIS L. REV. 1369 (2013).

165. *Griffiths v. Williams* [1978] 2 EGLR 121.

without securing a life interest for her daughter as promised. The English court held that the doctrine of estoppel applied.¹⁶⁶ According to this doctrine, if *A* intends that *B* will act in reliance on a promise to his or her detriment, and *B* indeed does so, then *A* will be prevented from asserting his or her own strict and formal legal rights. The court considered the care and improvements provided by the daughter to be acts made in reliance on her mother's promise. It determined that the mother had repeatedly assured her daughter that she would be allowed to live in the home. Because the promise was direct and explicit, it was easy to arrive at this conclusion. Yet at times such promises are much more latent and implied, and infrequently discussed.¹⁶⁷ Therefore, most resident children will have a harder time establishing a promise and reliance in such cases.¹⁶⁸

According to American property law, and returning to our hypothetical, the daughter lived with her mother based on her mother's permission, so she had a license to stay there. A license is typically revocable. However, a license can become irrevocable under the rules of estoppel.¹⁶⁹ An irrevocable license is treated as an easement in the Restatement.¹⁷⁰ According to the Restatement, estoppel is a flexible rule, the purpose of which is to avoid injustice when a user of land substantially changed her position believing that the permission would not be revoked.¹⁷¹ Unlike the English rule, the Restatement recognizes both implied and express representations.¹⁷² Yet such cases typically are concerned with servitude by estoppel and not with permission to live on the land with the owner. Most commonly, these cases involve a representation by a seller or developer regarding the seller's neighboring land or representations by neighbors,¹⁷³ or include

166. The English doctrine of proprietary estoppels requires that one party (*A*) make a representation or promise to another party (*B*) that the latter has or will have a right in the former's property. Consequently, *B* mistakenly believes that he or she has or will have such an interest or right. Now, if *A* intends that *B* will act in reliance on said promise to his or her detriment, and *B* indeed does so, then the doctrine of estoppel prevents *A* from asserting his or her own strict and formal legal rights. E. H. BURN & JOHN J. CARTWRIGHT, MAUDSLEY & BURN'S LAND LAW: CASES AND MATERIALS 1007–08 (9th ed. 2009).

167. *Cf.* *Thorner v. Major* [2009] UKHL 18 (recognizing a much more indirect promise because of the character and nature of the parties).

168. The facts of the *Griffiths* case are distinguishable from our imaginary case because the problem arises only after the death of the owner, which marks the end of the home-sharing community. See Shelly Kreiczler Levy, *Inheriting the Family Home* (2013) (unpublished manuscript) (on file with the author) (discussing home-sharing and inheritance). There was no conflict between an owner and a non-owner cohabitant, but instead between the cohabitant child and a third party.

169. DUKEMINIER, *supra* note 10, at 773–74.

170. RESTATEMENT (THIRD) OF PROP. § 1.2(4) (2000).

171. *Id.* § 2.10.

172. *Id.*; see also Stewart E. Sterk, *Estoppel in Property Law*, 77 NEB. L. REV. 756 (1998).

173. Sterk, *supra* note 172, at 769, 776–77.

boundary disputes, land transfer disputes, and landlord-tenant law.¹⁷⁴ Even though I did not encounter any case that involved home-sharing in return for care, the doctrine of estoppel is flexible enough to account for implied representation in these types of cases. As Stewart Sterk explains, courts consider the context of particular ongoing relationships:¹⁷⁵

The case law also reveals a second use of the estoppel doctrine. Even when the parties have made no promise at all, a number of courts hold that within the context of particular ongoing relationships, one party may have a duty to rescue the other from foreseeable harm caused by the other party's mistaken understanding of the parties' respective legal rights. Both the existence and the scope of this duty remain controversial in current doctrine, but within the relationship between neighbors, and between landlord and tenant, many courts are not willing to treat the parties as if they were strangers dealing with each other at arm's length, responsible only for obligations expressly undertaken.¹⁷⁶

There are a number of available remedies in the case of servitude by an estoppel, and there is a great amount of flexibility to account for the particular circumstances of the case.¹⁷⁷ Although this broad position is certainly controversial,¹⁷⁸ Anglo-American law appears to have the tools to address the first category of home-sharing by parents and adult children.

