

# Boomerang Children Come Home: On Home Sharing, the Family and Intergenerational Relations

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*The home and the family are deeply connected, not just as powerful metaphors but also in terms of legal reality. In very different areas of family life, the fact that people have lived together serves as a source of legal rights and obligations. This article takes on the task of articulating the meaning of living with others and its legal consequences. This type of discussion is particularly important when residential patterns begin to change. Adult children living with their parents represent an increasingly common phenomenon in the United States. This widespread social phenomenon challenges the boundaries of both the family and formal property rights. I argue that under certain conditions living with others creates a property community in the home. I call this community "home sharing". Thinking of sharing a home as a property community allows us to unpack the meaning of cohabitation for family life in different legal contexts. It also directs our attention to the end of the community and its rules of exit. I urge scholars to reconsider the rule that allows an owner to unilaterally revoke permission to live in the home. I do not claim that the child should continue to live at home, but argue for remedies that recognize the child's voice, e.g., a duty to explain and justify the decision, to listen to the child's arguments, and the determination of a cooling-off period.*

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## I. INTRODUCTION

In the 2006 romantic comedy *Failure to Launch*, a 35-year old man who lives with his parents shows no intentions 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 child 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.<sup>1</sup> This relatively recent residential pattern raises new questions. 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?

Contrary to the cohabitation of minor children with their parents<sup>2</sup> and cohabitating couples<sup>3</sup> that are frequently discussed in the literature, this type of living arrangement has received little consideration from legal scholars.<sup>4</sup> A surprising fact considering the numbers that clearly show it has become an increasingly frequent pattern in the United States and worldwide.<sup>5</sup> A recent Pew research report found that in 2012, 36 percent of America's young adults ages 18 to 31 were living with their parents, a record number of 21.6 million young adults,<sup>6</sup> which reflects a steady increase from the 32 percent in 2007.<sup>7</sup>

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<sup>1</sup> See, e.g., Jim Reed, *Boomerang Generation Come Home* BBC News (posted May 20, 2009); Ann Brenoff, *Boomerang Kids: 5 Things You Should Stop Doing for Your Adult Children*, The Huffington Post (posted April 26, 2013); *Bye Bye Boomerangs: how to persuade your adult offspring to move out*, The Economist (August 17, 2013); Nancy Anderson, *Boomerang Children Living at Home may not Be such a Bad Thing*, Forbes.com (uploaded August 16, 2012); for movies, see LONGSOME JIM (USA 2004); JEFF WHO LIVES AT HOME (USA 2011); for a how-to guide, see LINDA PERLMAN GORDON & SUSAN MORRIS SHAFFER, *MOM, CAN I MOVE BACK IN WITH YOU?: A SURVIVAL GUIDE FOR PARENTS OF TWENTYSOMETHINGS* (2004)

<sup>2</sup> See discussion at Pamela Laufer-Ukeles & Ayelet Blecher-Prigat, *Between Function and Form: Towards a Differentiated Model of Functional Parenthood*, 20 Geo. Mason L. Rev. 419, 460 (2013).

<sup>3</sup> See, e.g., Eric P. Voigt, *Reconsidering the Mythical Advantages of Cohabitation: Why Marriage Is More Efficient than Cohabitation*, 78 Ind. L.J. 1069 (2003); Shahar Lifshitz, *The External Rights of Cohabiting Couples in Israel* 37 ISR. L. REV. 346 (2003); Cynthia Grant Bowman, *Social Science and Legal Policy: The Case of Heterosexual Cohabitation*, 9 J. L. FAM. STUD. 1 (2009). Also see discussion at Part II.b.

<sup>4</sup> 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 & PUBLIC POLICY 39 (2011).

<sup>5</sup> See infra notes 112-118 and accompanying text.

<sup>6</sup> Richard Fry, *A Rising Share of Young Adults Live in Their Parents' Home*, PEW RESEARCH CENTER (2013).

<sup>7</sup> Id.

Formal property rights lead to the inevitable conclusion that adult children live at home at the mercy of their owners who happen to be their parents.<sup>8</sup> Similarly, according to the basic premise of family law, the minute a child reaches adulthood, parents are under no obligation to care for her.<sup>9</sup> This rather common analysis is flawed because it treats people who live together as strangers, owing no legal obligations to one another. A closer look at the law reveals that in very different areas of family life, the fact that people have shared a home serves as a source of legal rights and obligations.<sup>10</sup> This strong legal connection between relationships in the home and familial obligation is either taken for granted by scholars and lawmakers or criticized for its patriarchal background.<sup>11</sup> Scholars have yet to consider the meaning of living with others, and to explain why cohabitation is a source of legal commitment. This article takes on the task of articulating a vision of sharing a home and its legal consequences.

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 home<sup>12</sup> by all the co-occupants. However, not all patterns of co-residence are the same. Some people live together because it is convenient and saves resources. They purposefully limit their interaction to the minimum required. Others share not only their home but also financial resources. People should be able to choose from a variety of options along the continuum between individuality and communal life in the home. Accordingly, the law should offer different categories of shared living arrangements, each with its own set of legal responsibilities and rights.

The claim is that an owner (in this case the parent) cannot unilaterally decide to rescind permission to live in the home.<sup>13</sup> 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 VI, remedies of voice.

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<sup>8</sup>In his influential work on the household, Robert Ellickson describes the home based on current property and contract law, as "household at will". 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* (2008); Robert E. Ellickson, *Unpacking the Household: Informal Property Rights around the Hearth* 116 YALE L. J. 226 (2006). For a more detailed account of his argument see note 58 and accompanying text.

<sup>9</sup> Cf Anna Stepien-Sporek and Margaret Ryznar, *Child Support for Adult Children* 30 Quinnipiac L. Rev. 359 (2012).

<sup>10</sup> See *infra* Part II (including parenthood, partnership and elder care).

<sup>11</sup> Laura A. Rosenbury, *Friends with Benefits*, 106 MICH. L. REV 189 (2007). For a discussion of this impressive criticism and response, see *infra* Part VII.

<sup>12</sup> Home as opposed to a house.

<sup>13</sup> JESSE DUKEMINIER ET AL., *PROPERTY* 773-774 (7<sup>th</sup>. ed. 2010) (discussing permission to enter land as license and its revocability).

New York eviction law illustrates the problem. In New York, a licensee can be evicted through a summary proceeding in a swift procedure after a ten-day notice.<sup>14</sup> This rule presumably applies to adult 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 children aged 27 and 31 lived with their parents all of their lives. After the father moved out, they stayed home and cared for their mother.<sup>15</sup> Upon her death, the father sought to evict his children as mere licensees but the court refused, requiring him to bring an ejectment action. Similarly, a grandmother who brought a summary proceeding against her adult grandsons, seeking to evict them from her apartment, was denied relief.<sup>16</sup> These cases and others underscore that sharing a home with family is a deeper and more permanent commitment than one based on mere convenience.<sup>17</sup> 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.

The article begins with a brief review of the various ways in which the law attributes legal meaning to cohabitation. Part II 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. Part III offers such an explanation. Its goal is to construct 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 IV 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 V 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 lays the foundation for the legal structure outlined in Part VI. 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 VII responds to important objections and challenges to the concept of a home-sharing community as well as the particulars of the suggestions. Part VI concludes.

## II. 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 cohabitating with others generates obligations. Rather, there is a cluster of

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<sup>14</sup> NYS Real Property Actions and Proceeding Law § 713(7) (RPAPL)

<sup>15</sup> *Sirota v. Sirota*, 164 Misc.2d 966, 626 N.Y.S.2d 672 (1995).

<sup>16</sup> *Williams v. Williams*, 13 Misc.3d 395, 822 N.Y.S.2d 415 (2006).

<sup>17</sup> *Kakwani v. Kakwani* 967 N.Y.S.2d 827 (2013).

rules in different areas of family law that attribute various meanings to shared living arrangements. When scholars criticize the law's obsession with co-residence, they are usually thinking of spouses or cohabitating non-marital partners.<sup>18</sup> They condemn the home as women's work. But the law envisions the family and the home as connected in more ways than that. Legal rules place the family at home in other areas, including parent-child relations, elder care or new families. Living with others adds a layer of commitment to the relations, on occasion extending or even creating obligations between the parties.

