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# Distinguishing Households from Families

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FLOURISHING FAMILIES IN CONTEXT: A NEW LENS FOR  
URBAN LAW

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## Distinguishing Households from Families

Katharine Silbaugh\*

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# DISTINGUISHING HOUSEHOLDS FROM FAMILIES

*Katharine Silbaugh\**

## ABSTRACT

*The study of the relationship between all families, whether marital or non-marital, and households, is underdeveloped, despite extensive study of the mismatch between family law, which is still focused on marriage and parenthood, and family practices. Often, in an effort to update the discourse, discussions of non-marital families seem to deploy households or living arrangements as a substitute classification in the place of the old marital family. This Article argues that we need to resist the tendency to substitute the idea of “household” when the boundaries of legal family fail us, because households are not necessarily familial, and because core familial ties exist across multiple households. Household membership is characterized by churn, both because of changes in intimate attachments and because of life cycle changes. This Article argues that housing design and housing policy should accommodate that churn in a way that minimizes disruption to individuals’ attachment to building, neighborhood, community, and family members living in separate households. It should offer options for stability that are economically realistic for people whose households will change. No single policy intervention can resolve the disruptions associated with fluctuating household membership. Rather, properly understanding the needs of families as distinct from households provides a lens for evaluating particular attributes of housing policy. Two housing principles in particular would better serve the needs of today’s households. First, housing policy should prioritize the family ties of non-householders to a household. As family members exit a housing unit, housing policy should seek to stabilize their ties with the household, particularly valuing proximity. Second, the design of the unit itself should reflect*

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*the inevitable expansion and contraction in household membership. This means that the unit would allow for proximity with privacy for linked households. This Article seeks to marry insights from the emerging literature on multi-generational household design, accessory dwelling units, and micro-units, with insights from the literature on the new normative family, in the hopes of producing an improved housing policy lens.*

#### TABLE OF CONTENTS

Introduction .....	1072
I. “Normative” Families Are Not the Norm .....	1074
A. The Old Normative Family .....	1075
B. The New Normative Family.....	1076
II. Family Law Is Mismatched to Current Familial Arrangements.....	1080
III. Households and Families Are Distinct .....	1083
A. How Do Adults Live? .....	1084
B. Multigenerational Households .....	1085
C. Fluctuating Household Membership .....	1087
D. Can the Negative Consequences of Fluctuations Be Reduced? .....	1089
IV. Implications for Housing.....	1090
A. Preserving Proximity .....	1091
1. Public and Section 8 Housing .....	1091
2. Zoning.....	1093
3. Accessory Apartment Zoning.....	1095
4. Micro-Unit Developments .....	1097
5. Combining the Wisdom of Accessory Dwelling Units with the Urban Needs Addressed by Micro-Units.....	1099
B. Flexible Housing Design .....	1100
Conclusion.....	1105

#### INTRODUCTION

What is the relationship between families and households? How should housing design and policy meet the needs of both households and families? This Article explores the points of divergence between legal family definition and household composition. It argues that the divergence between family law, on the one hand, and household composition, on the other, has become substantial. It goes on to argue that housing design and policy lag behind contemporary

household composition, treating the divergence between family and household as incidental rather than central to housing. After reviewing the now-familiar argument that family law's narrow focus on marriage and parenthood misses much of family organization today, this Article considers the relationship between household composition and family, defined either as the narrow, marital, normative family or the more common, new-normal non-marital family. The Article concludes that household membership does not clearly align with *either* meaning of family.

Instead, household members come and go over the lifecycle of intimate relationships—children's lives and parents' aging, social preferences of what we call "single" people, and re-configurations associated with the new norm of multi-partner fertility. This unsteady alignment of household composition and family, whether broadly or narrowly conceived, should raise challenges for housing policy and design. This Article concludes with a series of suggestions for creating a more useful housing policy and design that warrant further study. The exploration of housing policy serves as only one example of the benefits of distinguishing between family and household in legal and policy analysis.

Parts I, II, and III gather three matters covered in the literature on family law and family and household demographics, putting them in conversation with one another. Part I examines the ways that families no longer conform demographically to the old normative family, meaning the family of children living with both of their parents and those parents married to one another, but are composed instead of an array of ties of varying permanency. Part II reviews how family law is unduly pre-occupied with two pillars, marriage and parenthood, and has not yet adequately developed to reflect the way families actually operate—to the "new normal" family. Part III discusses how actual household membership reflects *neither* the normative family nor the new-normal non-marital family. Household membership instead is characterized by constant entry and exit, both for economic, social, and cultural reasons, and due to the life cycle. As important, household also excludes core family members, particularly fathers. Households are neither traditionally familial nor new-normal familial, though they are influenced by each.

Part IV suggests some policy challenges posed by the issues raised in the first three parts as they relate to housing and urban planning in particular. It describes recent trends in accessory dwelling units and micro-unit developments, two movements that respond in some ways to changes in the family. It argues that the movement to permit accessory units employs a promising conception of linked familial

households that might contain either young adults living with their parents or aging individuals living with their adult children. However, the accessory unit movement is largely focused on fixing the oversized single-family home, predominantly located in suburban communities and tending to exclude lower-income families. By contrast, micro-unit developments are arising in cities with high housing costs to address the smaller space needs of households with fewer members. However, micro-unit developments assume that the household, containing a single person, does not have familial ties outside of the household that should influence housing design. Rather, they have arisen in buildings devoted entirely to micro-units, and they separate single householders from proximity to linked familial households.

This Article concludes that the next step for housing policy should be connecting the micro-unit concept with an awareness of linked familial households, so that design takes into account the need for proximity of smaller housing units to larger housing units.

#### I. “NORMATIVE” FAMILIES ARE NOT THE NORM

We are not a marriage population predominantly in practice, and children are not predominantly raised for 18 years by their two parents in a common household.<sup>1</sup> There is no longer anything novel in this observation. What was so often called the *normative family* can now be called *the old normative family*,<sup>2</sup> with a rapidly deepening understanding among researchers, policy-makers, and the public of the *new normative family*. Slightly harder to characterize than the old normative family, its attributes often include multigenerational households, the absence of a marriage, family members spread among more than one household, multi-partner attachments over time and multi-partner fertility, meaning adults with more than one co-parent.

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1. Gretchen Livingston, *Fewer Than Half of U.S. Kids Today Live in a 'Traditional' Family*, PEW RES. CTR. (Dec. 22, 2014), <http://www.pewresearch.org/fact-tank/2014/12/22/less-than-half-of-u-s-kids-today-live-in-a-traditional-family/> (detailing the decrease in the number of children living in a home with two married heterosexual parents who are in their first marriage); D'vera Cohn, Jeffrey S. Passel, Wendy Wang, & Gretchen Livingston, *Barely Half of U.S. Adults Are Married—A Record Low*, PEW RES. CTR. (Dec. 14, 2011), <http://www.pewsocialtrends.org/2011/12/14/barely-half-of-u-s-adults-are-married-a-record-low/>.

2. Even the old normative family is not “old”, but a historical post-WWII snapshot, with multigenerational households being the norm prior to that era.

### A. The Old Normative Family

In 1960, among the U.S. population of all adults over the age of 18, seventy-two percent were married.<sup>3</sup> The average age of marriage was 20.3 for women and 22.8 for men.<sup>4</sup> Approximately ninety percent of births were to married parents.<sup>5</sup> Only eleven percent of children in 1960 lived in a household without their father.<sup>6</sup> At one time, prior to WWII, multigenerational households (containing adult children or aging parents of adult householders) were common; in 1900, for example, fifty-seven percent of individuals over the age of 65 lived in a multigenerational home, making the arrangement the normal aging pattern.<sup>7</sup> But with post-war assistance from focused housing policy aimed at creating suburban communities of single-family homes,<sup>8</sup> a trend toward single, nuclear family households occupied by only two parents and their minor children emerged, and that trend dominated both demographically and ideologically.<sup>9</sup> By 1980, only eleven percent of households were multigenerational.<sup>10</sup> This *old normative family*, which is the post-WWII family, was likely to live with married parents and their minor children in a single-family home. Over the course of the past thirty to forty years, there has been a decline in the

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3. *Interactive: The Changing American Family*, PEW RES. CTR. (Nov. 18, 2010), <http://www.pewsocialtrends.org/2010/11/18/five-decades-of-marriage-trends/> (detailing the decreasing percentage of married individuals in recent decades).

4. *Id.* (showing the median marriage ages of individuals in recent decades).

5. *Fragile Families and Child Wellbeing Study Fact Sheet*, PRINCETON UNIV. & COLUM. UNIV., 1 (2006), <http://www.fragilefamilies.princeton.edu/documents/FragileFamiliesandChildWellbeingStudyFactSheet.pdf> (studying the marriage and childbearing trends of 5,000 individuals in large U.S. cities).

6. Gretchen Livingston & Kim Parker, *A Tale of Two Fathers*, PEW RES. CTR., 1 (June 15, 2011), <http://www.pewsocialtrends.org/2011/06/15/a-tale-of-two-fathers/> (examining the trends and challenges of fathers living apart from children).