The second category is more challenging to contemporary legal practice. The daughter—let's call her Sally—in this example is a student who lives with her mother, Pam. They maintain a close and affectionate relationship, share chores, spend time together, and provide emotional or economic support to each other when needed. Sally understands she will be able to live at home until she graduates and finds a job, but after a small argument the mother demands that she move out. Sally is living at home because her mother has allowed her to do so. She is therefore formally a licensee. Unless the license proves to be irrevocable, the mother can evict her child at will. As we have seen in our discussion of the previous category, for the license to become irrevocable, Sally would have to show that she changed her position believing that the license would not be revoked.¹⁷⁹ A change in position may be indicated by investing resources in improving the house or providing care. These actions have to convince a court that Sally acted to her detriment based on an express or implied promise.

174. *Id.* at 788–802.

175. *Id.* at 803.

176. *Id.*

177. RESTATEMENT (THIRD) OF PROP. § 8.3.

178. Sterk, *supra* note 172.

179. RESTATEMENT (THIRD) OF PROP. § 1.2(4).

In the typical case of a boomerang child living with his or her parents, that is usually not the case. Although the parties may have an implied or express agreement, in most cases it will be hard to establish a change in position. Unless the child had alternative living arrangements or job opportunities that she or he rejected because of the agreement, current law does not recognize the child's claim.

This category profoundly challenges conventional analysis of property rights in the home. I argue that current legal practice is misguided. The home-sharing community is the theoretical basis for the argument. Sally and Pam created a home together. Their home is not just the physical structure of the house, but also the relationships, atmosphere, and behavior in the home. In the home, Sally and Pam make decisions together and enjoy both privacy and cooperation. It is their intimate and communal spatiality. Home-sharing contributes to the autonomy of both parties, at its best providing security and acceptance, solidarity, and growth to both mother and daughter. It creates a close and immediate community that supports the individuals' need for shelter and repose, and their relational needs.

If indeed we are convinced that the cohabitation has turned into a home-sharing community, then, I argue, the daughter deserves some legal protection based on the doctrines of irrevocable license or estoppel. As Sterk explains, courts are not willing to treat certain types of relations as strangers, even when the facts do not reveal a promise.¹⁸⁰ Even though the argument is definitely controversial under current law, I suggest that the context of an ongoing relationship allows for a remedy in these cases. The property community serves as the relevant context of the relationship.¹⁸¹

Indeed, there is evidence that the law does not consider residents with no formal right in the home as mere licensees if they are family members of the right holder. Remember New York eviction law, the law which determines that a licensee can be evicted through a summary proceeding in a swift procedure after a ten-day notice.¹⁸² Case law reveals that courts are reluctant to evict a family member in a summary proceeding, and instead direct the owner to bring an ejectment action in the appropriate court.¹⁸³ A recent court decision explains that "where the occupancy of the subject premises arises out of the familial relationship, such as an adult child who has lived in the family home since birth, a summary proceeding may not be maintained,"¹⁸⁴ and that "it can not be disputed that a true family relationship, which includes a shared home, involves a far deeper and more permanent commitment than one based upon mere 'convenience, curiosity, or [en-

180. See Sterk, *supra* note 172 and accompanying text.

181. See *supra* text accompanying note 173.

182. N.Y. REAL PROP. ACTS. § 713(7) (2010).

183. *Kakwani v. Kakwani*, 967 N.Y.S.2d 827 (2013).

184. *Id.* at 833.

tainment].”¹⁸⁵ Although this family exception was originally crafted by the courts to protect a spouse or cohabitant, it has been expanded to include minor stepchildren,¹⁸⁶ adult children,¹⁸⁷ and grandchildren.¹⁸⁸ These cases all included shared living by the owner (or one of the owners) with the family member-licensee.

This procedural protection is an important step toward the recognition of home-sharing, but it is hardly enough. It does not rethink the right to evict the relative, but merely requires the eviction to be effected through a longer, more formal procedure. A systematic analysis of the benefits and harms of home-sharing should lie at the basis of providing remedies in these cases.

The third category includes the deadbeat daughter. Sally is unemployed, does little to contribute to the household, and is entirely supported by her mother. Sally and Pam regularly get into arguments over small chores around the house. The deadbeat child is the fear of every parent. In the case of a deadbeat child, it is unclear whether a home-sharing community was ever formed. A home-sharing community requires that all the parties contribute to the community and invest emotionally, physically, or economically in the home. Contribution is important for community not as a substitute for intent, or as part of a quid pro quo principle, but rather because it prevents the fear of exploitation. If one of the parties is systematically exploited, then the foundation of sharing is damaged. The concept of a home-sharing community cannot support a child that takes advantage of the parent. A community must be important to all the parties. I therefore argue that the child should not have any legal claim against the parent.