#### *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 ALI's principles propose two new legal statuses for parents: parent by estoppel and de facto parent.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> There are other requirements, of course, but it's 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 California's family code, a man is presumed to be a child's natural father if "[H]e receives the child into his home and openly holds out the child as his natural child."<sup>22</sup> In *re Nicholas*,<sup>23</sup> the court emphasizes the importance of co-residence by conflating love and home: "[w]hile his presumed father is providing a *loving home* for him, his mother has not done so, and his biological father, whose identity has never been judicially determined, has shown no interest" [emphasis added].<sup>24</sup>

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 you treat that child as your own.<sup>25</sup>

#### *b. Partnership*

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<sup>18</sup> Rosenbury, *supra* note 11; Steven K. Berenson, *Should Cohabitation Matter in Family Law?* 13 J. L. FAM. STUD. 289 (2011).

<sup>19</sup> Principles of the Law of Family Dissolution: Analysis and Recommendations § 2.03(1) (American Law Institute 2002).

<sup>20</sup> *Id.* at §2.03 (1) (c).

<sup>21</sup> *Id.* at §2.03 (1) (b).

<sup>22</sup> Calif. Fam. Code § 7611 (d).

<sup>23</sup> 46 P.3d 932, 941 (Cal. 2002).

<sup>24</sup> At 933.

<sup>25</sup> For other cases that emphasize co-residence, see *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005); *Kinnard v. Kinnard* 43 P.3d 150, 151 (Alaska 2002).

The cohabitation of married or unmarried couples proves significant under the current legal regime. As Berenson explains, there are numerous doctrines that create rights and obligations between parties depending on whether or not a couple is cohabitating.<sup>26</sup> Regarding married spouses, as *McGuire v. McGuire* famously determined, courts will normally not enforce a financial support duty if the married couple is cohabitating.<sup>27</sup> Also, in California, when spouses live together the husband is conclusively presumed to be the father of any child born during their cohabitation. If a married couple is living apart at the time the child is born, the husband is only the presumed father of the child.<sup>28</sup> 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 the states have adopted a rule that cohabitation alone is not reason enough to award one partner a share of the property accumulated during the cohabitation period by the other partner.<sup>29</sup> 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."<sup>30</sup> Scholars have also advocated for a legal recognition of cohabitating 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.<sup>31</sup>

Sharing a residency becomes especially important when compared with a new form of relationship, termed by sociologists as LAT (living apart together).<sup>32</sup> LAT is a form of committed relationship that does not include a shared household. Some scholars consider it a new family form,<sup>33</sup> particularly suitable for older divorcees, widows and widowers that wish to develop intimate relations but still maintain a significant degree of autonomy.<sup>34</sup> A committed relationship that does not include cohabitation does not currently entail legal obligations between the

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<sup>26</sup> Berenson, *supra* note 18.

<sup>27</sup> *McGuire v. McGuire*, 59 N.W.2d 336 (Neb. 1953).

<sup>28</sup> Cal. Fam. Code § 7540 (2010). The presumption can be rebutted by scientific evidence. See Berenson, *supra* note 26 at 288.

<sup>29</sup> Following the rule set in *Marvin v. Marvin*, Berenson, *supra* note 18 at 297.

<sup>30</sup> Principles of the Law of Family Dissolution: Analysis and Recommendations § 6.04 (American Law Institute 2002); Berenson, *supra* note 18 at 300.

<sup>31</sup> CYNTHIA GRANT BOWMAN, UNMARRIED COUPLES, LAW AND PUBLIC POLICY (2010).

<sup>32</sup> Irene Levin & Jan Trost, *Living Apart Together*, 2 COMMUNITY, WORK & FAMILY 279 (1999)

<sup>33</sup> Irene Levin, *Living Apart Together: A New Family Form?*, 52 CURRENT SOCIOLOGY 223 (2004).

<sup>34</sup> Sofie Ghazanfreeon Karlsson & Klas Borell, *Intimacy and Autonomy, Gender and Ageing: Living Apart Together*, 27 Ageing International 11 (2002).

parties.<sup>35</sup> Cohabitation is a necessary condition for establishing legal partnership in the absence of marriage.

*c. Care for Dependent Relatives*

Illinois State 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.<sup>36</sup> 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.<sup>37</sup>

Generally, this provision allows family members to recover the “additional opportunity and emotional costs of committing their lives to disabled relatives.”<sup>38</sup> The legislature chose to encourage private care by rewarding immediate family members.<sup>39</sup> 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 foregone”<sup>40</sup> when a family member commits his life to “making the lives of disabled persons better.”<sup>41</sup>

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 caring for the disabled person for at least 3 years.*” The court interprets these conditions strictly. Two and half years of care was deemed insufficient.<sup>42</sup> Also, living with the disabled was construed as not being equivalent to excessive visiting but requiring some sort of shared living arrangement.<sup>43</sup>

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 control regulation § 2204.6 (d) used to provide that upon the death of a rent control tenant, the landlord cannot evict the surviving spouse of the deceased

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<sup>35</sup> Berenson, *supra* note 18 at 318.

<sup>36</sup> 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 L.A. L. REV. 381, 401-407 (2003).

<sup>37</sup> 755 ILCS 5/11a-18.1 (a) (2008).

<sup>38</sup> *In re Estate of Jolliff* 199 Ill 2d 510 (2002).

<sup>39</sup> *Id.*, at 527.

<sup>40</sup> *Id.* at 517.

<sup>41</sup> *Id.*

<sup>42</sup> *In re Estate of Riordan*, 351 Ill. App. 3d 594 (2004).

<sup>43</sup> *Id.*, p. 596. Also see *In re Estate of Hoehn* 234 Ill. App. 3d 627 (1992).

tenant or some other member of the deceased family who has been *living with* the tenant.<sup>44</sup> In *Braschi v. Stahl Associates Company*, the court considered whether a same-sex lifetime partner of the deceased tenant falls under the definition of "family" in the regulation.

The protection applies to people who live with the tenant, but not to every person who resides with her. It requires a particular relationship, one that can be termed familial, that involves co-residence. The court in *Braschi* concluded that the term family should not be restricted to formal relations, but must take into account the reality of family life. The court also offered guidelines to distinguish between non-familial 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."<sup>45</sup>

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 period of no less than two years," he or she will be protected from eviction.<sup>46</sup> 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 V.

*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 control regulation extends 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.<sup>47</sup>

Under certain conditions, then, living with others is a meaningful experience endorsed by the law. What the 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.

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<sup>44</sup> See description in *Braschi v. Stahl Associates Company* 543 N.E. 2d 49 (NY 1989).

<sup>45</sup> *Id.*

<sup>46</sup> 9 NYCRR 2204.6 (d) (2012).

<sup>47</sup> See *supra* notes 32- 35 and accompanying text. Also see Rosenbury, *supra* note 11.

Furthermore, it also has to stipulate at which point co-residence creates the goods it is aimed at fostering, and to distinguish between different types of shared housing. Moreover, since living with others enhances commitment, the rules of exit 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.<sup>48</sup> As I argue in Part IV, the premise of this rule demands rethinking.

There are certain similarities between an argument in favor of a home sharing community and an argument supporting legal recognition of unmarried couples. Both acknowledge informal relations that are founded on sharing a home. Yet, this article conceptualizes the home as a potentially communal location regardless of conjugality. It begins with an uncluttered concept that does not necessarily involve any standing commitments (minor children) or a sexual relationship. Once this concept is established, I move to discuss the way the family is changing, and emphasize intergenerational ties.

In what follows, instead of asking whether the home makes a family, I alternatively ask the less normatively charged question: whether the relationship between the parties, founded on sharing a home, should be a source of certain rights and obligations.

### III. HOME-SHARING

The previous Part has demonstrated that 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 VI.

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.<sup>49</sup> 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.<sup>50</sup> 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. The latter protects the interest of the individual to remain in the home she currently occupies. Protection of possession relies on Margaret Radin's influential work on property as personhood.

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<sup>48</sup> See Thomas W. Merrill & Henry E. Smith, "The Morality of Property", 48 *Wm. & Mary L. Rev.* 1849 at 1857-1891(2007); Larissa Katz, "Exclusion and Exclusivity in Property Law", 58 *U. Toronto L. J.* 275 (2008). In contrast, see Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer & Laura

S. Underkuffler, "A Statement of Progressive Property" (2009), 94 *Cornell. L. Rev.* 744.

<sup>49</sup> D. Benjamin Barros, *Home as a Legal Concept* 46 *SANTA CLARA L. REV.* 256 (2006).