7. Richard Fry & Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-generational Living*, PEW RES. CTR., 8 (July 17, 2014), <http://www.pewsocialtrends.org/files/2014/07/ST-2014-07-17-multigen-households-report.pdf> (discussing the rise in multigenerational households in recent years partially fueled by unfavorable job prospects among young adults).

8. Katharine B. Silbaugh, *Women's Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 *FORDHAM L. REV.* 1797, 1833 (2007). The establishment of social security also changed the economic dynamic and culture around aging, from one of dependence to one of relative independence from adult children normatively.

9. *The Return of the Multi-Generational Family Household*, PEW RES. CTR. (Mar. 18, 2010), <http://www.pewsocialtrends.org/2010/03/18/the-return-of-the-multi-generational-family-household/> (discussing factors contributing to the increase in multigenerational households, including an increase in unmarried young adults and immigrants); see also DOLORES HAYDEN, *REDESIGNING THE AMERICAN DREAM: GENDER, HOUSING, AND FAMILY LIFE* (2d ed. 2002).

10. Fry & Passel, *supra* note 7, at 4 (contrasting the trends in elderly adults and young adults living in multigenerational homes).

prevalence of each one of the old normative family's attributes to the point where they now represent a small minority of households.<sup>11</sup>

### B. The New Normative Family

New normative families differ greatly from the old normative image. To begin to capture what the new normative family looks like, we need to look at family life from several perspectives. If we ask who children live with, we get one version of the new normative family. But that version pre-supposes children. If we ask instead who people live with, we get a different picture, but the question inaccurately presumes that family or intimates and households are coterminous.<sup>12</sup>

Moreover, there is a difference between a snapshot perspective and a life cycle perspective on the new normative family. We will get a different answer if we ask what the relationship is between a child's parents at the time of birth, at a snapshot moment during childhood, or over the course of the child's upbringing; the odds that a child's living arrangement will diverge from the *old normative family* at some time during her childhood is much higher than at any given moment during her childhood. In addition, we only capture one portion of familial and non-familial households by focusing on how children live. Many households, including familial households, do not include minor children. In considering the mismatch between family and family law, this Part focuses on parents and their children and the relationships among adults and co-parents. Even this look at the mismatch between family law and the non-marital family is distinct from the mismatch between family (whether marital or non-marital, old normative or new normative), and household, which is the subject of Part III.

First, consider the family lives of adults. Only one half of adults in the United States today live with a spouse, down from seventy percent in 1967.<sup>13</sup> The average age of marriage has risen to 29 for

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11. Gretchen Livingston, *It's No Longer a 'Leave It to Beaver' World for American Families—But It Wasn't Back Then, Either*, PEW RES. CTR. (Dec. 30, 2015) <http://www.pewresearch.org/fact-tank/2015/12/30/its-no-longer-a-leave-it-to-beaver-world-for-american-families-but-it-wasnt-back-then-either/> (“In 2014, just 14% of children younger than 18 lived with a stay-at-home mother and a working father who were in their first marriage.”)

12. See *infra* Part III.

13. *Figure AD-3a. Living Arrangements of Adults 18 and Over*, U. S. CENSUS BUREAU (2014), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/ad-3a.pdf> (illustrating the decrease in adults living with spouses from 1967 to 2014). Researchers are quick to admit that



men and 27 for women.<sup>14</sup> Twenty percent of adults (25 and older) in the United States have never been married, up from ten percent in 1960.<sup>15</sup> A quarter of 25–34 year olds who have not married live with a partner; three-quarters do not.<sup>16</sup> The Pew Research Center has projected that one quarter of today's young adults will never have married by their mid-40s to mid-50s.<sup>17</sup>

Next, consider a snapshot perspective on the lives of children: fewer than half of U.S. children under 18 live in a home with two heterosexual parents who are in their first marriage.<sup>18</sup> Today approximately forty percent of births are non-marital,<sup>19</sup> and twenty percent of children will experience parental divorce or marital separation during their childhoods.<sup>20</sup> Forty-two percent of American

their ability to accurately characterize households containing same-sex couples is still weak. D'Vera Cohn, *How Many Same-Sex Married Couples in the U.S.? Maybe 170,000*, PEW RES. CTR. (June 24, 2015), <http://www.pewresearch.org/fact-tank/2015/06/24/how-many-same-sex-married-couples-in-the-u-s-maybe-170000/> (examining reasons for the Census Bureau's high rate of error in estimating the number of same-sex married couples).

14. *Figure MS-2. Median Age at First Marriage: 1890 to Present*, U. S. CENSUS BUREAU (2016), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/ms-2.pdf> (detailing the decrease in median marriage age in the U.S. from 1890 to 1960 and subsequent increase from 1960 to 2016).

15. Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RES. CTR., 1 (Sept. 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/> (studying the reasons American men and women are not marrying).

16. *Id.* (discussing reasons why the number of adults who have never married is rising, including an increase in the average marriage age and the acceptability of raising children outside of marriage).

17. Wendy Wang & Kim Parker, *One-in-Four of Today's Young Adults May Never Marry*, PEW RES. CTR. (Sept. 23, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/st-2014-09-24-never-married-08/> (providing historical and projected rates of marriage among adults of different ages).

18. Livingston, *supra* note 1 (detailing the decrease in the number of children living in a home with two married heterosexual parents who are in their first marriage).

19. *Unmarried Childbearing*, CDC 6 (2015), <http://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm> (citing Joyce A. Martin et al., *Births: Final Data for 2013*, 64 NAT'L VITAL STAT. REPS., 1 (Jan. 15, 2015), [http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64\\_01.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_01.pdf)) (detailing the birth rates of unmarried women in the United States).

20. Vanessa Sacks, David Murphey, & Kristin Moore, *Adverse Childhood Experiences: National and State-Level Prevalence*, CHILD TRENDS RES. BRIEF, 10 (July 2014), [http://www.childtrends.org/wp-content/uploads/2014/07/Brief-adverse-childhood-experiences\\_FINAL.pdf](http://www.childtrends.org/wp-content/uploads/2014/07/Brief-adverse-childhood-experiences_FINAL.pdf) (compiling nationally representative data regarding the prevalence of household events impacting children).

adults have at least one “step” relative (inclusive of half-siblings).<sup>21</sup> About one in five women in her forties has children with more than one partner (multi-partner fertility), and one in seven men does.<sup>22</sup> Over a quarter of children under the age of eighteen live apart from their fathers at a snapshot in time, so that the number of children who live apart from their father at some point during their childhood is significantly higher.<sup>23</sup> For fathers who have not completed high school, forty percent live apart from their children.<sup>24</sup> Almost half of men ages 15–44 have one child born to a mother outside of marriage.<sup>25</sup> At the same time, more than two-thirds report that they have had at least one child within a marriage.<sup>26</sup>

Despite the high rate of births to unmarried parents, eighty percent of unmarried parents are still in a romantic relationship with one another at the time of the child’s birth, with half living together.<sup>27</sup> However, within five years of the birth, two-thirds of these non-marital relationships had ended.<sup>28</sup> Almost forty percent of unmarried mothers form new intimate relationships with a different man, and many have children with them.<sup>29</sup> By the time the child is five years old, only half of the non-residential fathers in the non-marital birth cohort have seen their child in the last month.<sup>30</sup> Residing with a child is a stronger indicator of paternal involvement in day-to-day childrearing than poverty, race, employment status, or any other

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21. *A Portrait of Stepfamilies*, PEW RES. CTR., 1 (Jan. 13, 2011), <http://www.pewsocialtrends.org/2011/01/13/a-portrait-of-stepfamilies/> (step-relatives include a step-parent, step or half-sibling, or step-child) (explaining the increased prevalence of step-families and social dynamics between step-family members).

22. Karen Benjamin Guzzo, *New Partners, More Kids: Multiple-Partner Fertility in the United States*, PMC, 1 (Oct. 2, 2014), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4182921/> (discussing the growing frequency of parents having children with more than one partner).

23. Livingston & Parker, *supra* note 6, at 1 (explaining that, in 2010, twenty-seven percent of children in the United States lived apart from their fathers).

24. *Id.* (detailing the relationship between fathers’ living arrangements and educational attainment).

25. *Id.* (discussing factors contributing to the number of fathers having children outside of marriage, including an increase in multi-partner fertility and a decrease in marriage rates).

26. *Id.* (discussing the factors resulting in children within a marriage).

27. *Fragile Families and Child Wellbeing Study Fact Sheet*, *supra* note 5 (explaining that, while often unmarried, many parents maintain a romantic relationship or cohabitate).

28. *Id.* (discussing non-marital parental relationships).

29. *Id.* at 1-2 (discussing relationship changes post-split).