In the next Section, I discuss the complex issue of remedies. In short, I believe it is important to have a set of protections aimed at recognizing the voice of the child. Instead of thinking of the owner as the sole decisionmaker, and of the child as having no influence on the process, the law should recognize the child’s right to be heard and the mother’s duty to justify her choice, and in certain cases it should establish a cooling-off period.

C. Remedies

This Article promotes a conceptual change. The aim is to change the power relations in the home and thus limit the owner’s power to exclude. It offers an alternative vision of the home that highlights sharing as a significant component of living with others. This Part lays out suggestions for a new set of remedies that acknowledge home-sharing. It preserves a certain

185. *Id.* at 829–30 (quoting BLACK’S LAW DICTIONARY (9th ed. 2009) definition of “licensee”).

186. *Nagle v. DiPaola*, 512 N.Y.S.2d 761 (1987).

187. *Sirota v. Sirota*, 626 N.Y.S.2d 672 (1995).

188. *Williams v. Williams*, 822 N.Y.S.2d 415 (2006).

level of generality and does not go into the particulars of the rules. The purpose is to explain how an eviction process should treat people who lived with the owner differently than other licensees when a home-sharing community has developed.

Rashmi Dyal-Chand claims that outcomes in property disputes have the potential to promote sharing of a resource.¹⁸⁹ Instead of outcomes that support ownership and exclusion, more sophisticated outcomes will acknowledge competing claims over the resource. Similarly, the purpose of remedies in home-sharing disputes is not to enforce a strict outcome of either exclusion or continued forced cohabitation. Continued cohabitation forces the parties to live under the same roof even after the relationship has turned sour. Unlike larger communities that spread over a wide geographical space, a home-sharing community is close and tight, and there is no real refuge from it because it is confined to one's most intimate place. In addition, continued cohabitation raises the concern that formal right-holders will refrain from investing in the home-sharing community because the community may give rise to a legal claim.¹⁹⁰ I therefore conclude that this remedy will be mostly inappropriate for home-sharing communities.

Exclusion of the child's claim is also objectionable because it fails to recognize the child's contribution to the creation of the home and her belongingness to the community. It focuses solely on formal property rights. A desired outcome should consider the different position of each party, the parent-owner and child-occupant, and their relationship within the home.

In addition, the New York judicial rule of familial exception is not an appropriate remedy either. Although this rule rightly insists on redefining the status of people that create a home-sharing community with the owner of the property, it has two deficiencies. First, it relies on the familial relation rather than on sharing a home. Second, it is purely procedural and makes no substantive recognition of a home-sharing community.

The suggested remedy concerns the voice of the child when the community ends. A remedy that targets the voice of the licensee would restructure the relationship and limit hasty decisions by owners. Giving voice to the child might include a cooling-off period, and an obligation to justify a decision and listen to the child's position. In *Frambach v. Dunihue*, the owners ordered Dunihue to leave home within thirty minutes.¹⁹¹ This type of exit decision is unacceptable; it does not respect the co-resident.¹⁹² Under the proposed remedy framework, the Frambachs would need to explain their request, justify the case, and listen to what Dunihue has to say.

189. Rashmi Dyal-Chand, *Sharing the Cathedral*, 46 CONN. L. REV. 647 (2013).

190. Cf. Omri Ben Shahr, *The Erosion of Rights by Past Breach*, 1 AM. L. & ECON. REV. 190 (1999) (asserting that adverse possession creates incentives to immediately claim a right).

191. 419 So.2d 1115, 1116 (Fla. Dist. Ct. App. 1982).

192. Cf. notes 181–187 and accompanying text.

Aside from the benefits of procedural protection, a remedy of voice has an important *ex ante* function. Because parties can contract out of these rules, the rules serve as penalties. The rules provide an incentive for the stronger party, the owner, to inform other cohabitantes of her intentions and views regarding cohabitation. The parties are encouraged to engage in a dialogue about their intentions and expectations in sharing a home: how, when, and under what conditions should their community end. Moreover, these rules encourage the owner to communicate information to a party that conventional analysis does not even consider part of the bargaining process. The adult-child-licensee's interest in the home is then being incorporated into the decision-making process. Rather than having one party—the owner—making a unilateral decision, the rules create a bifocal bargaining process.¹⁹³

Putting these concepts in practice, when parents ask their child to move out and the child refuses, an eviction lawsuit will be filed. Before the court approves the eviction, in the event the parties did not contract out of these remedies, the court must be convinced that the requirements of voice (justification and discussion) have been met. Alternatively, the court can refer the case to a mediation process that will ensure the parties have a chance to communicate.¹⁹⁴ Finally, the court can order a cooling-off period.