<sup>50</sup> *Id.* at 256.

Radin argues that the home is closely connected to personhood because it is "scene of one's history and future, one's life and growth."<sup>51</sup> It therefore deserves special protection. Even though Radin's argument has been significantly criticized,<sup>52</sup> it has proved to be particularly telling regarding American law's vision of the home.<sup>53</sup> The focus on privacy or possession reflects an ethos of the home as a castle,<sup>54</sup> 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.<sup>55</sup> The home is thus perceived as a site of individuality, one that has to be protected from intrusion. Consequently, it 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,<sup>56</sup> and for them a home is a site that hosts meaningful intimate relations.<sup>57</sup> 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.<sup>58</sup> 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 the 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

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<sup>51</sup> Margaret J. Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 992 (1982).

<sup>52</sup> Stern argues that there is little evidence from psychological research to support the argument that the home constructs identity. Instead, the home expresses and maintains identity, at best. Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1100 (2009). After all, in practice, people move from home to home all the time. More critically, Schnably has claimed that "[T]he 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, 373-374 (1993).

<sup>53</sup> Stern, *id.*

<sup>54</sup> On privacy, see JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009). See also Barros, *supra* note 49 at 25; Stern, *supra* note 52 at 1100. Also see Robert M. Rakoff, *Ideology in Everyday Life: The Meaning of the House*, 7 POLITICS & SOCIETY 85 (1977).

<sup>55</sup> See, e.g., Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?* J. L. SOC'Y 580 (2002).

<sup>56</sup> For some data on number of occupants and type of relationships see Ellickson, *Unpacking the Household*, *supra* note 8 at 254

<sup>57</sup> Lisa M. Austin, *Person, place or thing: property and the structuring of social relations*, 60 U. TORONTO L. J. 445 (2010).

<sup>58</sup> *Supra* note 8.

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.<sup>59</sup> 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 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. 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,<sup>60</sup> the home has not lost its meaning.

In spite of the significant relational and communal dimensions of the home,<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> In other words, the home is a complex concept that encompasses a dialectics between individuality and being other-regarding. Living together in the home

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<sup>59</sup> Sandy G. Smith, *The Essential Qualities of a Home*, 14 J. ENVIRON. PSYCH. 31, 39 (1994).

<sup>60</sup> For the growing importance of online communities, see Nicholas Suzor, *Order Supported by Law: The Enforcement of Rules in Online Communities*, 63 Mercer L. Rev. 523 (2012); 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).

<sup>61</sup> 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); Nedelsky *supra* note 62. For the communal aspects of property, see Alexander & Peñalver, *supra* note 62. **שגיאה! הסימניה אינה מוגדרת.**; Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L. J 549 (2001); Amnon Lehari, "How Property Can Create, Maintain, or Destroy Community," 10 THEORETICAL INQ. L. 43 (2009).

<sup>62</sup> For the relational, other-regarding characteristics of property, see Jennifer Nedelsky, *Law, Boundaries and the Bounded Self*, 30 REPRESENTATIONS 162 (1991).

<sup>63</sup> Compare 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 Dudley Knowles, *Hegel on Property and Personality*, 33 PHIL Q. 45, 56-57 (1983); ALAN BRUDNER, THE UNITY OF THE COMMON LAW: STUDIES IN HEGELIAN JURISPRUDENCE 34-38 (1995).

allows the individual to shape the boundaries of the self and create a space that is completely personal and private (e.g., a room, a closet or drawers). On the other hand, living with others forces the individual to open up to others, include them in her own vision of home, not merely exclude them.<sup>64</sup> As some philosophers have persuasively asserted, the home is a profoundly relational concept as it means acceptance, being with others.<sup>65</sup>

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:

[T]he social network built around a home and the relationships that create and are created in a home are of an 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.<sup>66</sup>

All this suggests that living with others creates a mutual dependency.<sup>67</sup> 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 a "home sharing community", I mean that living together creates a sense of cohesion and commitment among cohabitants<sup>68</sup> 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.<sup>69</sup>

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<sup>64</sup>For a critique on the centrality of exclusion in property law, see ,HANOCH DAGAN, PROPERTY: VALUES AND INSTITUTIONS, 37-57 (2011) ;Eduardo M. Peñalver *Property as Entrance*, 91 VA. L. REV. 1889 (2005); Gregory S. Alexander, *The Social Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009); Joseph W. Singer, *Democratic Estate: Property Law in a Free and Democratic Society*, 94 Cornell L. Rev. 1009 (2009).

<sup>65</sup> Shelley Mallett, *Understanding Home: a Critical Review of the Literature*, 52 THE SOCIOLOGICAL REVIEW 62, 81 (2004) (discussing Kuang Ming Wu and Buber).

<sup>66</sup> Judith Sixsmith, *The Meaning of Home: an Exploratory Study of Environmental Experience*, 6 J. ENVIRON. PSYCH. 281, 291 (1986).

<sup>67</sup> On property and dependency, see Gregory Alexander & Eduardo Peñalver, *Properties of Communities*, 10 THEORETICAL INQ. L.(2009); Gregory S. Alexander, *Unborn Communities*, 8 LAW & ETHICS OF HUMAN RIGHTS (forthcoming, 2014).

<sup>68</sup> Cf G. A. Hillery Jr *The Monastery* (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).

<sup>69</sup> See Carolyn Frantz &, Hanoch Dagan *The Properties of Marriage*, 104 COLUM. L. REV. 75, 133 (2004) (defining marriage as a liberal egalitarian community); Peñalver, supra note 64 (treating the family as a type of involuntary community); Dagan & Heller, supra note 61.

But community also contains a risk of vulnerability and subordination. The home, it has been argued, is a prison for women,<sup>70</sup> the glorification of which pushes them to care for the family.<sup>71</sup> In addition, communities carry risks for freedom and autonomy. With community comes pressure, the oppression of minorities and difficulties of exit.<sup>72</sup> Home sharing entails similar risks. Living with others means compromise. Sometimes it does not succeed, resulting in miserable cohabitants.<sup>73</sup> 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.

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.<sup>74</sup> As long as the benefits 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 rules of conduct is 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 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.<sup>75</sup> 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

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<sup>70</sup> See, for example, the context of domestic violence. 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).

<sup>71</sup> See discussion at 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- 451 (2008).

<sup>72</sup> Dagan & Heller, *supra* note 61; Peñalver, *supra* note 64 at 1930; for community and liberal values, see Ayelet Shaha, *Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation*, 6 J. POL. PHILO. 285 (1998).

<sup>73</sup> Smith, *supra* note 59 at 41.

<sup>74</sup> For property's role in creating communities and for the family as a type of community, see Peñalver, *supra* note 64.

<sup>75</sup> Naomi Rosh White, *"Not Under My Roof": Young People's Experience of Home*, 34 YOUTH & SOCIETY 214, 217 (2002).

control the asset, it does require some protection of her interest as Part V explains.

And yet, some people live alone.<sup>76</sup> Nothing in the 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.<sup>77</sup> 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.

#### IV. 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 that 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 VI. 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 sources. 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 VI.

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<sup>76</sup> In 2007, 31 million American households consisted of one person living alone. See Rose M. Kreider and Diana B. Elliott, US census, *America's Families and Living Arrangements: 2007* (2009). For a sociological analysis, see Dieter Demey et al., *Pathways into living alone in mid-life: Diversity and policy implications*, 18 *ADVANCES IN LIFE COURSE RESEARCH* 161 (2013).

<sup>77</sup> For plural choices in property institutions, see Hanoch Dagan, *Pluralism and Perfectionism in Private Law*, 112 *COLUM. L. REV.* 1409 (2012).

*a. Roommates vs. 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. 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.<sup>78</sup> 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 their self-regarding interests. A community is a group of people with goals that cannot be reduced to the goals of each individual member.<sup>79</sup> Home sharing is not just about sharing a common space; it is profoundly other-regarding. Mason's moralized community clarifies this point. It requires (1) solidarity or mutual concern; members must give each other's interests some non-instrumental weight and (2) there is no systematic exploitation or no systematic injustice.<sup>80</sup> Home sharing community is other regarding and mere co-residence is self-regarding. Other-regarding behavior and communal efforts may include shared use of the home, common decision making mechanism and shared rules of conduct.