30. *Id.* at 2 (discussing non-resident fathers’ involvement with their children over time).

social indicator.<sup>31</sup> A review of the substantial research supplementing these numbers with rich qualitative portraits giving context and explanation to many of these demographic trends is beyond the scope of this Article.<sup>32</sup>

As practices have moved away from the old normative family, so have attitudes. The demographic changes are increasingly accepted in public opinion. For example, eighty-one percent of Americans consider it acceptable for a man and woman to live together in a romantic relationship without being married, and fifty-five percent think it is as good as any other way of life.<sup>33</sup> Fewer than half of Americans believe that people are better off if marriage and children are priorities, while fifty percent think people are just as well off if they have other priorities.<sup>34</sup> Today, 18- to 29-year-olds value parenthood much more than marriage.<sup>35</sup> Additionally, as many as fifty-seven percent of Americans support same-sex marriage as of the summer of 2015.<sup>36</sup>

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31. Livingston & Parker, *supra* note 6, at 2.

32. It would be a substantial task to canvass the range and richness of the materials that deepen our understanding and provide context for the demographic shifts in family practices. *E.g.*, MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012); NAOMI CAHN & JUNE CARBONE, *RED FAMILIES v. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* (2010); LISA DODSON, *DON'T CALL US OUT OF NAME: THE UNTOLD LIVES OF WOMEN AND GIRLS IN POOR AMERICA* (1998); KATHRYN EDIN, *DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY* (2013); KATHRYN EDIN & MARIA KEFALAS, *PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE* (2005); *Fragile Families and Child Wellbeing Study*, PRINCETON UNIV. & COLUM. UNIV., <http://www.fragilefamilies.princeton.edu> (studying a national group of families at increased risk of poverty); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1st ed. 1996).

33. *Broad Acceptance of Various Living Arrangements for Adults*, PEW RES. CTR. (Aug. 31, 2015), [http://www.pewforum.org/2015/09/02/u-s-catholics-open-to-non-traditional-families/pg-2015-09-02\\_uscatholics-40/](http://www.pewforum.org/2015/09/02/u-s-catholics-open-to-non-traditional-families/pg-2015-09-02_uscatholics-40/) (comparing the opinions among religious groups and the broader public of non-traditional families).

34. Wendy Wang & Kim Parker, *Public Divided over Value of Marriage for Society*, PEW RES. CTR. (Sept. 23, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/st-2014-09-24-never-married-02/> (showing a nearly even division of attitudes of roughly 10,000 Americans towards the value of the marriage institution).

35. Wendy Wang & Paul Taylor, *For Millennials, Parenthood Trumps Marriage*, PEW RES. CTR., 1 (Mar. 9, 2011), <http://www.pewsocialtrends.org/2011/03/09/for-millennials-parenthood-trumps-marriage/> (discussing the increasingly prominent attitude among young adults that the importance of being a parent is greater than marriage).

36. *Support for Same-Sex Marriage at Record High, but Key Segments Remain Opposed*, PEW RES. CTR., 1 (June 8, 2015), <http://www.people-press.org/2015/06/08/support-for-same-sex-marriage-at-record-high-but-key-segments-remain-opposed/> (finding a continual increase in support for same-sex marriage).

## II. FAMILY LAW IS MISMATCHED TO CURRENT FAMILIAL ARRANGEMENTS

Family law pays attention to a particular set of relationships, and the rest are recognized incidentally for limited purposes.<sup>37</sup> The doctrinal force behind marriage and parenthood does not compare to anything else. Other relationships have become increasingly visible, but for limited purposes. Marriage and parenthood are privileged with government recognition and protection, and enjoy particular freedoms from government burden. They are more than a series of particular rights and obligations; marriage and parenthood are statuses. They enjoy a durability protected by the U.S. and state constitutions and come with countless legal consequences. These statuses are fundamentally important to many people; movements have been fought for justice in extending them without prejudice, with the same-sex marriage movement only the most recent.

All other familial relationships adults have with children, including step-parent, grandparent, foster parent, and unmarried partner of a parent, even when they are long-term and residential, are remarkably less significant *legally* than the relationship to the two individuals initially given the parental status at birth or the individual who adopts a child and thereby becomes a parent of equal status.<sup>38</sup> The stark difference between a legal parent and all others explains the history of battles for fair access to the legal parent status, battles resulting in improved access to adoption with decreased regard to marital status, age, disability, race, and sexual orientation.<sup>39</sup>

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37. Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167 (2015) (evaluating whether the focus of family law should be redirected from adult romantic relationships to caregiving relationships); Alice Ristroph & Melissa Murray, *Disestablishing the Family*, 119 YALE L. J. 1236 (2010) (exploring the implications of disestablishing the family through a historical lens).

38. Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385 (2008) (demonstrating that “family law’s coupling of parental rights and caregiving responsibilities has thus far precluded a more developed legal account of caregiving networks and the caregiving contributions of nonparents”). For a detailed intellectual history of the process by which family ties cohered into a legal category distinct from households over the course of the nineteenth century, see Janet Halley, *What is Family Law?: A Genealogy Part I*, 23 YALE J. L. & HUMAN. 1 (2011).

39. ELLEN HERMAN, KINSHIP BY DESIGN: A HISTORY OF ADOPTION IN THE MODERN UNITED STATES 195- 227 (2008).

The privileging of the two-pillar legal relationships, marriage and parenthood, has been subject to intense and persuasive criticism.<sup>40</sup> Family law's persistent failure to recognize and serve the multiple family forms that miss the two pillars diminish family law's usefulness. It has given rise to arguments in favor of abolishing legal marriage altogether, as well as arguments in favor of retaining marriage but better addressing the majority of the population whose family life does not live inside these lines and of removing the unjustified privilege given to legal marriage.<sup>41</sup> This Article is in line with the latter project, focused on a very narrow subset of issues related to housing policy and housing design that would better recognize complicated family ties.

However, with respect to recognition of the second pillar, parenthood, an examination of household composition supports the continued usefulness of this core legal status.<sup>42</sup> A parent who does not live with his child benefits from the relatively deep respect paid by the law to the parental status, even if he is unequal relative to a residential or a marital parent.<sup>43</sup> In considering the way households are smaller than legal family, not just bigger than legal family, the usefulness of the parent pillar of family law is visible, as we will see in Part III.

A respectable treatment of the reasons for the persistence of privilege to a family structure whose usefulness has been in steady decline is far beyond the scope of this article and has been extensively treated elsewhere.<sup>44</sup> The Article makes a few small observations

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40. *E.g.*, MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* (2008); Huntington, *supra* note 37; Ristroph & Murray, *supra* note 37.

41. *E.g.*, Huntington, *supra* note 37; Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL'Y & L. 307 (2004) (suggesting a policy shift from legal marriage protections to caretaker protections).

42. *See generally* JUNE CARBONE, *FROM PARTNERS TO PARENTS: THE SECOND REVOLUTION IN FAMILY LAW* (2000); CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014); *WHAT IS PARENTHOOD? CONTEMPORARY DEBATES ABOUT THE FAMILY* (Linda C. McClain & Daniel Cere eds., 2013).

43. *E.g.*, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (finding unconstitutional to terminate non-residential parent's rights without meeting the clear and convincing evidence standard).

44. *E.g.*, Janet Halley, *Behind the Law of Marriage (I): From Status/Contract to the Marriage System*, 6 UNBOUND: HARV. J. LEGAL. LEFT 1 (2010), [http://www.law.harvard.edu/faculty/jhalley/cv/1-behind\\_the\\_law\\_of\\_marriage.2.15.11.pdf](http://www.law.harvard.edu/faculty/jhalley/cv/1-behind_the_law_of_marriage.2.15.11.pdf).

about the mismatch between the two pillars approach to family law (what Clare Huntington calls “Marital Family Law”)<sup>45</sup> before it considers the relationship between any version of family form and households in Part III.

First, the persistent privileging of Marital Family Law must be partly an ideological matter, as evidenced by the intensity and form of so many of the arguments advanced by opponents of same-sex marriage over the past decade. Further evidence of an ideological component to the tenacity of Marital Family Law may be found in the divergence between attachment to marriage as an ideal and actual family practices among marriage’s most ardent boosters.<sup>46</sup>

But the reason that marriage and parenthood anchor family law is not only ideological. It is simply harder to draw lines around many other relationship forms and family practices.<sup>47</sup> This is in part because of a diversity of preferences and a drive for creative self-definition,<sup>48</sup> but it is also because many bonds cohere and dissolve with less definition, not just legally but culturally as well.<sup>49</sup> This may explain why those legal institutions that do incorporate more flexible definitions of family often tailor their definition to the limited legal purpose for which the recognition occurs. For example, the Supplemental Nutrition Assistance Program (SNAP) defines family as a group that eats its meals together, because meals are the function of the definition—SNAP dictates food stamp eligibility.<sup>50</sup> This highly practical designation avoids any larger framework for capturing family ties and limits creation of social meaning. The difficulty of creating alternative, more comprehensive and realistic legal responses to families should be no surprise when we understand how families actually live, with people coming and going regularly. This is easier to understand if we pause from the task of defining new families for a moment and ask instead about households. This Article benefits from and builds on the literature mapping and critiquing family law’s

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45. HUNTINGTON, *supra* note 42.