A cooling-off period of a few months to a year will allow the licensee to come to terms with the loss of his home community and take important steps in constructing an alternative home. The concept of home-sharing requires, in principle, that not every set of facts merits a cooling-off period. The deadbeat child, for example, is not entitled to such protection. However, in order to avoid litigation costs and enforcement inefficiencies, I suggest the enactment of a clear rule. Whenever a child has lived with her parents, the parents must notify the child of their intent to revoke permission to live in the home a few months in advance. The law should determine the exact amount of time and courts will have limited discretion to provide shorter or longer periods in extreme circumstances.

These remedies also have their limitations. One could argue that, much like in the case of continued cohabitation, homeowners will dread a cooling-off period and hence either refuse to let their child into their home or choose to invest as little as possible in the relationship to avoid the definition of a home-sharing community. The risk of tension, conflict, and animosity is disturbing from an *ex post* perspective as well.

Let us consider the parent's options when a child asks to move in with her. If the parent is concerned with the legal ramifications of the joint living arrangement, she has three options: she can refuse the child's request,

193. Kreiczer-Levy, *supra* note 158.

194. On the strengths and weakness of mediation see Janet Rifkin, *Mediation from a Feminist Perspective: Promise and Problems*, 2 LAW & INEQ. 21 (1984).

open her home to the child but contract out of the remedies proposed here, or let the child in but deliberately minimize sharing in the home. Because the parent can opt out explicitly, this is the easier and less costly course of action. Yet, even if the parent prefers to avoid this type of conversation, choosing one of the two other options does not undermine the argument. I am not arguing that cohabitation of adult children and their parents is a good in and of itself, but rather that owners should live up to the responsibilities they create in establishing a home-sharing community. Owners have to be responsible for misrepresentations towards their cohabitants, but at the same time they can clearly avoid these types of commitments.

Of course, parties that can amicably resolve conflicts do not need the help of the law. Yet the law shapes the perception of these parties regarding their mutual obligations and guides the way they act and resolve their differences.¹⁹⁵ The parties' understandings, expectations, and behaviors will be different under a regime that recognizes home-sharing commitments.

What about damages? Damages could prompt people to internalize the cost of exit from the community. If right-holders were required to pay for the revocation of a license, they would have to evaluate whether the benefit from ending the home-sharing community outweighs the cost of damages. There are, however, a few problems with this remedy as well. First, the possibility of compensation may encourage the child to claim she does not wish to leave home, even if the move is ultimately desired. An additional problem concerns the larger familial picture, including brothers or sisters of the boomerang child. Suppose the homeowners have three children, only one of whom lives with them as an adult child. If the co-resident child receives compensation, she will gain more property than her siblings. If parents have a certain amount of property that they intend to pass on to their children, compensating the live-in child violates the principle of equal distribution.¹⁹⁶ However, parties are free to opt for the remedy of damages when they find it to be the best means for resolving cohabitation related disagreements.

VI. HOME-SHARING: CHALLENGES AND OBJECTIONS

Both the concept of home-sharing and the particulars of some of the suggestions presented in this Article challenge current perceptions of property and family. The autonomy of the homeowner is jeopardized because she can no longer freely decide to revoke permission to live in her home.

195. *See supra* note 158.

196. Parents do not have to distribute their property equally. However, most parents choose an equal distribution because it signals their equal affection for all the children. *See* B. Douglas Bernheim & Sergei Severinov, *Bequests as Signals: An Explanation for the Equal Division Puzzle*, 111 J. POL. ECON. 733 (2003).

Since home is such an important metaphor of privacy and autonomy in American law,¹⁹⁷ such a limitation strikes at the core of individuality: the shaping of one's home environment.

The concept of home-sharing does recognize autonomy, but at the same time accepts that autonomy is entangled with sharing in the home. A homeowner can choose freely whether or not to let another person into her home. This choice reflects her autonomy and may be influenced by sheer will or a sense of commitment. My argument is that once an owner has decided to enter a home-sharing community and to embrace the responsibility and other-regarding attitude and behavior it entails, there is a particular way to exit. Sharing a home reflects the autonomy and voice of each cohabitant, but also the respect for and consideration of others. Exit should also reflect such respect for the voice of the licensee.

Obviously, a community may develop in a way that the owner did not foresee, and she may wish to change her home environment. This dynamic aspect of autonomy is definitely important. Yet, the remedy itself will most often not enforce the continuation of home-sharing, just a temporary cooling-off period.

