

Fordham Urban Law Journal

Volume 43

Number 4 *Flourishing Families in Context: A New
Lens for Urban Law*

Article 10

2016

Housing the "New" Household

Twila L. Perry

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

Recommended Citation

Twila L. Perry, *Housing the "New" Household*, 43 Fordham Urb. L.J. 1205 (2016).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol43/iss4/10>

This Response or Comment is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

HOUSING THE “NEW” HOUSEHOLD

*Twila L. Perry**

Introduction	1205
I. Families and Households	1207
II. Households and Social Policy	1211
III. Housing Design	1212
IV. Economic and Social Justice Considerations	1213
V. Structuring “Household” Relationships	1216
Conclusion	1219

INTRODUCTION

In the United States, most housing has been constructed with the traditional nuclear family in mind. In the suburbs, the ideal was the single-family dwelling. In urban areas, too, the assumption was that a nuclear family resides in a single-family house or in a single apartment in a multiple dwelling. Today, however, people who are related or who are unrelated reside in many configurations—the majority of people in this country no longer live in the traditional nuclear family,¹ and there are increasing numbers of people who live with others with whom they have no familial relationship.²

* Professor of Law and Judge Alexander T. Waugh Sr. Scholar, Rutgers University School of Law.

1. ANDREW CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND FAMILY IN AMERICA TODAY* (2009). Fundamental changes in the structure of the family have led the United States Supreme Court to note that “[t]he demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household.” *Troxel v. Granville*, 530 U.S. 57, 63 (2000). The family structure of two married parents with their biological children now represents the minority of households in the country. See Jens Manuel Krogstad, *5 Facts About the Modern American Family*, PEW RES. CTR. (Apr. 30, 2014), <http://www.pewresearch.org/fact-tank/2014/04/30/5-facts-about-the-modern-american-family/>.

2. According to the Census, one third of households in the United States are “non-family,” meaning that they contain no relationships connected by birth, marriage, or adoption. JONATHAN VESPA ET AL., U.S. CENSUS BUREAU, *AMERICA’S FAMILIES, AND LIVING ARRANGEMENTS: 2012* (2013).

In “Distinguishing Households from Families,”³ Professor Katharine Silbaugh argues that the law has failed to distinguish between families and households and that housing policies should do more to accommodate the needs of those living in households.⁴ Professor Silbaugh’s Article provides a valuable contribution to literature at the intersection of housing law and policy and family law and policy. I am pleased to have been invited to comment on her Article, and I hope that the Article will stimulate a wider discussion about planning to better accommodate the needs of the increasing number of people who by choice or necessity live in a variety of residential arrangements.

Professor Silbaugh’s discussion of the concept of households brought back some childhood memories for me. Growing up in New York City, in Harlem, during the 1950s and 1960s, I often observed a particular residential arrangement: There were a number of single middle-aged or elderly women who were the primary tenants in large apartments. Looking back, it is likely that the apartments were rent-controlled.⁵ The apartments were often quite large, perhaps with three or even four bedrooms. It was not clear to me whether the women were divorced, never married or widowed. As a child, it never occurred to me to think about their marital status.

Some of these women took in roomers. One room in the apartment may have been occupied by a relative, perhaps a niece or nephew newly arrived from the south, seeking employment with the goal of starting a new life in New York. Another room may have been occupied by a young, single woman from the south, perhaps a schoolteacher staying in the city for the summer to take courses at a university in the city. Also, sometimes residing in such an apartment was what my friends who have grown up in similar neighborhoods have humorously called a “Mr. Charles.” A “Mr. Charles” was a roomer, often a very nice soft-spoken elderly gentleman, around the same age as the elderly lady whose apartment it was. These kinds of men were often retirees from modest, but respectable jobs, who, as I look back on it, must have had some source of income—perhaps social security, and/or a pension. In any event, they seemed quite comfortable and content with their lives as we watched them coming

3. Katharine Silbaugh, *Distinguishing Households from Families*, 43 FORDHAM URB. L.J. 1071 (2016).

4. *Id.* at 1072-73.

5. THE ENCYCLOPEDIA OF NEW YORK CITY 998 (Kenneth T. Jackson ed., 1995); DAVID J. MAURASSE, LISTENING TO HARLEM: GENTRIFICATION, COMMUNITY AND BUSINESS 100-01 (2006).

and going, always well-dressed and carrying themselves with quiet dignity.