46. CAHN & CARBONE, *supra* note 32.

47. *Symposium, Abolishing Civil Marriage: A Case for Civil Marriage*, 27 CARDOZO L. REV. 1311, 1315 (2006); see generally Ariela Dubler, *Wifely Behavior: A Legal History of Acting Married*, 100 COLUM. L. REV. 957 (2000).

48. *E.g.*, Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189 (2007).

49. See Murray, *supra* note 38, at 394 (discussing the importance of non-parental caregivers in providing assistance with children modern families).

50. *Supplemental Nutrition Assistance Program (SNAP) Eligibility*, USDA FOOD AND NUTRITION SERVICES (Nov. 25, 2015), <http://www.fns.usda.gov/snap/eligibility> (listing the prerequisites for SNAP eligibility).

failure to see and serve the new normal family,<sup>51</sup> and extends that insight into issues around housing and households.

### III. HOUSEHOLDS AND FAMILIES ARE DISTINCT

Household living arrangements unsurprisingly do not track the marital family either. Study of the relationship between families, marital and non-marital, and households, is underdeveloped.<sup>52</sup> Often, discussions of non-marital families, or what I am calling *new normative families*, seem to place households or living arrangements in the role of the old marital/normative family.<sup>53</sup> Households become the substitute analytical category.<sup>54</sup> This Article seeks to adjust that instinct. While the alignment of marital family law with the old normative family provided very convenient classifications for discussion, recognition of the non-marital or new normative family begs for boundaries and definitions for discussion. This Article argues that we need to resist the tendency to substitute the idea of “household” when the idea of legal family fails us. Substituting households for marital families leads us to ignore important non-household family ties and to elevate some weaker household ties to a status that should require more justification than it has yet received.

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51. *E.g.*, FINEMAN, *supra* note 40; Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development and Present Status Part I*, 16 STAN. L. REV. 257 (1964) (first drawing attention to a private middle class family law and a second public law regulatory structure of low-income families); Huntington, *supra* note 37; MARRIAGE AT THE CROSSROADS: LAW, POLICY, AND THE BRAVE NEW WORLD OF TWENTY-FIRST CENTURY FAMILIES (Marsha Garrison & Elizabeth S. Scott eds., 2012); June Carbone & Naomi Cahn, *The Triple System of Family Law*, 2013 MICH. ST. L. REV. 1185 (2013); Linda C. McClain, *The Other Marriage Equality Problem*, 93 B.U. L. REV. 921 (2013).

52. Obvious exceptions are Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226 (2007) (focusing on the economic rationale for households that are held together by family ties) and the work of Laura A. Rosenbury, *e.g.*, *supra* note 48 (focusing on households composed of non-familial ties).

53. *E.g.*, Annamaria Lusardi et al., *Financially Fragile Households: Evidence and Implications 2* (Nat'l Bureau of Econ. Research, Working Paper No. 17072, 2011), <http://www.nber.org/papers/w17072>; INVESTMENT COMPANY INSTITUTE, *THE ROLE OF IRAS IN U.S. HOUSEHOLDS' SAVING FOR RETIREMENT* (2014), <https://www.ici.org/pdf/per21-01.pdf>; SENTIER RESEARCH, *ESTIMATION METHODS AND THE SENTIER HOUSEHOLD INCOME INDEX (HII)* (2017), <http://www.sentierresearch.com/HouseholdIncomeIndex.html>; Deborah Foster, *Why Do Children Do So Well in Lesbian Households?: Research on Lesbian Parenting*, 24 CANADIAN WOMAN STUD. no. 2-3 (2005), <http://cws.journals.yorku.ca/index.php/cws/article/view/6115/5303>.

54. *See* Foster, *supra* note 53.

### A. How Do Adults Live?

A look at the living arrangements across the adult population poses a challenge to the notion that household is a proxy for new family. Today, the U.S. Census Bureau counts a third of households as “non-family”, meaning it contains no relationships by birth, marriage, or adoption.<sup>55</sup> Only forty-eight percent contain a marriage and seventeen percent are defined as “other family households,” which includes the households containing single parents and their children.<sup>56</sup> This means that the *new normative family*, the one that endeavors to capture the substantial non-marital family relationships, if defined concretely,<sup>57</sup> seems to exclude a significant number of adults.<sup>58</sup> Half of adults live with a spouse, another seven percent with a partner, and eleven percent of the remainder with their own child.<sup>59</sup> About fifteen percent of adults live alone.<sup>60</sup> But those adults living alone comprise twenty-seven percent of households.<sup>61</sup> It seems risky to assume that those twenty seven percent of householders view themselves as belonging to no family, but that would be a natural conclusion to be drawn when we use “household” as the new marker for family.

If we narrow the question to young adults, we find that many live in households with no legal or romantic tie.<sup>62</sup> A full forty-eight

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55. *America's Families and Living Arrangements: 2012*, U.S. CENSUS BUREAU (August 2013), <https://www.census.gov/prod/2013pubs/p20-570.pdf> (defining terms as used by the United States Census Bureau).

56. *Figure HH-1. Percentage of Households by Type*, U.S. CENSUS BUREAU (2016), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-1.pdf> (plotting household trends since 1940).

57. I'm constrained in this definition by the information that the census bureau and other researchers gathers and report; there's no way to tell from the Census data, for example, how many of the 48% of households containing a marriage contain step-children, multi-partner fertility, etc. Many of the “new normative families”, in other words, would come from the percentage containing a marriage.

58. Though many new normative families, step-families, and those with multi-partner fertility will be captured by the 48% of households that contain a marriage, and many multigenerational “boomerang” households will also be captured by the 48%.

59. *Figure AD-3b. Living Arrangements of Adults 18 and Over*, U.S. CENSUS BUREAU (2015), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/ad-3b.pdf> (showing the decline in percentage of adults living with a spouse).

60. *Id.*

61. *Figure HH-4. Growth in Living Alone*, U.S. CENSUS BUREAU (2016), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-4.pdf> (plotting the increase in adults living alone since 1960).

62. Richard Fry, *More Young Adults Are “Doubled-up.”* PEW RES. CTR. (July 28, 2015), <http://www.pewsocialtrends.org/2015/07/29/more-millennials-living-with-family>



percent of young adults are “doubled up”, meaning they live with one or more adults who are not their spouse or unmarried partner (though they could be another family member).<sup>63</sup> In 2012, only seven percent of 18-31 year olds lived alone, thirty-six percent with their parents, twenty-three percent with a spouse, and thirty-four percent with someone else.<sup>64</sup>

### B. Multigenerational Households

Consider the significant role of multigenerational households, meaning households where at least two adult generations reside. One out of every five U.S. residents lives in a multigenerational household.<sup>65</sup> These multigenerational households are largely of two sorts: young adults living with their parents (using the term “young” cautiously, as most of these young adults are well over the average marriage age of the early 1960s), and elderly adults living with their adult children.

Among young adults ages 18–31, excluding full-time college students, thirty-six percent live with their parents.<sup>66</sup> According to the Pew Research Center, this is the highest number in four decades.<sup>67</sup> By contrast, only eleven percent lived with their parents in 1980, the low in the survey.<sup>68</sup> Removing the youngest group of adults still leaves an impressive number of multigenerational arrangements: among adults age 25–34 in the United States, about one-quarter live with their parents.<sup>69</sup> These numbers change little whether college

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-despite-improved-job-market/st\_2015-07-29\_young-adult-living-05/ (plotting the increase in young adults living with someone besides a spouse or unmarried partner from 2007–2015).

63. *Id.*

64. Who else? For Laura Rosenbury, that is a question family law should focus on: many single adults perceive their friend network to be their source of caregiving (whether residential or non-residential). Rosenbury, *supra* note 48.

65. Fry & Passel, *supra* note 7, at 8.

66. Richard Fry, *A Rising Share of Young Adults Live in Their Parents' Home*, PEW RES. CTR., 1 (August 1, 2013), <http://www.pewsocialtrends.org/2013/08/01/a-rising-share-of-young-adults-live-in-their-parents-home/> (discussing the increase in post-recession millennials living with their parents until later in life).

67. *Id.* (discussing the effects of the recession on millennials living at home until their late 20s and early 30s).

68. Kim Parker, *The Boomerang Generation*, PEW RES. CTR., 1 (Mar. 15, 2012), <http://www.pewsocialtrends.org/2012/03/15/the-boomerang-generation/> (examining the growing trend of young adults living with their parents).

69. Fry & Passel, *supra* note 7, at 11 (plotting the increase in multigenerational living for 25–34 year olds).

students are counted or removed from the equation.<sup>70</sup> There was an uptick in this living arrangement when the economy sank in 2008,<sup>71</sup> but as both the overall economy and the economic prospects of this age group have improved, there has been no corresponding decline in this multigenerational household pattern.<sup>72</sup> This shift has outlived its purported economic explanation, and larger cultural explanations may eventually emerge.

A second kind of multigenerational household fills out this landscape. Among U.S. residents age 85 and older, almost one-quarter live in multigenerational households as well—with their adult children.<sup>73</sup> This number has remained more stable over time than the number of young adults living with their parents, but its durability should not detract from its relevance.