A *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.<sup>81</sup> 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; also 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. Vallorosi*,<sup>82</sup> 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."<sup>83</sup>

The New Jersey Supreme Court had to decide whether a group of ten college students that share a home together constitute 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

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<sup>78</sup> ANDREW MASON, COMMUNITY, SOLIDARITY, AND BELONGING: LEVELS OF BELONGING AND THEIR NORMATIVE SIGNIFICANCE 22 (2000)

<sup>79</sup> Mason's full definition of an ordinary community is not applicable to the home. It requires sharing of values, a way of life, identifying with the group and recognizing each other as members of the group.

<sup>80</sup> Id at 27.

<sup>81</sup> For longevity in zoning cases, see Glassboro...

<sup>82</sup> 117 N.J. 421 (1990).

<sup>83</sup> Id at 423.

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.

The court decided that these ten college students living together did constitute a family, but this decision clearly reflected the court's criticism of the ordinance.<sup>84</sup> Let us look into 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 the students meant to save money by living together does not necessarily imply that 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.

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*,<sup>85</sup> the zoning ordinance defined family narrowly.<sup>86</sup> It 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 when he was a baby following his mother's death, and was a ten-year old child at the time the case was decided.<sup>87</sup> Although the judgment does not provide details regarding the decision-making procedures, behavior and everyday practices in the home, the facts indicate a long-term commitment to

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<sup>84</sup> Id at 426.

<sup>85</sup> 431 US 494 (1977).

<sup>86</sup> Section 1341.08 (1966) provides:

"Family' 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.

"(d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household.

"(e) A family may consist of one individual."

<sup>87</sup> 431 US 494, 507 (1977).

caring for minor children. In addition, intergenerational bonds are an important source of emotional and financial support in certain communities,<sup>88</sup> and a rising phenomenon in general.<sup>89</sup>

Even though I have concluded 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.

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 should be allowed to choose from a spectrum of available options.<sup>90</sup>

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"<sup>91</sup> or "stable and permanent living unit."<sup>92</sup> 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 who 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.

b. *Home Sharing vs. Shared Lives*<sup>93</sup>

The "shared lives" category has a home-sharing community as its basis, but includes an additional element: the sharing of financial resources. The 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 informal committed couples. Indeed, couples usually live together and share financial resources. Yet once we

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<sup>88</sup> Id, at 508.

<sup>89</sup> See infra...

<sup>90</sup> See Dagan, *supra* note 77.

<sup>91</sup> *Penobscot Area Housing Development Corp v. City of Brewer* 434 A. 2d. 14 (1981).

<sup>92</sup> *Borough of Glassboro v. Vallorosi* 117 N.J. 421 (1990).

<sup>93</sup> The term "shared life" is borrowed from *Principles of the Law of Family Dissolution: Analysis and Recommendations* § 6.03 (2002). 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.

focus on the relationship within the home, more complex forms of social interaction arise.

Let us consider the following case.<sup>94</sup> Mr. Dunihue was a widower with seven children. The Frambachs lived nearby with their four children. The relationship between these two families began when Mrs. Frambach babysat for 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, 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. The court characterized the arrangement as "one big family". One day Mrs. Frambach called Mr. Dunihue at work and told him he had thirty minutes to move out.

Mr. Dunihue argued that "the Frambachs had promised him a place to live for the rest of his life in exchange for his work,"<sup>95</sup> and requested that an equitable lien be imposed on the property. The trial court concluded that they were all a single family unit and 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." The appellate court reversed the decision. It found no evidence of a promise or an agreement. The only relevant question was whether Dunihue's "contributions exceed the value of the benefits received by him from the Frambachs,"<sup>96</sup> 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 *Brorough of Glassboro*, neither the Frambachs nor Dunihue had a deadline in mind for ending the arrangement. They all allowed the relationship to naturally develop 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 *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 this case, 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. I argue in the next Part that exit rules should allow for the voice of the excluded resident.

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<sup>94</sup> *Frambach v. Dunihue* 419 So. 2d 1115 (1982).

<sup>95</sup> *Id.* at 1117.

<sup>96</sup> *Id.*

But the parties were not only sharing a home: they also shared financial sources 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.<sup>97</sup> 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.<sup>98</sup>

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 that has been permanently evicted from the apartment. The definition of family member is broad. In addition to sharing a home, the rules emphasize financial interdependence,<sup>99</sup> and intermingling of finance.<sup>100</sup> The ALI's principles concerning the determination of domestic partnership include similar criteria.<sup>101</sup> In Canada domestic partnership focuses on economic interdependence regardless of conjugality.<sup>102</sup>

Although a detailed account of this issue 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

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<sup>97</sup> For similar criteria, see 9 NYCRR 2204.6 (d) (3) (b)-(c) (2012).

<sup>98</sup> Another esoteric set of facts can be found in *In re Marriage of Bauder* 44 Or. App. 443, 605 P 2d 1374 (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. When the husband suspected Hart of intending to leave, he asked the wife to present herself sexually to the roomer. 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* at 446. 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 could have been established. But under these circumstances, the court concluded "for all that appears, he got what he bargained for". *Id* at 448

<sup>99</sup> 9 NYCRR 2204.6 (d) (3). A family member is defined 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."

<sup>100</sup> 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*.

<sup>101</sup> Principles of the Law of Family Dissolution: Analysis and Recommendations § 6.03 (2002). These criteria include, for example, the extent to which the parties intermingled their finances; the extent to which their relationship fostered the parties' economic interdependence, or the economic dependence of one party upon the other; the extent to which the parties engaged in conduct and assumed specialized or collaborative roles in furtherance of their life together; the extent to which the relationship wrought change in the life of either or both parties; the extent to which the parties acknowledged responsibilities to each other.

<sup>102</sup> See analysis in Rosenbury, *supra* note 11 at 221-222. Also see the report: LAW COMMISSION OF CANADA, BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL ADULT RELATIONSHIPS (2001).

to share a life together.<sup>103</sup> 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.<sup>104</sup> 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.

#### V. 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,<sup>105</sup> a discussion of home sharing is especially productive in the face of changes in family structure. Developments in family dynamics provide an opportunity to reexamine our conception of home and the relationships we expect to find in it. I therefore turn to discussing 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.<sup>106</sup> More recent scholarship stresses the increasingly important multigenerational bonds, at times at the expense of the nuclear family.<sup>107</sup> Two processes are particularly significant. The aging of the population results in "longer years of shared life" between different generations.<sup>108</sup> In addition, grandparents and other kin play an increasingly important role in supplying care for children.<sup>109</sup> High divorce rates and birth out of wedlock make women more likely to be single mothers and rely on the assistance of their extended kin, especially their own mothers.<sup>110</sup>

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.<sup>111</sup> In fact, adult children's living with their parents is a rising phenomenon not only

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<sup>103</sup> Adilson Jose Moreira, *We the Family! Legal Recognition of Same Sex Union in Brazil* 60 AM. J. COMP. L. 1003, 1016 (2012).

<sup>104</sup> See discussion Dagan restitution.

<sup>105</sup> See supra note – and accompanying text.

<sup>106</sup> David Popenoe, *American Family Decline 1960-1990: A Review and Appraisal*, 55 J. MARRIAGE & THE FAMILY 527 (1993); Linda J. Waite, *Does Marriage Matter?* 32 DEMOGRAPHY 485 (1995)

<sup>107</sup> Vern L. Bengston, *Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds*, 63 J. MARRIAGE & THE FAMILY 1 (2001).

<sup>108</sup> *Id.* at 1.

<sup>109</sup> *Id.* at 4.

<sup>110</sup> Suzanne M. Bianchi et al., *Intergenerational Ties: Alternative Theories, Empirical Findings and Trends, and Remaining Challenges*, in INTERGENERATIONAL CAREGIVING (Alan Booth et al. eds. 2008).