As I reflect on these memories from the perspective of adulthood, it was not clear to me whether these women's relationships with "Mr. Charles" were economic, platonic, romantic, or some combination of these. Some may have been intimate cohabitation arrangements between elderly people in an era when many people were not willing to make such relationships public or explicit. In the situations I have described, the various people living in the apartment were not members of the same family, related by blood, marriage or adoption (although one person might have been related to the "landlady"). Instead, they were in the existing arrangement for a variety of reasons, and expectations as to the duration of the arrangement varied.

I. FAMILIES AND HOUSEHOLDS

In her Article, Professor Silbaugh draws a distinction between families and households. Professor Silbaugh argues that a "household" is not the same as what she describes as the old normative family, consisting of married parents and their minor children in a single-family home.⁶ Professor Silbaugh also distinguishes a "household" from the new-normal, non-marital family, which she describes as characterized by a variety of possible formations, including "multigenerational households, the absence of a marriage, family members spread among more than one household, multi-partner attachments over time and multi-partner fertility."⁷ In contrast to both of these family formations, she defines a household as a residential arrangement often characterized by "churn," a circumstance that involves "constant entry and exit, both for economic, social, and cultural reasons . . . due to the life cycle," including changes in intimate attachments.⁸

Professor Silbaugh argues that housing policy and design need to be more responsive to those who live in households so as to minimize disruption to people's important emotional attachments to buildings, neighborhoods, communities, and families.⁹ Professor Silbaugh goes

6. Silbaugh, *supra* note 3, at 1073.

7. *Id.* at 1074.

8. *Id.* at 1073.

9. *Id.* at 1071.

on to provide some suggestions for housing designs that might help to further this goal.¹⁰

While Professor Silbaugh argues that families and households are distinct, it seems to me that most of the households described in her examples still have what most people would consider to be family ties, albeit in a wide variety of configurations. The residential arrangements that I encountered in my childhood are of a different nature. The individuals I have described as residing in the same unit often had no familial ties at all—they were not married or linked by parenthood or other ties by blood or adoption. Usually, they did not know each other until they moved into the same apartment. Different people stayed, or intended to stay, for varying lengths of time—from a few months to an indefinite period.

Still, Professor Silbaugh's concept of a household, and my illustration of a household share some common ground. Most importantly, both are characterized by churn¹¹—people are in the household arrangement for varying periods of time; they do not all have the same goals or the same commitment to the continuation of the housing arrangement. Also, both conceptions of a household raise similar issues that housing design and policy can support by addressing the kind of arrangements in which people are living today, in a world in which the nuclear family is no longer the norm.

The kind of household I remember from my childhood is seen less often in urban areas today. In the 1970s and 1980s, many inner-city neighborhoods fell into decay.¹² The older generations died. City

10. Professor Silbaugh offers several design possibilities that might better accommodate households that fluctuate in size and makeup as various members come and go over time. She suggests, for example, that suburban areas could ease zoning restrictions to encourage more accessory dwelling units within single family homes. This approach would allow a household to be divided into two units—one in the original house and one in the accessory unit. Additionally, encouraging more accessory dwelling units within single family homes would allow for privacy, and enable economic efficiencies and the kind of physical proximity that would support caretaking activities. *See* Silbaugh, *supra* note 3, at 1099. Professor Silbaugh suggests that in urban areas, in multiple dwellings, bedrooms on the outer ends of apartments could be designed or renovated to function as “swing space” that would be part of the main unit when household membership is large, but could become part of a neighboring unit or become a freestanding unit when household membership is low. *See id.* at 1103.

11. *Id.* at 1071, 1090.