This “boomerang” aspect of household demography is hard to fit into the categories of marital and non-marital families, or old normative and new normative. A multigenerational household of this sort is bound by one of the two core pillars of family law, the parent and child, though when both are adults the social meaning of the tie is more complicated, as it can no longer be characterized simply as the “social reproduction function” of family. In the majority of cases, adult parents and children do not reside together, and so we would not call them a household and we do not elevate their legal ties correspondingly. These households do conform to an argument advanced by Robert Ellickson that kinship or intimates are the foundation of U.S. households.<sup>74</sup> From Ellickson’s perspective, it is the trust inside households that substitutes for the security deposit, lowering transaction costs, reducing the risk of opportunism, and increasing cooperation.<sup>75</sup> For Ellickson’s purpose of framing intimate ties, however, it is only necessary that household members are

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70. Richard Fry, *Trend in Living Arrangements Similar Regardless of How College Students Are Handled*, PEW RES. CTR. (July 28, 2015), [http://www.pewsocialtrends.org/2015/07/29/more-millennials-living-with-family-despite-improved-job-market/st\\_2015-07-29\\_young-adult-living-14/](http://www.pewsocialtrends.org/2015/07/29/more-millennials-living-with-family-despite-improved-job-market/st_2015-07-29_young-adult-living-14/) (plotting the decline in young adults living independently from 2007-2015).

71. *Id.*

72. Richard Fry, *More Millennials Living with Family Despite Improved Job Market*, PEW RES. CTR. (July 29, 2015), <http://www.pewsocialtrends.org/2015/07/29/more-millennials-living-with-family-despite-improved-job-market/> (discussing the recent decline in 18–24 year olds establishing an independent home).

73. Fry & Passel, *supra* note 7.

74. Ellickson, *supra* note 52, at 231 (defining family through blood and other relationships and differentiating it from the household).

75. *Id.* at 247-49 (discussing trading of services instead of bilateral contracts in household situations).

intimately bonded. It does not matter what level of legal recognition they either have or they ought to have on some normative measure. This adds to Ellickson's work on order without law:<sup>76</sup> living with intimates is efficient because opportunism is squelched among intimates. People will choose to live in efficient arrangements, so they choose intimates. Legal ties among householders are secondary under this view.

Less visible in Ellickson's coding is the fact that multigenerational households include many individuals with core, family-like relationships outside of the household. Aging adults who move in with their adult children may feel their core relationship is with a spouse or partner in nursing care, or even a spouse who has recently died, and by comparison to the relationships inside the household, the external one is far more central and enduring to their identity. Young adults living with their parents may feel their core relationships are with a romantic partner outside of the household, an incarcerated spouse, friends outside of the household, or children outside of the household who live with a co-parent. In Ellickson's terms, we can characterize the multigenerational household as familial. But we would make a mistake if we characterized that household as "the family" for its group of residents or for any particular individual within the multigenerational household, because its residents may have very strong family ties to non-residents of the household, stronger than those internal to the household. It would be a mistake to call the non-householders "extended family"; a 24-year-old man living with his parents is not "extended family" to his own daughter who lives with her mother. That man is a familiar householder with his parents, while his strongest legal and psychological family tie is in a different household. So even in a multigenerational household that is "familial" in the Ellickson sense, the core dynamics of family relationships may include ties outside of the household. Therefore, "household" as a concept can obscure, not just illuminate, the contours of "new family."

### C. Fluctuating Household Membership

Next, consider the question of household composition from the perspective of stability and change. To address the distinct housing needs of households and families, we should ask what *fluctuations* in household membership we can expect, even though available data on

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76. See generally ROBERT ELICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1994).

household membership is predominantly focused on snapshots in time.<sup>77</sup> This is most starkly illustrated in the *old normative family*, because even there, household membership does not remain stable over the life cycle of children. The household with two married parents and their children would still contract in membership as the children became adults, until the *old normative family* becomes a household of two. If that family had two children, separate in age by two years, that would mean 20 years of a household with more than a pair, but many more years of a household with only two. Presuming the old normative marriage age of 22, and an adult life expectancy of approximately 75 years, this household will have 33 years with a couple and no children at home, and 20 years with a couple and children. The time this household has without resident children is at least as relevant to describing their household as the time with children—even for this most conventional of old normative families. This is *life cycle fluctuation* in household membership. While the old normative family may provide clarity in understanding life cycle fluctuation, all households with minor children are subject to this fluctuation. Life cycle fluctuation in household membership must be a foundation for understanding households.

Departure from the old normative family gives rise to more fluctuations in household membership. Multigenerational households among boomerang families include young adults who left their parents' households and returned, first contracting and then expanding the size of that household. Aging parents who move in with adult children have the same impact on household membership numbers, and eventually contracting it again due either to mortality or movement back to independent living or nursing facilities. Finally, fathers whose relationship with the mother of their children ends either due to a divorce or the end of a romantic non-marital relationship are unlikely to reside with their children—and far more unlikely where there had been no marriage.<sup>78</sup> Fathers exiting a household present fluctuations in membership, as do mothers' new relationships, which may bring a new partner and potentially his or their children.

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77. *E.g.*, Gretchen Livingston, *At Grandmother's House We Stay*, PEW RES. CTR. (Sept. 4 2013), <http://www.pewsocialtrends.org/2013/09/04/at-grandmothers-house-we-stay/>.

78. *Fragile Families and Child Wellbeing Study Fact Sheet*, *supra* note 5, at 1.

#### D. Can the Negative Consequences of Fluctuations Be Reduced?

This article argues that stability along other metrics remains valuable and may be achievable even when household membership changes.

For many entirely predictable fluctuations in household size and membership, leaving the household is not the only disruption. For example, when an aging couple moves in with their adult children, it is possible that in the process they are cutting their own community ties, both in terms of personal relationships and civic institutions. Likewise, when a father exits his child's household, his daily caregiving tasks also drop off precipitously on average,<sup>79</sup> though this is not a necessary disruption and is often prevented through joint custody awards for marital families.

Clare Huntington has linked mothers' gatekeeping role, which diminishes fathers' ties to their non-marital children, to particular attributes of family law, including child support law and the widespread absence of legal parenting plans between non-marital parents.<sup>80</sup> A distressing number of non-marital fathers have little contact with their children five years after the birth of their child and after the end of the adult relationship that produced the child: only fifty percent of these non-resident fathers will have visited with their child in the past month.<sup>81</sup> The urgent housing policy question is whether the other disruptions associated with the increase and decrease in household membership can be reduced, so that housing design and policy meet the needs of fluctuating households while reducing the collateral neighborhood, community, and family effects associated with that fluctuation.

Considering non-residential parents, the final problem with conflating households and families comes into sharp relief: the most important familial ties can exist across households, meaning they are absent from one single household. This obvious issue points to the importance of avoiding, in legal, policy, and cultural analyses, either of two mistakes arising from conflation of household and family: over-counting householders as family even when they do not view themselves as tied together in that way and the law does not tie them in significant ways, or under-counting core family ties to non-householders.

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79. Livingston & Parker, *supra* note 6, at 1 (discussing how absent fathers attempt to keep in contact with their children).

80. HUNTINGTON, *supra* note 42.

81. *Fragile Families and Child Wellbeing Study Fact Sheet*, *supra* note 5, at 2.

The conceptual distinction between households and new family may be helpful in a number of policy analyses. For example, it may be important in considering traditional family law questions of custody, visitation, and child support, and in evaluating the many different ways family can be defined for social programs such as SNAP. In Part IV, this Article considers a single policy area, housing, that may be confused or burdened by the failure to distinguish households from family ties. This is not meant to identify the primary benefit of separating the two concepts, but rather to provide a single illustration of the potential insights such a separation can yield.<sup>82</sup> Housing design and housing policy fail to interact well with three issues: (1) life cycle expansion and contraction, (2) demographic and social expansion and contraction, and (3) cooperation and inclusion in family life for non-householders.

#### IV. IMPLICATIONS FOR HOUSING

There are times when the legal and cultural images of the normative family disrupt good urban planning and interfere with housing design and policy programs that could function better for the way people actually live or wish to live. If family and housing are not just occasionally divergent, but instead normally not co-terminus, what do we actually mean when we ask whether housing design meets family needs? If household membership is characterized by churn, both because of changes in intimate attachments and because of life cycle changes, this article argues that housing design or housing policy should respond to that churn in a way that minimizes disruption of individuals' attachments to building, neighborhood, community, and family members living in separate households, such as children living with a co-parent. Such policy should consider options for stability that are economically realistic for people whose households will change. No single policy intervention can resolve the disruptions associated with fluctuating household membership. Rather, properly understanding the needs of families and households over time provides a lens for evaluating particular attributes of housing policy.

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82. In economics, the household is ordinarily the unit of analysis, *e.g.*, OECD, OECD GUIDELINES FOR MICRO STAT. ON HOUSEHOLD WEALTH 163 (2013) (explaining some of the benefits of measuring wealth of individuals in addition to households). The analytic value of this unit is weakened if we question whether its composition reflects endogenous preferences, or instead whether the household is a product of economic forces. The latter is most clearly suggested by multigenerational households, for example. Moreover, if the quality and quantity of resource sharing varies greatly from one household to the next, the household unit becomes less informative than traditional economic analysis has assumed.