<sup>111</sup> *Id.*

in the United States,<sup>112</sup> but has become a global trend.<sup>113</sup> American adults in their 20s and early 30s are more likely to be living with their parents than in previous generations.<sup>114</sup> 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.<sup>115</sup> According to the Census Bureau population report from 2007, six percent of all family groups contained a householder and his or her adult children.<sup>116</sup> A recent Pew research report found that in 2012, 36 percent of America's young adults ages 18 to 31 were living with their parents, a record number of 21.6 million young adults.<sup>117</sup> Younger adults (18-24) are much more likely to live with their parents than older ones (25-31).<sup>118</sup>

The reasons for this new household structure include the economic downturn and housing crisis.<sup>119</sup> As the recession deepens, the economic climate makes it harder for college graduates to become financially independent, and they therefore need their parents' assistance.<sup>120</sup> In addition, homeowners in their thirties and forties are sometimes forced to move back in with their parents due to foreclosure.<sup>121</sup>

This new structure of the home has raised much concern on either side of the equation, children and parents alike, as several empirical studies have demonstrated. Children often experience the loss of privacy and autonomy, and an inability to influence decision making in the home.<sup>122</sup> Parental rules regarding sexual relationships 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.<sup>123</sup> 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."<sup>124</sup> There is a constant tension between the need

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<sup>112</sup> 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 (2010).

<sup>113</sup> See Clara H. Mudler, William A.V. Clark & Michael Wagner, *A Comparative Analysis of Leaving Home in the United States, the Netherlands and West Germany*, 7 DEMOGRAPHIC RESEARCH 565 (2002). For Israel, see Shelly Kreiczer-Levy, *Intergenerational Relations and the Family Home*, 8 THE LAW & ETHICS OF HUMAN RIGHTS (forthcoming 2014). For Canada, see Barbara A. Mitchell, Andrew V. Wister & Ellen M. Gee, "There is no Place like Home" an Analysis of Young Adults' Mature Co-residency in Canada", 54 INT'L J. AGING & HUMAN DEVELOPMENT 57 (2002).

<sup>114</sup> 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. FORUM 670 (2008).

<sup>115</sup> Farber, *supra* note 4.

<sup>116</sup> Kreider & Elliot, *supra* note 76.

<sup>117</sup> Richard Fry, *A Rising Share of Young Adults Live in Their Parents' Home*, PEW RESEARCH CENTER (2013).

<sup>118</sup> Id. The former account for 56 percent of all children living with their parents, the latter for 16 percent.

<sup>119</sup> Keene & Batson, *supra* note 112.

<sup>120</sup> Farber, *supra* note 4 at 68-69.

<sup>121</sup> Id.

<sup>122</sup> White, *supra* note 75 .

<sup>123</sup> Ibid. 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 PSYCHOLOGY 1416 (2009).

<sup>124</sup> Id at 225.

for independence and the need for emotional support and guidance provided by parents.<sup>125</sup> The literature shows that when the child contributes to the household, he or she will feel more independent, in control, and consequently at home.<sup>126</sup> 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.<sup>127</sup> The nature and quality of the relationship with the parents is also an important parameter.

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.<sup>128</sup> Other scholars emphasize positive experiences of shared living arrangements.<sup>129</sup> The most significant indicator for parental satisfaction from cohabitation is the relationship between the child and the parent.<sup>130</sup> In addition, reciprocity is a significant indicator, manifested either by paying rent or board, or offering emotional support.<sup>131</sup> 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 and companionship, and a sense of a family.<sup>132</sup> On the other hand, children with a difficult personality or negative lifestyle and the lack of privacy are associated with negative experiences of co-residence.<sup>133</sup>

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.<sup>134</sup> 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 (sharing of resources and the construction of relational identity)

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<sup>125</sup> Id. Research shows that a close relationship with parents during adolescence increases the chances of an adult child living with her parents. See Wister & Gee, *supra* note 113. 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*, 24 DEVELOPMENTAL PSYCHOLOGY 864 (2006).

<sup>126</sup> Id at 222-223.

<sup>127</sup> Id.

<sup>128</sup> See the literature reviewed in Barbara A. Mitchell, *Too Close for Comfort? Parental Assessment of Boomerang Kid Living Arrangements*, 23 CANADIAN J. OF SOCIOLOGY 21 (1998).

<sup>129</sup> Mitchell, *id.* Also see William S. Aquilino & Khalil R. Supple, *Parent Child Relations and Parents' Satisfaction with Living Arrangements when Adult Children Live at Home*, 53 J. OF MARRIAGE AND FAMILY 13 (1991).

<sup>130</sup> Aquilino & Supple, *id.*

<sup>131</sup> Mitchell, *supra* note 128.

<sup>132</sup> Mitchell, *id.*

<sup>133</sup> Id.

<sup>134</sup> Thomas Leopold, *The Legacy of Leaving Home: Long-Term Effects of Co-residence on Parent – Child Relationships*, 74 J. MARRIAGE & THE FAMILY 399 (2012).

will contribute to the construction of legal rules. Empirical research sheds light on home sharing in context because it targets a specific relationship. 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 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.

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 relational and communal aspects of the home. In many cases, the child contributed to 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 the facts of *Sirota v. Sirota*. Two children aged 27 and 31 lived with their parents all of their lives. After the father moved out, they stayed home and cared for their ill mother until her death.<sup>135</sup> Let us assume that the mother, who had a miraculous recovery, now 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 in a ten-day notice does not consider their contribution to the home and the community in it. A more nuanced characterization of their interest is required.

The problem with this argument, a critic may point out, is that the law does not interfere in the relationship between parents and their adult children. Legally, the minute a child reaches adulthood, parents are under no obligation to care for her.<sup>136</sup> They do not owe each other any legal obligations, and their entire relationship is left to the realm of morality rather than that of the law. Yet, the law does not completely ignore the parent-adult child relationship,<sup>137</sup> nor does it treat them as complete strangers. Although there are no formal obligations, the law often assumes parents want to benefit their children. Transfers and services to children are presumed to be gifts rather than loans.<sup>138</sup> Unless proven

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<sup>135</sup> *Sirota v. Sirota*, 164 Misc.2d 966, 626 N.Y.S.2d 672 (1995).

<sup>136</sup> Cf. Stepien-Sporek & Ryznar, *supra* note 9.

<sup>137</sup> JOSEPH RAZ, *ETHICS IN THE PUBLIC DOMAIN - ESSAYS IN THE MORALITY OF LAW AND POLITICS* 177-8 (1994) (arguing in favor of parents' interest in educating their children in their cultural heritage, because parents need to understand their children and remain close to them).

<sup>138</sup> J. E. Keefe, Jr., Annotation, *Recovery for services rendered by member of household or family other than spouse without express agreement for compensation* 7 A.L.R.2d 8 (2009)

otherwise, parents are presumed to bequeath their property to their children.<sup>139</sup> In addition, constructive trusts that protect licensee from revocation of their rights are limited by some courts to familial or confidential relationships.<sup>140</sup> These rules recognize the attachment between parents and children, one that is backed by recent sociological studies.<sup>141</sup>

## VI. RETHINKING THE LAW OF HOME SHARING

This article encourages lawmakers to recognize the legal obligations that home sharing creates, regardless of formal property rights.<sup>142</sup> It focuses on exit rules, and considers appropriate rules of eviction process. It does not, at this point, deal with state or corporate recognition of home sharing (for tax, insurance or pension purposes). Nor does it deal with managing the household and the decision-making process. These important issues deserve separate contemplation.

### *a. The Argument: Entrance and Exit*

A community of property is often defined along two central lines: the rules of entering and rules of exit.<sup>143</sup> Entrance rules raise the question 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 your 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 that 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.<sup>144</sup> 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, entrance rules in these cases should be understood as an ongoing process. In every family, there are implicit or explicit understandings regarding coming of age and independence, economic support of

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<sup>139</sup> See the intestate share of descendants RESTATEMENT OF LAW, (THIRD) OF PROP: (WILLS AND OTHER DONATIVE TRANSFERS) §2.3 (2003). Some states protect children from unintentional disinheritance, and others go further and protect any child not mentioned in the will. See Shelly Krecizer-Levy, *Deliberative Accountability Rules in Inheritance Law: Promoting Accountable Estate Planning*, 45 MICH. J. OF L. REFORM 937 (2012).

<sup>140</sup> See JOSEPH WILLIAM SINGER PROPERTY 332 (4<sup>th</sup> ed. 2006)

<sup>141</sup> See notes 107-111 and accompanying text.

<sup>142</sup> For a discussion of informal property rights, see generally JOSEPH W. SINGER, PROPERTY LAW: RULES, POLICIES AND PRACTICES (5<sup>th</sup> ed. 2010).

<sup>143</sup> See, e.g., Peñalver, *supra* note 64.