12. *See, e.g.*, LANCE FREEMAN, THERE GOES THE ‘HOOD’: VIEWS OF GENTRIFICATION FROM THE GROUND UP 50 (2006) (describing “vacant lots and abandoned buildings left behind by the wave of abandonment and arson that swept poor New York neighborhoods like Harlem and the South Bronx”); DEBORAH WALLACE & RODRICK WALLACE, A PLAGUE ON YOUR HOUSES: HOW NEW YORK WAS BURNED DOWN AND NATIONAL PUBLIC HEALTH CRUMBLER 21-44 (1998)

blocks containing the kinds of apartment buildings that had roomy apartments capable of housing a relatively large number of people were demolished.¹³ In recent years, as neighborhoods like Harlem have undergone gentrification, much of the new housing that has been built or renovated is beyond the economic means of the kinds of people who historically have lived in the neighborhood.¹⁴ As a result of such factors, today, in neighborhoods like Harlem, housing arrangements with “roomers” are not a part of the same neighborhood culture.¹⁵

Still, housing needs persist for people like those I have described. Many people in the city today are neither in parent-child nor marital relationships.¹⁶ In addition to those who are divorced or widowed, there are many people who have never married.¹⁷ Cities are also home to students or young singles who may later marry, but currently live on one income. Another city-dwelling group consists of older people who may not earn enough income to rent an apartment

(discussing “planned shrinkage” and other policies aimed at demolishing housing in poor neighborhoods). Between about 1960 and 1990, Harlem lost half of its housing stock and one third of its population. Timothy Williams, *Mixed Feelings as Change Overtakes 125th Street*, N.Y. TIMES (June 13, 2008), www.nytimes.com/2008/06/13/nyregion/13/journal.html.

13. FREEMAN, *supra* note 12; WALLACE & WALLACE, *supra* note 12.

14. *See, e.g.*, Williams, *supra* note 12 (noting that by 2008, the average price of new condominiums had risen to \$900,000, while the average household income was less than \$25,000).

15. New York Real Property Law, § 235-f permits a tenant to have only one roommate. N.Y. REAL PROP. LAW § 235-f (McKinney 2016). Section § 235-f(a)(3) provides: “Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant’s spouse occupies the premises as his primary residence.” *Id.*

16. In New York City, of 3,148,067 households, 1,017,067 are householders living alone. U.S. CENSUS BUREAU, DP02: SELECTED SOCIAL CHARACTERISTICS IN THE UNITED STATES, 2014 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES (2014), https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/acs/soc_2014acs1yr_nyc.pdf [hereinafter DP02: SELECTED SOCIAL CHARACTERISTICS IN THE UNITED STATES].

17. Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RES. CTR. (Sept. 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/> (“In 2012, one-in-five adults age 25 and older (about 42 million people) had never been married . . . In 1960, only about one-in-ten adults (9%) in that age range had never been married.”). In New York City, out of a population of 8,313,491, of those 15-years-old and older, 1,520,957 men and 1,563,864 women have never married. DP02: SELECTED SOCIAL CHARACTERISTICS IN THE UNITED STATES, *supra* note 16.

alone.¹⁸ Furthermore, cities include people who are unemployed, recipients of social welfare benefits, homeless or threatened with homelessness.¹⁹ There are those who might wish to live with others simply for companionship, and elderly people who might have the combined need both of low housing costs and companionship.²⁰ In recent years, I have heard of more and more single people, especially women, express interest in, as they age, living in groups rather than nursing homes or traditional senior citizen's housing.²¹ Some of these individuals have economic means and may not need "affordable" alternatives—what they seek are settings that they would find comfortable and that would enable them to continue to live in ways they find satisfying. With the increase in attractive employment opportunities for professional women, we now have the phenomenon of bi-coastal marriages and intimate relationships. For people in bi-coastal relationships, a "roomer" arrangement on one of the two coasts might be attractive.

Since we are living in an era in which there seems to be a willingness to view a variety of personal and intimate relationships as legitimate and worthy of respect, this may be an opportune moment to take an in-depth look at the need today for the kind of housing that some people used to reside in as roomers. We should also consider how to resolve the need for alternative housing through policy and design, along with the economic and social justice implications of such a resolution.

There are a number of issues. Does the government have an obligation to plan for these kinds of households? What kind of housing designs would best accommodate this kind of residential arrangement? Are current laws and housing policies sufficient to address the kinds of legal issues likely to arise out of this kind of housing arrangement? What are the relevant economic considerations? Related to the last issue is the equally important moral and social justice issue of what our vision of the city should be

18. See Amy O'Leary, *What is Middle Class in Manhattan?*, N.Y. TIMES (Jan. 18, 2013), <http://www.nytimes.com/2013/01/20/realestate/what-is-middle-class-in-manhattan.html> (noting that in 2013, the average apartment rent in Manhattan was \$3,973 per month; the average sale price for a home was \$1.46 million).