This issue brings me to the more critical objection to the concept of home-sharing: the conflation of home and family. Laura Rosenbury has argued that the home is still the organizing structure for family, and this focus leaves out other meaningful relationships that provide care outside the home and are not based on dependency.¹⁹⁸ Positioning the home at center stage is the result, according to the argument, of a patriarchal model. This objection envisions the home as a site for conjugal relationships along with their minor children. Yet the home hosts other meaningful relationships, and intergenerational relationships are just one example. Relations between siblings¹⁹⁹ and nontraditional households²⁰⁰ are others. Rosenbury criticizes the distinction between marriage-like relationships and non-cohabiting friends, but devotes less attention to other forms of cohabitation, in particular intergenerational ties. Rather than criticize the dominance of the home metaphor in property and family law, this Article has explored its hidden meanings and the ways power relations in the home are construed in the less familiar territory of co-residence by adult children and parents.

If the purpose of this exploration is to consider various forms of home-sharing communities, then the identity of the licensee becomes important. Is there a difference between a child and a stepchild, between adult children

197. See analysis of SUK, *supra* note 56.

198. Rosenbury, *supra* note 13.

199. See, e.g., *Burden v. United Kingdom*, 44 Eur. Ct. H.R. 51 (2007) (describing two sisters who lived together all their lives and shared property).

200. See, e.g., *In re Marriage of Bauder*, 605 P.2d 1374 (Or. Ct. App. 1980); *Frambach v. Dunihue*, 419 So.2d 1115 (Fl. Dist. Ct. App. 1982).

and elderly parents? Does the argument distinguish between family members and non-familial relations? Paid in-home caregivers demonstrate this challenge: are they part of a home-sharing community? A home-sharing community is not dependent on the particular identity of the cohabitants. It is wide enough to allow freedom of association and family life. The important question is whether a home-sharing community exists according to the criteria presented above.²⁰¹ Nonetheless, when we examine whether a home-sharing community has been formed, the implied understandings of the parties are significant. If the parties think of the living arrangement as temporary, of the commitment as contingent, their willingness to invest in the community decreases. Most often, paid caregivers and their care receivers understand the cohabitation as temporary. Yet, even in the face of presumptions of fact, exceptions have to be made where a home-sharing community has been established.

A related concern pertains to the fragile texture of family life. One could argue that the law should not interfere with familial relations in the home. Encouraging family members to make legal agreements or enforcing remedies when cohabitation ends will disrupt the more amicable ways in which families can resolve differences. The problem with this argument is that the law already intervenes with familial relations in the home. It gives the owner, the parent in this case, the power to end the relationship unilaterally.²⁰² A related concern is that familial and familial-like relationships are susceptible to courts' normative judgment regarding appropriate behaviors, which in turn leads to the standardization of the family. However, the argument does not probe into relationships but rather makes people aware of their obligation when they enter and exit the home-sharing community. It only controls the exit points by prescribing a clear rule and minimal judicial interference. Moreover, parties can contract out of these rules and self-regulate their mutual commitments by engaging in a dialogue.

A final objection claims this Article does not go far enough. If one were truly to challenge formal sources of property rights, then the licensee would have rights in the home based on the community. This type of objection resembles the case of community property between spouses or unmarried couples. Yet, there is an important difference between a home and a house. The home refers to the symbolic spatiality that includes the community of people who live together. The house represents the property itself. Because a home-sharing community concerns the living arrangement and not the economic value of the asset, awarding an undivided share of the property should be limited to cases where parties also pooled financial re-

201. *See supra* Part III.

202. *See* Frances Olsen's famous argument regarding the separation of the family and the market: Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983).

sources. Only in cases where the sharing includes a joint economic effort can such measures be considered. Home-sharing, then, still bows to the power of the formal owners, but reconstructs the responsibilities existing between co-residents.

VII. CONCLUSION

This Article has explored the meaning of sharing a home on two levels. I first discussed the more abstract qualities of a home-sharing community, its benefits and its perils. This analysis can serve as a foundation for future discussion of other forms of cohabitation: elderly parents living with their children, owners living with paid caretakers, and non-conjugal partnerships. The second level dealt specifically with home-sharing by adult children and parents. Other categories of cohabitation are different in their application, empirical data, advantages, and pitfalls. For example, elderly parents that live in their children's home require larger discussions of inter-generational reciprocity, dependence, and commitment.

As this Article has suggested, the legal arrangements must be nuanced. At the end of the day, the thrust of this Article has been to convince readers that the way we think of co-residence today is misguided. Alongside ownership, we need to recognize the communal project in a unique location, the home.