<sup>144</sup> ALICE S. ROSSI & PETER H. ROSSI, OF HUMAN BONDING: THE PARENT CHILD RELATIONS ACROSS THE LIFE COURSE 159 (1990).

children, and the expected timeframe of sharing a home.<sup>145</sup> Parents and children often discuss the length of cohabitation, directly or indirectly. The parties may view the arrangement as temporary and have a definite timeframe in mind, for example graduation from college. In such cases, belonging to the community is understood by all parties involved as temporary, with a clear date of exit. If the parties agree the child will remain at home until he or she marries, and then one parent (or both) changes her mind, rules of exit come into force.

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,<sup>146</sup> or as a symbol of roots or continuity.<sup>147</sup> 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 with it 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. The parties' understandings regarding the length of cohabitation (until graduation, marriage, or arriving at a certain age) should be considered when awarding any protection to the child-occupant. 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.

This conceptual change can be further clarified by using an analogy drawn from labor law. A prominent labor law rule is "employment at will," which allows an employer to discharge an employee for no reason at all.<sup>148</sup> Over the years, the rule has eroded. In particular, due process rules have developed and in certain cases an employer is required to give fair notice and conduct a formal hearing

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<sup>145</sup> Add cite. These understandings change through time

<sup>146</sup> Radin, *supra* note 51.

<sup>147</sup> Fox, *supra* note 55.

<sup>148</sup> Jay M. Feinman, *The Development of the Employment at Will Rule*, 20 AM. J. LEGAL HIST. 118 (1976).

prior to the discharge.<sup>149</sup> These requirements give voice to the employee, although the ultimate decision maker is the employer. More than mere protections, they reflect a change in the perception of the interaction. Similarly, recognizing the voice of the child, a non-owner resident, will alter the way the parties understand their interaction, the way they negotiate around it while still living together. Even when litigation is not involved, it will affect the way children and parents think about their cohabitation. Relying on the expressive function of the law,<sup>150</sup> 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.<sup>151</sup> However, for the sake of argument let's 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.<sup>152</sup> 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.<sup>153</sup> In most cases, we will be able to find joint activities and other-regarding behavior.

But what if it is the child that 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

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<sup>149</sup>See Stephen F. Befort, *Labor and Employment Law at the Millennium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351, 383-384 (2002); Jonathan Fineman, *The Inevitable Demise of the Implied Employment Contract*, 29 BERKELEY J. EMP. & LAB. L. 345, 353, 358 (2008).

<sup>150</sup>Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (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).

<sup>151</sup>See Farber, *supra* note 4.

<sup>152</sup>See notes 82-84 and accompanying text.

<sup>153</sup>See Leopold, *supra* note 134 and accompanying text.

previous scholarship has so vigorously argued,<sup>154</sup> then chaining a person to a home could be devastating.

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. Evaluating the Interests of Parents and Children*

After the general argument regarding exit rules from home sharing has been laid out, one needs a more elaborated set of considerations for applying the rules to concrete cases. Although this article will not offer a complete and workable set of rules, it does provide criteria that distinguish between different types of cohabitation by parents and adult children. These criteria allow us to evaluate the strength of a child's claim, and to determine the remedies available, as I discuss in section d. In some cases, the child's interest may be strong, but in others fairly weak. Following the discussion of considerations, I move on to group different cases into three main categories.

There are two main sets of considerations. One set pertains to the child and her participation in the home-sharing community. The second set also takes account

of the parents' interests and any injury to their communal wellbeing. All these considerations are based on the goods and harms encapsulated in a home-sharing community.

Considerations of the child's interest include:

1. To what extent is the child part of the home-sharing community? Is the child's behavior other-regarding and respectful of other cohabitants? In particular, it must be ascertained whether the child participates in the creation of the home, its use and atmosphere, and the quality of the relationship between the child and her parents should also be examined.<sup>155</sup>

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<sup>154</sup> See discussion at Fox, *supra* note 55.

<sup>155</sup> See note 130 and accompanying text.

2. Does the child contribute to the household by performing chores, participating in planning the home, or providing economic, physical or emotional support? The more the child is involved in the home and contributes to it, the more fulfilling home sharing becomes for both child and parents,<sup>156</sup> and therefore more likely that a home-sharing community has been formed. Note, however, that the law should not assess the financial worth of the contribution. Contribution is important for two main reasons. First, it reinforces a mutual dependency between the parties. When only one of the parties gives and the other receives, there is little chance that a home-sharing community will have been created. Second, contribution deals with the two main risks to a home-sharing community of parents and adult children: the risk of loss of autonomy and independence of the child, and the risk the parent may feel exploited.<sup>157</sup> As a general rule of thumb, the more the child contributes to the home, the more autonomous he feels and the more satisfied a parent becomes.
3. The parties' commitment to long-term home sharing increases their willingness to invest in the home. Commitment depends on the mutual expectation of the parties regarding the duration of the community. Generally, the younger the child or the more dependent (physically or mentally) she is, the more likely it is that the parties consider cohabitation to be long-term and committed. Any agreement of the parties, whether implied or explicit, should be considered. If the parties agreed that the child would live with her parents until she graduates from college, and after the first year of college the parents ask her to move out, they have to explain the reasons for this change. However, if the agreed-upon deadline has passed, the child will have to explain why she thinks her interest warrants any protection.

A second set of considerations concerns the community that remains in the home. These considerations include:

1. To what extent does the child's presence blemish each parent's individual vision of home? In addition, it must be ascertained whether the child's presence negatively affects relationships within the community. For example, the child's presence at home may lead to friction and conflict between the parents.<sup>158</sup>
2. The level of conflict between the child and other residents in the home. If life is unbearable in the home, then home sharing offers no benefits.
3. The motives for the exclusion of the child from her parents' home. When spouses or cohabitating couples are locked in conflict, the formal owner of the home may wish to evict a child out of spite, rather than a concern for

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<sup>156</sup> See supra notes 126, 130 and accompanying text.

<sup>157</sup> *Id.*

<sup>158</sup> *Cf.* the Israeli case CA 304/72 Bialer v. Bialer, [1973] IsrSC 27 (1) 533 (the father argued that his son supports the mother in arguments, making his life at home unbearable).

his individual home environment.<sup>159</sup> In such cases, these spiteful motives will serve as a consideration in favor of the child.<sup>160</sup>

This list of considerations is neither complete nor comprehensive. The discussion would be enriched by taking account of other forms of home-sharing communities, such as parents living in their child's home, new families, and stepchildren. The purpose of this section is to highlight the factors that either contribute to a home-sharing community or damage it in the context of parents and adult children.

*c. 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.<sup>161</sup> Informal sources, such as estoppels and irrevocable license, of property rights therefore come into play.

Let me clarify with an example. In *Griffiths v. Williams*,<sup>162</sup> 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, without securing a life interest for her daughter as promised. The English court held that the doctrine of estoppel applies here.<sup>163</sup> According to this doctrine, if A intends that B will act in reliance

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<sup>159</sup> See the Israeli case Family Appeal (Haifa) 740/08 Anonymous v. Anonymous (published in Nevo, on 19/11/2008).

<sup>160</sup> For the role of motives in property, see Larissa M. Katz, *Spite and Extortion: A Jurisdictional Principle of Abuse of Property Right*, Yale L. J. (forthcoming 2013).

<sup>161</sup> On justified expectations and informal sources of rights, see Joseph Singer, *The Rule of Reason in Property law*, 46 UC. Davis L. Rev. 1369 (2013).

<sup>162</sup> Cf. *Griffiths v. Williams* [1978] EGD 919 (the daughter looked after her mother in her later years in the belief that she would be entitled to live in the house for the rest of her life).

<sup>163</sup> 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 & J CARTWRIGHT, *MAUDSLEY & BURN'S LAND LAW: CASES AND MATERIALS* 1007-1008 (9<sup>th</sup> ed., 2009).

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.<sup>164</sup> Therefore, most resident children will have a harder time establishing a promise and reliance in such cases.<sup>165</sup>

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.<sup>166</sup> An irrevocable license is treated as an easement in the restatement.<sup>167</sup> According to the restatement, an 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.<sup>168</sup> Unlike the English rule, the restatement recognizes *both* implied and express representations.<sup>169</sup> 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,<sup>170</sup> or include boundary disputes, land transfer disputes, and landlord-tenant law.<sup>171</sup> 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:<sup>172</sup>

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<sup>164</sup> Cf. *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776 (the court was willing to recognize a very indirect promise because of the character and nature of the parties).