19. Tatiana Schlossberg, *Homelessness Rose in New York*, N.Y. TIMES (Oct. 30, 2014), <https://www.nytimes.com/2014/10/31/nyregion/homelessness-rose-in-new-york.html>.

20. Sally Abrahms, *House Sharing for Boomer Women Who Would Rather Not Live Alone*, AARP, <http://www.aarp.org/home-family/your-home/info-05-2013/older-women-roommates-house-sharing.html>.

21. *Id.*

in an era of increasing ethnic, racial, and religious diversity and at the same time, growing economic inequality.

II. HOUSEHOLDS AND SOCIAL POLICY

I believe that the government has an obligation to respond to the needs and desires of people who may be seeking, on either a temporary or permanent basis, a household in which they share, in various degrees, space, household expenses, and aspects of their social lives with others. Although an in-depth discussion of this issue is beyond the scope of this short essay, a few points can be made briefly. First, while there are those who argue that social and legal policy should seek to channel people into the traditional structure of marriage,²² the trend has been toward increasing respect for a variety of personal and/or intimate life choices, without penalty. Same-sex marriage²³ and cohabitation²⁴ are now seen as legitimate personal relationship choices. The choices or the need for people to live with others platonically, rather than through familial, sexual or even romantic relationships at all, should also be accommodated²⁵ and supported through housing design.

Second, the very same needs that scholars have identified as important for suburban families—the need to be near the workplace, to have sidewalks that offer both freedom and safety, the opportunity to experience companionship rather than isolation²⁶—are equally important to city dwellers. Access to these kinds of benefits is the motivation for many people to move into cities. These benefits are important to many people, even if the timeframe for living in a particular place is of shorter duration than what many people generally think of when they think about family relationships.

Is there a societal interest in planning for those who might wish to live in these kinds of residential arrangements? The answer, here, too, would seem to clearly be “yes.” First, it can be economically

22. See, e.g., Carl Schneider, *The Channeling Function in Family Law*, 20 HOFSTRA L. REV. 495 (1992).

23. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

24. See, e.g., *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976).

25. Laura Rosenbury, *Friends with Benefits*, 106 MICH. L. REV. 189 (2007) (exploring whether the law should recognize caregiving performed by friends rather than family members).

26. See, e.g., CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW THE LAW UNDERMINES FAMILY RELATIONSHIPS* 98-99, 158-59 (2014); Katharine B. Silbaugh, *Women's Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 FORDHAM L. REV. 1797, 1818-35 (2007) (discussing the effect of urban planning and housing design on family life).

beneficial for individuals to live together, sharing the costs of items such as electricity or rent. With these cost savings, individuals can then spend more of their money on other things that have the potential to enhance their physical and emotional well-being. In addition, for some people, these kinds of households may replace some of the functions of families,²⁷ even if only temporarily. Thus, residing with others offers the potential for not only companionship, but also for relationships with other people who might be able to offer financial help in the event of an emergency or even perhaps some hands-on physical assistance in the event of sickness or an accident. Society has an interest in the physical and emotional well-being of its citizens that could be enhanced by supporting arrangements in which unrelated people live together.

III. HOUSING DESIGN

What kind of housing units might be designed to accommodate the kind of households I have described? As I have already noted, the kind of arrangements in which people live as roomers seems to be less prevalent in our cities today. In this brief essay, I will not propose a specific housing design that could accommodate the kinds of households I recall from my childhood. However, I do suggest that there may be something for us to learn about housing design from various kinds of past and/or present housing arrangements that have been based on culturally different patterns and structures.

There are opportunities to learn about possible housing designs by studying housing arrangements such as communes,²⁸ co-housing communities,²⁹ housing arrangements in polygamous marriages,³⁰ and even college dormitory life in which individuals may have separate rooms or roommates, but common areas and activities—something akin to dorms for adults. We might also explore the idea of

27. See, e.g., Rosenbury, *supra* note 25; Ethan J. Lieb, *Friendship and the Law*, 54 UCLAL. REV. 631 (2007).

28. See, e.g., WILLIAM M. KEPHART, *THE FAMILY, SOCIETY AND THE INDIVIDUAL* 121-41 (1977) (discussing the Oneida commune in upstate New York during the mid to late 1800s); SPENCER KLAU, *WITHOUT SIN* (1993) (recounting personal experiences of Oneida commune residents).