Two housing principles in particular could better serve the needs of today's households. First, multi-family housing, housing development policies, and planned neighborhoods could prioritize the family ties of non-householders to a household. This means that policy and planning would facilitate proximity to family ties for fathers, for example, and facilitate stability in community and relationships for aging populations. As family members exit a housing unit, housing policy would seek to stabilize their ties to the household, particularly valuing proximity.<sup>83</sup> Policies particularly divisive to family ties, such as the one-strike policy in public housing,<sup>84</sup> should be re-evaluated for their restrictive understanding of family.

Second, the design of the unit itself would reflect the inevitable expansion and contraction in household membership. This means that the unit would allow for proximity with privacy for multigenerational households. It would be designed with universal accessibility features that allow individuals to use it throughout their life and health cycle. It would also mean that the unit itself could be easily resized as the size of the household expanded and contracted, without necessitated relocation for the entire household. These two ideas, shaping housing unit design to adapt to changing household size and demographics, and changing housing policy to prioritize proximity for non-householders, would advance our thinking about policy that meets the needs of new normative families.

### A. Preserving Proximity

Policies that preserve familial proximity include the reduction in policies that drive familial households to lose proximity, and affirmative policies that promote proximity for non-householders.

#### 1. Public and Section 8 Housing

Federal public housing programs (meaning public housing and Section 8 housing) have presented serious challenges to family ties. The simplest example of housing policy highly disruptive to family ties would be the one-strike policy in public housing.<sup>85</sup> Because the

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83. Any such policy would need to contend with a history of violence in the adult relationships, which when proved would make preserving proximity a weak policy choice.

84. See *infra* Part IV.A.1.

85. Housing Act of 1937 § 6(l)(6), *amended by* Cranston-Gonzalez National Affordable Housing Act § 504, 42 U.S.C. § 1437d(1)(6) (2012) (providing “that any criminal activity... by... tenant... or any guest... shall be cause for termination...”).

Department of Housing and Urban Development (HUD) and its local housing authorities effectively prohibit felons from residing in public housing,<sup>86</sup> families already residing in public housing cannot add a member who has a past felony conviction. This means that single mothers in public housing units must forfeit their housing if they choose to marry or cohabit with someone new who has a record. Given the enormous number of low-income men, particularly men of color,<sup>87</sup> who have at some point come under the jurisdiction of the criminal justice system, this barrier to housing creates a serious obstacle to household composition for low-income families, forcing central family ties to remain out of the household.<sup>88</sup> In addition, members of a household who receive a conviction or who the housing authority finds committed a crime without a conviction while living in public housing expose the entire household to eviction proceedings, even when the conviction is a plea to a petty juvenile drug offense by a teenager and the family had no knowledge of the behavior.<sup>89</sup> Local housing authorities that can demonstrate, specifically using high numbers of one-strike tenant evictions, that they are complying with this policy receive higher scores in competition for grant money, and they are subject to less oversight.<sup>90</sup> This is the simplest example of housing policy that is squarely detrimental to stability for families.

When strong family ties are external to a given household, the loss of proximity further erodes ties among family members. In general, public housing authorities that administer either public housing spots or Section 8 vouchers create preferences among the long list of low-income families or individuals applying for one of those two housing supports. In practice, preference is given to households with children, and single individuals are very unlikely to receive either a Section 8 voucher or a public housing unit unless they have a disability or are a senior receiving a designated spot in senior housing.<sup>91</sup> This means

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86. While it is not a requirement that public housing use the one-strike policy written into its leases, in practice it does. See generally Wendy J. Kaplan & David Rossman, *Called "Out" at Home: The One Strike Eviction Policy and Juvenile Court*, 3 DUKE F.L. & SOC. CHANGE 109, 114 (2011) (discussing HUD's suggestion to apply the one-strike policy "without exception").

87. ALEXANDER, *supra* note 32.

88. *Id.*

89. Kaplan & Rossman, *supra* note 86, at 135 (showing absurd results of the one-strike policy).

90. *Id.* at 115 (discussing the Public Housing Assessment System's "hundred-point metric").

91. See generally 24 C.F.R. § 960.206(b)(5) ("The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or



that single fathers who do not live with their children and have no disability will find it difficult to access public housing.

Nothing in the conventional procedures for allocating spots in public housing units takes into consideration the value to children of placing low-income single noncustodial fathers in close proximity to those children. Housing is not designed with that concept in mind, and it is possible that a local housing authority would find the idea counterintuitive given the needs of the long waiting list of other categories of applicants for housing assistance.<sup>92</sup> HUD runs a fatherhood initiative, but it is not aimed at housing fathers near their children. It appears to be aimed at a combination of connecting fathers to their children and encouraging fathers to be economic contributors to their children.<sup>93</sup> Consideration of *new* normative family unity should move into better focus in the provision of public housing benefits, promoting proximity even among family members whose intimate attachments make it impossible to live within the same housing units.

## 2. Zoning

More amorphous but equally significant are the multiple legal forces that lead communities to zone large areas for single-family homes and other areas for multi-family homes, all separate from commercial uses. These zoning moves have been part of the engine of sprawl, a term used to describe areas:

[W]hose defining attributes are lower density development, meaning the consumption of greater and greater amounts of land for the same uses that are effectuated with far less land in urban neighborhoods; single-use zoning, meaning residential areas separated from retail areas, creating a nearly complete reliance on cars for commuting to work, as well as for small local errands such as

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persons with disabilities over other single persons.”). In practice, housing agencies give preference to families with children.

92. HUD launched a Father’s Day initiative in 2011, hosting numerous events “designed to provide opportunities for fathers and families to ensure greater involvement by fathers, thereby leading to positive effects on children’s health, development, and well-being.” *Strengthening and Empowering Families*, U.S. DEP’T OF HOUSING & URB. DEV. (2015), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/hope6/css/rfd](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/css/rfd). The agenda sounds promising, but when you drill down into the supporting materials, they reinforce father’s economic role more than his caregiving role, HUD notes that the day will “focus on health, wealth, job training, education, and corporate and government response services.” HUDchannel, *Father’s Day 2015 Pt1*, YOUTUBE (June 5, 2015), [https://youtu.be/a\\_ICoulmAqY](https://youtu.be/a_ICoulmAqY).

93. See HUDchannel, *supra* note 92.

retail shopping, school drop-offs, and social and civic activities; and a complex relationship to the city center, marked by economic and racial justice issues and divestment in urban centers.<sup>94</sup>

I, and others, have discussed the web of legal and policy levers that generate sprawl elsewhere.<sup>95</sup> While particular rules impede creativity, and planners seem to universally complain about the way zoning and building codes stymie experimentation to meet changing needs, shifting overarching goals for planning and zoning can lead to significant change in the smaller policies that block innovation.<sup>96</sup>

In much the way zoning has separated residential units from commercial uses, zoning also segregates residential units by type.<sup>97</sup> This means that small units tend to be congregated together, and larger units, including freestanding homes, tend to congregate together, encouraged by zoning which creates single-family and multi-family areas separate from one another.<sup>98</sup> Multi-family housing units are of more use to individuals living alone, or to pairs of adults living without minor children, because the building type affords an efficiency in cost and maintenance that is passed on to the resident. Because zoning separates housing type, it has the effect of also separating household or family type.<sup>99</sup> In so doing, in effect, it regulates multigenerational households, preventing new normative families from developing housing plans that place larger groups near or in the same household as single or smaller groups.

Didn't *Moore v. City of East Cleveland*<sup>100</sup> resolve the matter by prohibiting zoning that excludes *new normative families*, at least those extended families tied together by blood relationships? To a point, yes. But *Moore* did not prohibit zoning for single-family homes. It simply prohibited a highly restrictive, old normative family understanding of what the single family in the home would look like.

94. Silbaugh, *supra* note 8, at 1818.

95. *Id.* at 1797.

96. *See, e.g.*, ANDRES DUANY, ELIZABETH PLATER-ZYBERK & JEFF SPECK, *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* (2000); ANDRES DUANY, JEFF SPECK, & MIKE LYDON, *THE SMART GROWTH MANUAL* (2009); Rosanne Haggerty, *You Can't Build What People Want: Building Codes vs Affordability*, SHELTERFORCE BLOG (Feb. 26, 2013), [http://www.rooflines.org/3106/you\\_cant\\_build\\_what\\_people\\_want\\_building\\_codes\\_vs\\_affordability/](http://www.rooflines.org/3106/you_cant_build_what_people_want_building_codes_vs_affordability/) (explaining the ways that zoning and building laws limit many different types of household living arrangements).

97. HAYDEN, *supra* note 9, at 58, 59, 216-21.

98. *Id.*

99. *Id.*

100. 431 U.S. 494, 506 (1977) (finding that a law prohibiting a second grandchild from living in a home with a grandparent and no parent was unconstitutional).