<sup>165</sup> The facts 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. (On home sharing and inheritance, see Shelly Kreiczer Levy, *Inheriting the Family Home* (2013, draft, on file with the author)). There was no conflict between an owner and a non-owner cohabitant, but instead between the cohabitant child and a third party.

<sup>166</sup> DUKEMINIER *supra* note 13.

<sup>167</sup> Restatement of Property (Third), Servitudes § 1.2 (4) (2000).

<sup>168</sup> *Id.* at §2.10.

<sup>169</sup> *Id.* ("If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when: (1) the owner or occupier permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief; or (2) the owner or occupier represented that the land was burdened by a servitude under circumstances in which it was reasonable to foresee that the person to whom the representation was made would substantially change position on the basis of that representation, and the person did substantially change position in reasonable reliance on that representation"). Also see Stewart E. Sterk, *Estoppel in Property Law*, 77 NEB. L. REV. 756 (1998).

<sup>170</sup> Sterk, *id.* at 769-784.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 803.

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.

There are a number of available remedies in case of servitude by an estoppel, and there is a great amount of flexibility to account for particular circumstances of the case.<sup>173</sup> Although this broad position is certainly controversial,<sup>174</sup> 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.<sup>175</sup> 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.

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

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<sup>173</sup> Restatement of Property (Third), Servitudes § 8.3 (2000).

<sup>174</sup> Sterk, *supra* note 169.

<sup>175</sup> See note 169.

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 of 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.<sup>176</sup> 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.<sup>177</sup> In the next section I discuss the complex issue of remedies. In short, I believe it's important to have a set of protections aimed at recognizing the voice of the child. Instead of thinking of the owner as the sole decision-maker, and of the child as having no influence on the process, the law should recognize her right to be heard and the mother's duty to justify her choice, and in certain cases it should establish a cooling-off period.

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 determines that a licensee can be evicted through a summary proceeding in a swift procedure after a ten-day notice.<sup>178</sup> 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.<sup>179</sup> 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,"<sup>180</sup> 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 convenience.'"<sup>181</sup> Although this family exception was originally crafted by the courts to protect a spouse or cohabitant, it has been expanded to include minor stepchildren,<sup>182</sup> adult children<sup>183</sup> and grandchildren.<sup>184</sup> 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 towards 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

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<sup>176</sup> Supra note 169.

<sup>177</sup> See supra note 172 and accompanying text.

<sup>178</sup> NYS Real Property Actions and Proceeding Law § 713(7) (RPAPL)

<sup>179</sup> *Kakwani v. Kakwani* 967 N.Y.S.2d 827 (2013).

<sup>180</sup> *Id.* at 833.

<sup>181</sup> *Id.* at 829-830.

<sup>182</sup> *Nagle v. DiPaola*, 134 Misc.2d 753, 512 N.Y.S.2d 761(1987).

<sup>183</sup> *Sirota v. Sirota*, 164 Misc.2d 966, 626 N.Y.S.2d 672 (1995).

<sup>184</sup> *Williams v. Williams*, 13 Misc.3d 395, 822 N.Y.S.2d 415 (2006).

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. The considerations reviewed in the previous section reveal that the relationship between the parties is important, as is the contribution of the child. In the case of a deadbeat child, it is even unclear whether a home-sharing community was ever formed. I therefore argue that the child should not have any legal claim against the parent.

#### *d. Remedies*

The 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 sharing at home. It preserves a certain 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.

Rashmi Dyal-Chand claims that outcomes in property disputes have the potential to promote sharing of a resource.<sup>185</sup> 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.<sup>186</sup> 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.

I suggest three basic principles for remedies in eviction disputes of parents and adult children that follow the breakdown of a home sharing community. The first principle defines the position of the co-occupant in an eviction process. It demands outlawing self-help when the owner and occupant shared their home

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<sup>185</sup> Rashmi Dyal-Chand, *Sharing the Cathedral*, CONNECT. L. REV. (Forthcoming 2013)

<sup>186</sup> Cf. Omri Ben Shahrar, *The Erosion of Rights by Past Breach*, 1 AM. LAW ECON. REV. 190 (1999) (adverse possession creates incentives to immediately claim a right).

together. Most states do not allow a landlord to forcefully enter and expel the tenant without a judicial remedy.<sup>187</sup> Yet, a minority of states allows some version of self-help.<sup>188</sup> Self-help is not an appropriate process in home sharing disputes. The parent should not be able to evict his co-occupant child without securing a judicial order. In addition, eviction laws in states that distinguish between a licensee and a tenant should not classify a co-occupant child as mere licensee. The New York judicial rule of familial exception makes a good example. Although licensees can be evicted through a swift summary proceedings, courts repeatedly distinguish between mere licensees and people who had a "true family relationship [with the owner], which includes a shared home."<sup>189</sup>The first principle thus ensures that a co-occupant child will not be treated as holding no legal rights to live in the home. It insists on redefining the status of people that create a home sharing community with the owner of the property.

The second principle 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*,<sup>190</sup> the owners ordered Dunihue to leave home within thirty minutes. This type of exit decision is unacceptable; it does not respect the co-resident.<sup>191</sup> The owners would need to explain their request, justify the case and listen to what Dunihue has to say. Possibly the procedure would only rarely change the owner's mind. Nonetheless, the procedure in and of itself gives the resident a voice and an opportunity to resolve the conflict. It is a barrier that protects from rush decisions. When parents ask their child to move out and the child refuse, an eviction lawsuit is filed. Before the court approves the eviction, it must be convinced that the requirements of voice (justification and discussion) have been met. Alternatively, the court can refer the case to mediation process that will ensure the parties have a chance to communicate.<sup>192</sup>

A cooling-off period of a few months up to a year is an additional principle. This remedy depends on the interests and considerations reviewed earlier in Part VI.b., and it would allow the licensee to come to terms with the loss of his home community and take important steps in constructing an alternative home. A second goal of this remedy is to allow the parties to try and settle their differences before taking any further action. Given that intergenerational relations are complex,<sup>193</sup> there is a chance that the parties will be able to reach

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<sup>187</sup> Randy D. Gerchick, No Easy Way Out: *Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 777-779 (1994).

<sup>188</sup> Id at 779-780.

<sup>189</sup> See notes 178 - 184 and accompanying text. A definition that focuses on familial relationship can be interpreted to exclude nontraditional families. A broad definition that evaluates the quality of sharing will serve the purposes of home sharing to the fullest. However, a familial relationship can serve as a rule of thumb for courts when making such decisions.

<sup>190</sup> 419 So. 2d 1115 (1982).

<sup>191</sup> Cf. notes 178-184 and accompanying text.

<sup>192</sup> On the strengths and weakness of mediation see Janet Rifkin, *Mediation from a Feminist Perspective: Promise and Problems*, 2 Law & Ineq. 21 (1984).

<sup>193</sup> Instead of conceptualizing intergenerational relations as based on either solidarity or conflict, a more nuanced approach has developed. Intergenerational ambivalence means that the relationships between parents and adult children are characterized by irreconcilable contradictions. Intergenerational

an agreement after they've regained their composure. It is important to note, however, that not every set of facts merits a cooling-off period. The court should have the discretion to evaluate whether such a remedy is appropriate, taking into account the considerations detailed in Part VI.b. In addition, the court may decide that a cooling off period has already been given depending on the facts of the case or leave the details of the arrangement to the mediation process.

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. An additional objection is that parties to a home-sharing community would *ex ante* prefer a remedy of damages rather than a remedy that forces them to live together, even for a short period of time. The risk of tension, conflict and animosity is disturbing from an *ex-post* perspective as well.

Although all these objections have merit, and an adjustment of the remedy is required, the concerns are not as severe as they appear to be. First of all, in the case of family members, in particular parents and children, chances are good that they will stay in touch, much more than any other community.<sup>194</sup> They have strong incentives to resolve the crisis in a positive way. 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. Second, a cooling-off period, unlike forced cohabitation, is short-term and defined in time, and therefore the risk of tension and conflict is more moderate. Third, the court must consider the level of conflict between the parties when it decides whether a cooling-off period is required, and for how long. This does not mean that conflict will always lead to the denial of protection, but it is an important factor.