29. See, e.g., Laura Padilla, *Single-Parent Latinas on the Margin: Seeking a Room With a View, Meals and Built-in Community*, 13 WIS. WOMEN'S L.J. 179 (1998) (discussing co-housing communities).

30. See, e.g., Florence Williams, *A House With 10 Wives: Polygamy in Suburbia*, N.Y. TIMES (Dec. 11, 1997), <http://www.nytimes.com/1997/12/11/garden/a-house-10-wives-polygamy-in-suburbia.html> (discussing variety of possible housing arrangements for polygamous families including one large house, smaller separate houses and houses with separate entrances and exits).

reinventing, redesigning, and reinvigorating the concept of the “rooming house.” For most people, the term “rooming house” probably has negative connotations, especially in cities such as New York, where the term “SRO,” the abbreviation for “single-room occupancy,” became almost synonymous with urban decay and degeneracy.³¹ But the idea of people living in a structure consisting of a nice large room with a shared bath or kitchen with one or two other people is not necessarily an unattractive one. It is very conceivable that this housing arrangement could be done with dignity for those in the working and the middle class. Posit, for example, a design with private entrances into private spaces from the street or hallway, but another door, either inside or outside, that provides entrance into a shared space.

As Professor Silbaugh notes, New York City, where in recent years there has been a pattern of young professionals cramming into apartments with two or three roommates, is experimenting with the idea of micro-apartments.³² The units, often ranging from 260 to 360 square feet, are very small, but may adequately meet the temporary needs of some city residents—most likely, young, single professionals. However, the rents currently projected for these kinds of units are high.³³ Such high rents render this option out of reach for a wide range of individuals, whether young people, old people, or people amid a life transition, who might be interested in such a housing option.

IV. ECONOMIC AND SOCIAL JUSTICE CONSIDERATIONS

The costs of constructing or renovating housing in urban areas pose a major barrier to meeting the needs of the households both Professor Silbaugh and I have described. It is difficult to envision cities seeking housing design solutions for new household formations at the present time. Because New York City has essentially stepped away from

31. See, e.g., Alan Biller, Manhattan Borough President’s Office, Single Room Occupancy Dwellings in CD7 Presentation, www.nyc.gov/html/mancb7/downloads/pdf/sro_presentation.pdf (noting the perceptions that SROs concentrate poverty and social problems).

32. See, e.g., Ronda Kaysen, *Leasing Begins for New York’s First Micro-Apartments*, N.Y. TIMES (Nov. 20, 2015), <https://www.nytimes.com/2015/11/22/realestate/leasing-begins-for-new-yorks-first-micro-apartments.html>. There will be fifty-five studio apartments ranging from 260 to 360 square feet. The building is scheduled to open in 2016.

33. The lowest priced unit listed is a 265 square foot furnished studio at \$2,450 per month. There will be some “affordable units that will rent for \$950 per month to individuals who meet certain income restrictions.” *Id.*

building public housing,³⁴ there is a dearth of new housing with large units affordable to the middle class.³⁵ Instead, large apartments with multiple bedrooms are being built, or apartments are being combined into larger units, it seems, primarily for the luxury market.³⁶ Indeed, New York City is currently in the middle of a new crisis of homelessness largely due to housing costs rising beyond the means of many city residents.³⁷ Other cities are facing, or will likely soon be facing, the same problem.³⁸

A major factor contributing to this state of affairs is the phenomenon of gentrification, which is driving more and more of the middle class and the poor from the cities. A major factor behind gentrification is what scholars refer to as “demographic inversion.”³⁹ In demographic inversion, the idea that the suburbs are the most desirable residential location has been replaced by a desire of many upper-middle-class and wealthy people to move back into the center

34. See, e.g., FREEMAN, *supra* note 12, at 51 (“[P]ublic housing and other federally sponsored development programs virtually ceased building housing in the 1990’s.”); THE ENCYCLOPEDIA OF NEW YORK CITY, *supra* note 5, at 914-15 (describing how the federal government started the Section 8 Housing Assistance Program providing for vouchers to encourage the leasing of privately owned apartments rather than pursuing the construction of more public housing).