For zoning to meet the needs of new normative families as described in this article, zoning would need to permit buildings with multiple units, including semi-private spaces in or near properties. The family in *Moore* could live together as long as they shared the single kitchen that is the hallmark of a single-family home, and lived in rooms that were not accessed through separate entrances. *Moore* protects the new normative family where it is synonymous with household, but does not prohibit zoning that makes it practically impossible to tie multiple households containing members of the same family together. To understand this point, we need to consider the treatment of accessory apartments.

### 3. Accessory Apartment Zoning

Traditional single-family home zoning actively discouraged what are called accessory dwelling units (ADUs) in the zoning and building world, and sometimes referred to colloquially as in-law suites or granny flats.<sup>101</sup> These are units under the same roof or on the same grounds as a single-family home that could still be said to constitute a separate home within or attached to the larger home.<sup>102</sup> Historically, areas zoned for single-family use generated zoning and other regulations that effectively prohibited these units.<sup>103</sup>

In recent years, there has been a trend toward easing restrictions on accessory dwelling units.<sup>104</sup> This trend arose in part as an outgrowth of overbuilt houses too big to make sense in leaner economic times.<sup>105</sup> The trend has been promoted too by the American Association of Retired Persons (AARP), both because accessory units provide potential income to its empty nesters that could facilitate AARP's overall aim to allow people to "age in

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101. Martin John Brown, *Accessory Dwelling Units: What They Are and Why People Build Them*, ACCESSORY DWELLINGS (2015), <http://accessorydwellings.org/what-adus-are-and-why-people-build-them/> (describing ADUs and their uses).

102. *Id.*

103. Maurizio Antoninetti, *The Difficult History of Ancillary Units: The Obstacles and Potential Opportunities to Increase the Heterogeneity of Neighborhoods and the Flexibility of Households in the United States*, 22 J. HOUSING ELDERLY 348 (Dec. 2008).

104. *What Are the Rules Where I Live?*, ACCESSORY DWELLINGS (2015), <http://accessorydwellings.org/adu-regulations-by-city/> (providing a volunteer driven list of ADU regulations for cities across America).

105. *Id.*; Phoebe S. Liebig, Teresa Koenig, & Jon Pynoos, *Zoning, Accessory Dwelling Units, and Family Caregiving: Issues, Trends, and Recommendations*, 18 J. AGING & SOC. POL'Y 155 (2006) (presenting recommendations for supporting more multigenerational homes as a possible alternative to other family support programs).

place,”<sup>106</sup> and in part because it permits multigenerational households,<sup>107</sup> of particular interest to aging Americans who may decide to live with adult children.

Accessory dwelling units are conceptually attractive to new normative family households. They allow people to live together in one sense, but separately in another, because they are characterized by a separate entrance and a second kitchen or kitchenette, both features that bespeak a measure of independence within the close proximity of family.<sup>108</sup> A household is in effect divided into two groupings, one in the original home and the second in the accessory dwelling unit built by subdividing that original home. The accessory dwelling unit gives the two households greater privacy from one another while they still share one roof and gain the efficiencies of financial trust and in-kind care arrangements. For an aging parent moving in with an adult child or a young adult moving in with parents, the accessory dwelling unit can be a physical manifestation of the complexity of the new normative family, where members are related, but their relationship does not entail the collapse of physical boundaries associated with the old normative family.

Relaxing the zoning restrictions on accessory units allows for some correction of the errors of sprawl. However, the movement repeats some of the family-unfriendly errors of past housing booms, particularly in that accessory dwelling units are car-dependent when added to suburban homes. Moreover, those same single-family homes are ordinarily not zoned for multiple uses, employing instead the familiar Euclidean separation of uses, which is inconvenient for healthy work-family balance.<sup>109</sup>

A general trend has emerged in many communities favoring smart-growth, or the infilling of building close to and in city centers and near public transportation.<sup>110</sup> This trend is environmentally friendly, as sprawled development eats much more in the way of building, utility, and transportation resources, as well as privatizing greenspace.<sup>111</sup> Consequently, green advocates also support easing

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106. Rodney L. Cobb & Scott Dvorak, *Accessory Dwelling Units: Model State Act and Local Ordinance*, AARP, 9 (April 2000), [http://assets.aarp.org/rgcenter/consume/d17158\\_dwell.pdf](http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf) (concluding that a reconsideration of zoning policies should encourage ADU development).

107. *Id.*

108. Brown, *supra* note 101 (describing ADUs and their uses).

109. *See generally* Silbaugh, *supra* note 8.

110. DOLORES HAYDEN, *A FIELD GUIDE TO SPRAWL* 12-13 (1st ed. 2004).

111. David B. Resnik, *Urban Sprawl, Smart Growth, and Deliberative Democracy*, 100 AM. J. PUB. HEALTH 1852, 1853 (Oct. 2010) (discussing the detrimental effects of

restrictions on accessory dwelling units,<sup>112</sup> creating a promising working coalition of interests groups with the AARP and other advocates for effective multigenerational housing design.

#### 4. *Micro-Unit Developments*

The emergence of micro-units serves as an urban counterpart to the suburban debate over accessory units.<sup>113</sup> According to the Urban Land Institute Multifamily Housing Councils, micro-units have been emerging in urban areas with particularly high housing costs as an alternative to traditionally larger-scaled units.<sup>114</sup> Micro-units are defined as somewhere between 250–500 square feet, depending on the city and the context.<sup>115</sup> Because zoning in cities includes minimum unit sizes that effectively preclude micro-unit development, cities need to decide whether to make zoning changes that will allow or encourage this housing type.<sup>116</sup> There is a market for it, with micro-units finding a higher market price per square foot than larger units in the current environment of limited availability.<sup>117</sup> In 2012, New York City ran a design competition<sup>118</sup> for a “micro-unit apartment building” that would serve the “small household population,” to be built at 335 E. 27th Street.<sup>119</sup> New York waved its ordinary requirement that a new dwelling unit be at least 400 square

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urban sprawl, the benefits of smart growth as a policy-driven solution, and how two are taken into consideration by communities).

112. Brown, *supra* note 101 (describing ADUs and their uses).

113. *The Micro View on Macro Units*, URB. LAND INST., 4 (2014), [http://uli.org/wp-content/uploads/ULI-Documents/MicroUnit\\_full\\_rev\\_2015.pdf](http://uli.org/wp-content/uploads/ULI-Documents/MicroUnit_full_rev_2015.pdf) (examining micro units through in-depth case studies, interviews with industry experts, and consumer research).

114. *Id.* at 5 (discussing the appeal of micro-units).

115. *Id.* (defining micro-units in cities throughout the United States).

116. John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 STAN. L. & POL'Y REV. 53, 67-69 (2014), [https://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2014/01/infranca\\_25\\_stan\\_l\\_poly\\_rev\\_53.pdf](https://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2014/01/infranca_25_stan_l_poly_rev_53.pdf) (comparing development best practices in high and low population density areas).

117. *The Micro View on Macro Units*, *supra* note 113, at 10-11.

118. *Winner of adAPT NYC Competition to Develop Innovative Micro-Unit Apartment Housing Model*, NYC HOUSING PRESERVATION & DEV. (2015), <http://www1.nyc.gov/site/hpd/developers/adapt-nyc-rfp.page> (outlining the adAPT NYC Competition and rules).

119. Irina Vinnitskaya, *adAPT NYC Competition Announces Micro Apartment Winner and Finalists*, ARCH DAILY (Jan. 26, 2013), <http://www.archdaily.com/324418/adapt-nyc-competition-announces-micro-apartment-winner-and-finalists> (discussing the innovative adAPT NYC winning design).

feet,<sup>120</sup> and the competition winners designed units ranging from 250–370 square feet.<sup>121</sup> Boston has also considered easing its requirement of 450 square feet for a new housing unit.<sup>122</sup>

These are instances of change in zoning that responds to changes in household size.<sup>123</sup> The micro-unit trend is driven by the numbers of adults living alone or in pairs, and the mismatch in available housing stock in expensive areas.<sup>124</sup> The innovation holds promise for adapting housing design to the heterogeneity of household membership. But note that it continues to treat households in isolation from one another: the micro-units in Boston and New York exist in buildings composed of similar units.<sup>125</sup> Therefore, micro-unit developments thus far are not designed to facilitate the proximity of a single father to his children residing in a different household, for example. Just as sprawl's single-family home zoning in the suburbs clusters households with more members (typically those with children) together but separates them from households with fewer members, micro-units cluster households with single members but separates them from larger units that may contain all or part of their new normative family. Micro-unit developments provide a blueprint for a housing type fitted to small household size, but that blueprint does not capture the linking of small households to family ties in larger households.

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120. *Carmel Place (My Micro NY)*, NARCHITECTS (2015), <http://narchitects.com/work/my-micro-ny-2/> (following the progress of the adAPT NYC Competition winning design's construction).

121. NYC HOUSING PRESERVATION & DEV., *supra* note 96.

122. Tom Acitelli, *What, Exactly, Makes a Home a Micro-Home in Greater Boston?*, *Curbed* (Feb. 23, 2015), <http://boston.curbed.com/archives/2015/02/what-exactly-makes-a-home-micro-in-greater-boston.php> (discussing mayor's proposal to allow units as small as 375 square feet).