Even though the concern is mitigated, there is indeed a possibility that the remedy may deter parents from letting adult children into their home. The law should therefore allow the parties to contract out of this rule or a particular remedy. The option to opt out of the proposed rules is itself a manifestation of the child's voice. It encourages the parties to reveal their positions regarding their co-residence and to think together of an appropriate arrangement. Recognizing the non-formal claim of a co-resident licensee encourages the parties to reveal information regarding their intentions.<sup>195</sup> Interestingly, many websites

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ambivalence fluctuates between two poles: autonomy and dependence. Parents and adult children desire each other's help, support and nurturance, but also feel the pressure for freedom from this relationship. See, e.g., Kurt Luscher and Karl Pillemer, *Intergenerational Ambivalence: A New Approach to the Study of Parent-Child Relations in Later Life*, 60 J. MARRIAGE & THE FAMILY 413 (1998); Kurt Luscher, *Intergenerational Ambivalence: Further Steps in Theory and Practice*, 64 J. MARRIAGE & THE FAMILY 585 (2002); Kira S. Birditt, Karen L. Fingerman & Steven H. Zarit, *Adult Children's Problems and Successes: Implications for Intergenerational Ambivalence*, 65B J. GERONTOLOGY: PSYCHOLOGICAL SCIENCE 145(2010).

<sup>194</sup> For the family as a community one cannot exit, see Peñalver, *supra* note 62.

<sup>195</sup> Compare this to the concept of penalty rules. According to Ayres & Gertner, a penalty rule is "to give at least one party to the contract an incentive to contract around the default rule and therefore to choose affirmatively the contract provision they prefer. In contrast to received wisdom, penalty defaults are purposefully set at what the parties would not want -- in order to encourage the parties to reveal

encourage parents to make formal agreements with their boomerang children. The potential of such agreements is the discussion that precedes them, and the exchange of opinions between the parties.<sup>196</sup>

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.<sup>197</sup> I am not suggesting we rule out this remedy, but we should acknowledge its limitations.

## VII. HOME SHARING: CHALLENGES AND OBJECTIONS

Both the concept of home sharing and the particulars of some of the suggestions presented in this article are challenging to 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. Since home is such an important metaphor of privacy and autonomy in American law,<sup>198</sup> 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

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information to each other or to third parties (especially the courts).” Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L. J. 87, 89-91 (1989).

<sup>196</sup> See, e.g., <http://youngadults.about.com/od/movinghome/a/rentalcontract.htm>.

<sup>197</sup> 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. Douglas B. Douglas Bernheim & Sergei Severinov, *Bequests as Signals: An Explanation for the Equal Division Puzzle*, 111(4) J. POL. ECON. 733 (2003).

<sup>198</sup> See the analysis of SUK, *supra* note 54.

autonomy is definitely important, and is included in the list of considerations for assessing the claim of the licensee. In addition, the remedy itself will most often not enforce the continuation of home sharing, just a temporary cooling-off period.

In fact, in many situations it is artificial to think of the home as being under the exclusive control of the owner. Joint tenancy in the home is common, and parents often need to make decisions together,<sup>199</sup> reflecting their own home-sharing community. The tension between the community of parents and the broader community that includes the child<sup>200</sup> is an important consideration when evaluating the strength of the child's claim, and whether a remedy is indeed warranted.

This article's specific test-case of boomerang children also presents a challenge to common perceptions of the parent-child relation. The legal and ethical discussion has usually focused on the time of minority, when the child needs to be cared for and nurtured.<sup>201</sup> According to Winfield, the ethical significance of the parent-child relationship ends with maturity.<sup>202</sup> When a parent allows her adult child to live in her home, it is a matter of her benevolence, and can therefore be revoked at any given time. Moreover, parents often wish to encourage their children to become independent and self-sufficient, and this may be the motivation behind the exit from a home-sharing community.<sup>203</sup> Protection from exit unnecessarily intervenes, according to the argument, with parental authority and discretion.

This argument conceals a normative agenda that assumes children that live with their parents are not fully mature and independent. Leaving the parental home is associated with both emotional and physical maturity.<sup>204</sup> However, this is mostly true of white middleclass families. Among certain racial and ethnic groups, multigenerational co-residence is common.<sup>205</sup> Educating a child to become independent and leave home already assumes a particular residential pattern that centers on the nuclear family. As sociological research has shown, the multigenerational family, including the relationships between adult children and

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<sup>200</sup> See discussion of such tension in HANOCH DAGAN, *PROPERTY AT A CROSSROAD* 319-320 (2005) (Hebrew).

<sup>201</sup> Marsha Garrison, *Towards a Contractarian Account of Family Governance*, 1998 UTAH L. REV. 241; Anne L. Alstott, *Property, Taxation and Distributive Justice: What Does a Fair Society Owe Children – and Their Parents?* 77 FORDHAM L. REV. 1941 (2004). Some writers have struggled with the moral justification for parental duties to nurture and care and rights of parental authority (for a discussion and evaluation of this literature, see JACOB JOSHUA ROSS, *THE VIRTUE OF THE FAMILY* 115-135 (1994); RICHARD DIEN WINFIELD, *THE JUST FAMILY* 137-145, 148-153 (1998); CHRIS BARTON & GILLIAN DOUGLAS, *LAW AND PARENTHOOD* 18-33 (1995)). One approach views minor children as belonging to their parents, much like a special sort of property (see BARTON & DOUGLAS, *id* at 19-22). Another approach prefers to see the parents as trustees of their minor children (ROSS, *id* at 116). Yet another approach views the moral rights and obligations of parental relationships as deriving from socially accepted roles, from the social institution or proto-institution of the family (ROSS, *id* at 117-122).

<sup>202</sup> *Id* at 157-159.

<sup>203</sup> Cf. the claims regarding over parenting: Gaia Bernstein & Zvi H. Triger, *Over Parenting*, 44 UC DAVIS L. REV. 1221 (2011).

<sup>204</sup> Sassler et al. *supra* note 114 at 670.

<sup>205</sup> Farber, *supra* note 4.

their parents, is increasingly important in everyday life.<sup>206</sup> These recent trends may reflect a gradual shift in family structure and dynamics.

Even if one believes that residential independence of children is an important goal, the suggested model takes the age of the child as a central consideration. The younger or more dependent a child is, the more likely the parties consider cohabitation to be long-term and committed. The claim of an eighteen-year old student will presumably be stronger than that of a thirty-year old unemployed child. A home-sharing community means that exit of the child needs to be gradual and in certain cases include an adjustment (what I previously termed a cooling-off period), and the child's voice must be heard.

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.<sup>207</sup> 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 siblings<sup>208</sup> and nontraditional households<sup>209</sup> are others. Rosenbury criticizes the distinction between marriage-like relationships and non-cohabitating 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 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.<sup>210</sup> 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. Cultural norms shape the

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<sup>206</sup> See discussion at notes 106-110 and accompanying text.

<sup>207</sup> Rosenbury, *supra* note 11.

<sup>208</sup> See, e.g., *Burden v. United Kingdom* [2006] ECHR no. 13378/05 (two sisters who lived together all their lives and shared property).

<sup>209</sup> See *In re Marriage of Bauder* 44 Or. App. 443, 605 P 2d 1374 (1980); *Frambach v. Dunihue* 419 So. 2d 1115 (1982).

<sup>210</sup> See *supra* Part IV.

understandings of the parties and create presumptions in favor of or against any particular form of co-residence. However, when one examines cultural norms, one has to be mindful not simply to replicate the norms of middleclass white families. Moreover, 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.<sup>211</sup> I rely here again on the law's expressive function. Nevertheless, familial relations will definitely be damaged if disputes turn into litigation and therefore ADR, such as mediation or arbitration, should be preferred. This article's aim is to advance a conceptual change, and the proposed remedies are moderate enough to allow most family members to settle their differences outside of court.

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 resources. 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 obtaining between co-residents.

## VIII. 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 perils. Because the formation of the community relies on the parties' expectations and understandings, it merits a more contextual analysis. 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. Elderly parents that live in their children's home represent an important project that involves larger discussions of intergenerational reciprocity, dependence and commitment.

As this article has suggested, the legal arrangements must be nuanced. The age of the child, her or his contribution to the household, the relationship between

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<sup>211</sup> 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).

the parties, commitments and expectations are all important factors in deciding whether a home-sharing community was indeed created and the strength of the corresponding interests. 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.