35. See, e.g., Constance Rosenblum, *Middle-Class Lament: Rent: Middle Class Finds Few Affordable Manhattan Apartment*, N.Y. TIMES (May 30, 2014), <https://www.nytimes.com/2014/06/01/realestate/middle-class-finds-few-affordable-manhattan-apartments.html>; Stephen Jacob Smith, *Alms for the Upper Middle Class: Subsidized Apartments Aim at \$200K Earners*, OBSERVER (June 18, 2013, 7:39pm), <http://observer.com/2013/06/alms-for-the-upper-middle-class-subsidized-apartments-aim-at-200k-earners/> (describing, for example, two-bedroom apartments in a new “affordable” housing development that rent for \$3421.00 per month and noting that “[i]n the world of New York City affordable housing, this is what passes for middle income”).

36. See, e.g., Hannah Seligson, *Three Seat Strollers: The Growing Three-Child Household in Manhattan*, N.Y. TIMES (Apr. 9, 2014), <https://www.nytimes.com/2014/04/10/fashion/The-Growing-Three-Child-Household-in-Manhattan.html> (describing the growing number of dual-income families in in new condominiums with multiple bedrooms); Vivian S. Toy, *Large Apartments Are the Rage in New York City*, N.Y. TIMES (June 25, 2010), <http://www.nytimes.com/2010/06/27/realestate/27cov.html> (describing the demand by affluent city residents for apartments with multiple bedrooms in both new constructions and older buildings.).

37. Schlossberg, *supra* note 19.

38. See, e.g., Nikita Stewart, *Obama Will Seek \$11 Billion for Homeless Families*, N.Y. TIMES (Feb. 8, 2016), <https://www.nytimes.com/2016/02/09/nyregion/obama-to-propose-11-billion-to-combat-family-homelessness.html> (describing President Obama’s intention to seek money to address the problem of homeless families with young children).

39. See generally ALAN EBERHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* (2012).

cities.⁴⁰ Wealthy and upper-middle-class people now want to be close to restaurants and entertainment venues, and they want to be able to walk around and use public transportation.⁴¹ These economically well-off people do not want the long commute to the suburbs at the end of the workday.⁴² Many want their children to be able to grow up in the kind of rich cultural and intellectual environment found in many cities.⁴³ The result has been an acceleration of gentrification, which threatens to continually decrease the housing opportunities for middle class people and poor people, as well as those who might want or need to live, temporarily or permanently, with a group of other individuals. The combination of gentrification, rising housing costs and increasing economic inequality⁴⁴ poses major challenges for designing households in urban areas.

Gentrification is affecting the ability of cities to plan for the housing of people who do not live in traditional families. This challenge not only poses an economic issue, but also a moral question because gentrification poses a danger of re-segregating our nation's cities. If gentrification continues unabated, there is a danger of our central cities becoming white wealthy enclaves while African-Americans and other poor people of color are relegated to increasingly poor suburbs from which they will be forced to endure lengthy daily commutes to work in the center of cities where they cannot afford to live.⁴⁵ Attention to social justice implications should

40. *Id.*

41. *See, e.g.*, Eric Jaffe, *Is Gentrification the Result of Rich People's Quest for Shorter Commutes?*, THE ATLANTIC (Nov. 19, 2015), <https://www.theatlantic.com/business/archive/2015/11/shorter-commutes-gentrification/416646/>.

42. *Id.*

43. *See* Toy, *supra* note 36 (noting affluent families' desire for their children to experience the cultural richness of city life).

44. *See, e.g.*, COLIN GORDON, *GROWING APART: A POLITICAL HISTORY OF AMERICAN INEQUALITY* (Institute for Policy Studies 2013); THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2013); Annie Lowrey, *Income Inequality May Take a Toll on Growth*, N.Y. TIMES (Oct. 16, 2012), <http://www.nytimes.com/2012/10/17/business/economy/income-inequality-may-take-toll-on-growth.html>.

45. For a description, see RICHARD PLUNZ, *A HISTORY OF HOUSING IN NEW YORK CITY* 325 (1990) ("Given the eclipse of social housing programs, one scenario would displace the city's poor minorities to pockets of obsolesced suburban and inner-suburban housing, while segments of the middle and upper middle class continue to inhabit the most desirable urban neighborhoods. As much as anything else, it will be city policy which decides such transformations."). It would be indeed a sad day if American cities one day come to resemble the Bantustans in South African during the period of apartheid, a situation in which whites lived in luxury inside the cities, while Blacks and other people of color were forced to live outside of the cities and endure long and difficult commutes to jobs in areas where they were not permitted to live. For discussion of the Bantustans and other methods of residential

be central to the development of all housing policies. This means valuing not only a wide variety of family and relationship configurations, but also economic, social, ethnic, and racial integration.

There remains the daunting question of how to pay for all of this. Despite the rapidly growing attention to the issue of increasing wealth inequality in recent years, virtually any proposal to increase taxes immediately becomes the subject of intense controversy. Recently, the mayor of New York City proposed to impose a tax on wealthy non-resident property owners, who under the present law do not pay city income tax.⁴⁶ These individuals purchase multimillion-dollar luxury apartments in the city. They may earn huge amounts of money in the city, but they do not have to pay city income taxes because they do not live there.⁴⁷ Their primary residences are elsewhere and their city apartments often function as pied-a-terres. They pay relatively low property taxes compared to the value of their residences,⁴⁸ and yet, they benefit from city services and grow wealthier as a result of the continued increase in the city's property values.⁴⁹ While the only way to obtain tax revenue is through collection from individuals, there has been strong resistance to imposing higher income taxes on wealthy New Yorkers.⁵⁰ Currently, the prospects of cities devoting substantial funds to developing housing for those who live outside of a traditional family structure seem dim.

V. STRUCTURING "HOUSEHOLD" RELATIONSHIPS

Finally, we can briefly ask whether the kind of households I have described would require the development of new legal doctrines or principles. It is likely that in the households I remembered from my childhood, in which people in large apartments took in roomers, there

segregation under apartheid see Bentley J. Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obfuscation*, 9 CONN. J. INT'L L. 295 (1993-1994); Henry J. Richardson III, *Self-Determination, International Law and the South African Bantustan Policy*, 17 COLUM. J. TRANSNAT'L L. 185, 185-89 (1978).

46. See James B. Stewart, *Plan to Tax the Rich Could Aim Higher*, N.Y. TIMES (Oct. 25, 2013), <http://www.nytimes.com/2013/10/26/business/taxing-new-yorkers-but-not-the-ultrarich.html> (discussing the fact that non-residents who spend at least 183 days outside of New York City and State pay no New York City income tax).

47. *Id.*

48. *Id.*

49. *Id.*

50. Henry Goldman & Max Abelson, *Wealthy New Yorkers Call De Blasio's Tax Plan Offensive*, BLOOMBERG NEWS (Sept. 4, 2013), <https://www.bloomberg.com/news/articles/2013-09-04/wealthy-new-yorkers-call-de-blasio-s-tax-plan-offensive> (describing resistance to proposal to raise income taxes on wealthiest city residents).

were few structured legal relationships. People probably had oral, informal agreements, which, for the most part, they likely honored.⁵¹ However, should these kinds of households become more prevalent, there may be a need for the development of more defined legal structures.

I do not think that it is necessary for those who live in these arrangements to argue that they should be considered families. As Professor Silbaugh notes, when courts allow more flexible definitions of family, the definition is limited to a specific context and specific facts.⁵² Any movement to have these arrangements treated as families must be very clear as to the purpose for the designation. The same would be true for those people seeking to have these arrangements legally designated as households. Currently, administrative regulations define households differently for different purposes,⁵³ and here, too, there would need to be clarity as to the need and purpose of any further definition.

Still, there may be a need for some legal protections for those who live in these households. Some states already have statutes that address the legal rights of roommates as more people live outside of the traditional family.⁵⁴ Many of these statutes focus on protecting tenants and their roommates from landlords when the tenant of record seeks to share his or her residence with others.⁵⁵ A more

51. *See, e.g.*, ROBERT ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1994).

52. Cases and administrative regulations have defined “family” differently in different contexts. *See, e.g.*, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (upholding zoning ordinance prohibiting more than two unrelated persons from residing together in a one-family dwelling); *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (Me. 1981) (upholding denial of occupancy permit to for use of house in one-family house zoned area as a group home for six mentally retarded individuals); *Borough of Glassboro v. Vallorosi*, 568 A.2d 888 (N.J. 1990) (permitting ten unrelated college students to be considered a family for purpose of zoning ordinance); *see also Supplemental Nutrition Assistance Program (SNAP) Eligibility*, USDA FOOD & NUTRITION SERVICES, <http://www.fns.usda.gov/snap/eligibility>.

53. For the purpose of filing taxes, the IRS defines the “head of household” for income taxes as a person providing assistance to another relative. *Filing Status*, IRS, <https://www.irs.gov/publications/p17/ch02.html>.

54. *See, e.g.*, N.Y. REAL PROP. LAW, § 235-F (McKinney 2016). This law, known as New York’s Unlawful Restrictions on Occupancy Law, allows a tenant to have one roomer. *See id.*

55. *Id.*; *see also Your Right to Have A Roommate: The Roommate Law in New York*, METRO. COUNCIL ON HOUS., http://metcouncilonhousing.org/help_and_answers/your_right_to_have_a_roommate (information sheet of tenant advocacy group to inform tenants of their right to share their apartment with another). The law differs in various states and jurisdictions. *See, e.g.*, George B. Laurent, *Law*

complicated legal situation can arise in the case of roommates or roomers in cooperatives or condominiums. In those contexts, the rights of cooperative shareholders or condominium owners can depend on a complex relationship between case law and statutory law along with the institution's own governing documents.⁵⁶ It seems that at this point in time, the line of demarcation between roommates and roomers is unclear, and in the future, there may be a need to define "roomer" and other kinds of residence sharing relationships more clearly, either by statute or private contract.

Existing doctrines of contract law and real estate law would probably be adequate to address situations in which small groups of people who intend to reside together for many years pool their resources to purchase a home as co-owners. In such cases, contracts are obviously necessary to arrange for exit strategies in the event of disagreements, death or the inability of some group members to meet their share of the costs. Current law is likely sufficient to address these situations.

However, the kinds of households I am focusing on are unlikely to involve joint purchases of property. They are more likely to be temporary, somewhat tentative arrangements, even if they ultimately turn out to be long-term. For cases that may be expected to be long term, there may be a need for the development of both statutory protections as well as private law frameworks to govern relationships. In the case of private agreements, there is always the factor of transaction costs, which can impose a significant burden on people of limited economic means. A quick look at internet sites makes it clear that roommate agreements have become popular.⁵⁷ Some of these sites provide model agreements, while others offer what is intended to be legal advice. If a significant amount of housing is developed that is more similar to the older arrangement of "roomers" as I recall it from my childhood, we may see model agreements and offers of legal advice on internet sites for that context as well.

Distinguishes Between Tenants, Roommates and Guests, BALTIMORE SUN (Apr. 3, 1994), http://articles.baltimoresun.com/1994-04-03/business/1994093189_1_roomer-legal-tenant-tenant-refuses.

56. See, e.g., *From our Legal Talk Podcasts: Two Attorneys Explain the Roommate Law*, HABITAT (June 11, 2013), <https://www.habitatmag.com/Publication-Content/Board-Operations/2013/2013-June/New-York-s-Roommate-Law>.

57. See, e.g., *Roommate Agreement*, LAWDEPOT, <https://www.lawdepot.com/contracts/roommate-agreement/>.

CONCLUSION

The family is changing. In the future, there may be more people living in household arrangements that are outside of even the newer, non-traditional, non-marital family structures. In some instances, these arrangements will involve members of an extended family, but more and more unrelated individuals will be seeking ways to reside together for extended periods of time or short-term periods in which they want to be comfortable.

It will be a significant challenge to reimagine housing and communities in ways that will accommodate the many living arrangements that will evolve in the future. A special part of this challenge will be to accommodate these arrangements in a society that is racially, ethnically, and economically diverse and where the cost of housing is continuing to rise. It may not be easy to plan for the various kinds of households I have described in this essay, but the task is an important one that we need to begin.