123. The demand for micro-units is not driven solely by change in household size, however, but by urbanization and housing shortage. Nikita Stewart, *De Blasio Unveils Plan to Create 15,000 Units of Housing*, N. Y. TIMES (Nov. 18, 2015) (discussing the introduction of housing plan to reduce NYC's homeless population), <http://www.nytimes.com/2015/11/19/nyregion/de-blasio-unveils-plan-to-create-15000-units-of-housing.html>; Joe Anuta, *Good News For Singles Who Don't Want Roommates: More Tiny Apartments Are On the Way*, CRAIN'S N. Y. BUS. (Oct. 23, 2015), [http://www.crainsnewyork.com/article/20151023/REAL\\_ESTATE/151029914/good-news-for-singles-who-dont-want-roommates-more-tiny-apartments-are-on-the-way](http://www.crainsnewyork.com/article/20151023/REAL_ESTATE/151029914/good-news-for-singles-who-dont-want-roommates-more-tiny-apartments-are-on-the-way) (discussing attempted changes in NYC zoning laws to allow for more single-dwelling micro units).

124. Infranca, *supra* note 116, at 56-60.

125. Acitelli, *supra* note 122 (discussing mayor's proposal to allow units as small as 375 square feet); *Carmel Place (My Micro NY)*, *supra* note 120 (following the progress of the adAPT NYC Competition winning design's construction).

5. *Combining the Wisdom of Accessory Dwelling Units with the Urban Needs Addressed by Micro-Units*

The trend toward micro-units is designed specifically to address the “Growing Mismatch” between the housing stock and household composition.<sup>126</sup> Housing policy-makers should evaluate taking the next step by recognizing that family ties often link multiple households. As such, the mismatch between household membership and family should influence planning, rather than embedding the mistaken conflation of *household* with the *new normative family* into the built environment. Easing restrictions on accessory dwelling units, by contrast, anticipates households within households.

In effect, accessory dwelling units accommodate a layering of households that more closely reflects the dynamic relationship between household membership and family ties. However, cities have been even less friendly to permitting the creation of accessory dwelling units than have suburbs, which has led to an increase in illegal makeshift units in cities.<sup>127</sup> New York City prohibits their creation altogether, for example.<sup>128</sup> Micro-unit developments are more realistic in cities where housing is expensive and incomes variable, but as currently planned, they will isolate households containing one adult from ties to households that may contain their other family members.

Zoning change and housing innovation aimed at meeting the needs of new normative families would consider *proximity and privacy*, meaning the creation of very small units near but not necessarily inside of larger units. This design would allow for new normative families to gain some of the benefits of proximity without the lack of privacy that a single household implies. Privacy may be desirable (for boomerang children or retirees, for example), or necessary (for non-householder co-parents). A building with variably sized units that also prioritized lease or sale to households linked by family ties could respond better to evolving conceptions of family. If a distinction between household and new family informed housing policy, we might see a more energetic investigation of the feasibility of variably

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126. Infranca, *supra* note 116, at 56-58.

127. There were an estimated 114,000 illegal accessory units added in NYC in the decade between 1990 and 2000. Robert Neuwirth, *New York's Housing Underground: A Refuge and Resource*, PRATT CTR. COMMUNITY DEV. & CHHAYA COMMUNITY DEV. CORPS., 1 (March 2008), [http://prattcenter.net/sites/default/files/housing\\_underground\\_0.pdf](http://prattcenter.net/sites/default/files/housing_underground_0.pdf) (discussing the need to legalize “phantom units” throughout NYC’s outskirts).

128. Infranca, *supra* note 116, at 77.

sized units within single developments. In addition, we might see the development of policies that placed a priority on extra-household family ties in making units available to renters or purchasers in close proximity to those ties.

### B. Flexible Housing Design

Finally, consider the value of planning for fluctuation in household membership when designing the housing unit itself. The housing unit, as currently conceived, has a fixed number of bedrooms. Where there is enough family wealth or income, families buy space for peak load provisioning.<sup>129</sup> This means that they buy space for the maximum number of people they foresee dwelling in the unit. If they are a household of six, for example, including two parents and four children, they may buy a four- or five- bedroom home if they can afford it. In public housing, they would be entitled to a three-bedroom unit, because the bedroom allocation formulas assume two children will share each room.<sup>130</sup> But as individuals exit the household, the physical size of the space remains unchanged. Likewise, as people enter or re-enter the household, the floor space remains unchanged. Since most families or households cannot afford peak load provisioning, they will downsize by leaving their unit for a smaller unit as they age, potentially disrupting community and family ties.

When family members are added to the household, they will convert spaces not designed for sleeping into additional bedrooms.<sup>131</sup> What is certain is that the membership in the household will expand and contract, but the unit size will not. *The inflexibility of the space itself may drive household composition decisions*, like whether a young adult child will move in with parents. That same inflexibility in unit size will lead to unnecessary social disruptions, like the

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129. This term means providing capacity for the times of maximum use, as with an electrical grid. JACK CASAZZA & FRANK DELEA, UNDERSTANDING ELECTRIC POWER SYSTEMS: AN OVERVIEW OF THE TECHNOLOGY AND THE MARKETPLACE 45 (2003).

130. Jo Becker, *Occupancy Standards May Violate Fair Housing Laws*, FAIR HOUSING COUNCIL OF OREGON, 1 (2015), [http://www.fhco.org/pdfs/occup\\_article.pdf](http://www.fhco.org/pdfs/occup_article.pdf) (providing that “a standard industry minimum occupancy limit is two people per bedroom, regardless of the age or sex of the occupants”); *Public Housing FAQ’s*, JACKSONVILLE HOUSING AUTHORITY (2015), <http://www.jaxha.org/public-housing/public-housing-faqs> (providing that Jacksonville Housing Authority “will allow one bedroom for every two people of the same generation and sex”).

131. Sally Abrahms, *3 Generations Under One Roof*, AARP, <http://www.aarp.org/home-family/friends-family/info-04-2013/three-generations-household-american-family.html>



movement of aging populations away from both communities and adult children that could have provided them with relational stability.

This Article seeks to marry insights from the emerging literature on multigenerational households, accessory dwelling units, and micro-units, with insights from the literature on the new normative family. The trend toward micro-unit development, for example, assumes that the single individuals occupying the increasing number of households containing only one person are not also members of a family in a way that implicates housing policy.<sup>132</sup> The unit design responds to a real need. Yet the micro-unit concept might respond to a different need for extra-household family cohesion given fluctuating household membership if the concept were tweaked to incorporate flexible space, with expanding and contracting housing unit size.

Flexible housing design requires two assets: creativity in design concepts, and supporting policy, such as zoning and financing, which would facilitate the imaginative design.<sup>133</sup> The two are so intertwined that policy which stymies alternative design is often naturalized, and we mistake it for the limitations of design imagination. We believe that the shape of housing itself reflects optimal design as revealed by consumer preferences, rather than reflecting the constraints of zoning or limitations in financing options.

To appreciate the drive to make housing design more flexible, it is enough to see the explosion in literature on how to convert a larger housing unit into a better multigenerational home, through the full-scale creation of accessory dwelling units, or through smaller inventive modifications that increase proximity and privacy for multigenerational households.<sup>134</sup> With an array of suggestions on

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132. See, e.g., Infranca, *supra* note 116, at 58-59.

133. Haggerty, *supra* note 96; Infranca, *supra* note 116.

134. E.g., SHARON GRAHAM NIEDERHAUS & JOHN L. GRAHAM, *ALL IN THE FAMILY: A PRACTICAL GUIDE TO SUCCESSFUL MULTIGENERATIONAL LIVING* (2013); MICHAEL LITCHFIELD, *IN-LAWS, OUTLAWS, AND GRANNY FLATS: YOUR GUIDE TO TURNING ONE HOUSE INTO TWO HOMES* (Mark Feirer & Peter Chapman eds., 2011); *Accessory Dwelling Units*, PAS QUICKNOTES NO. 19 (2009), <https://www.planning.org/pas/quicknotes/pdf/QN19.pdf> (helping communities begin the discussion on ADUs); *Accessory Housing is Part of the Solution*, 3 RBC: BREAKTHROUGHTS (Jan. 2004), <http://archives.huduser.gov/rbc/archives/newsletter/vol3iss1more.html> (examining how different locales regulate and control ADUs); Anthonia Akitunde, *Building a Multigenerational Home: What You Need to Know*, HUFFINGTON POST (Apr. 10, 2013), [http://www.huffingtonpost.com/2013/04/10/building-a-multigenerational-home-primer\\_n\\_3039441.html](http://www.huffingtonpost.com/2013/04/10/building-a-multigenerational-home-primer_n_3039441.html) (discussing what to consider before beginning a multigenerational home); Phillip Moeller, *How Generations Can Thrive Under the Same Roof*, U.S. NEWS & WORLD REP. (Jan. 16, 2013), <http://money.usnews.com/money/blogs/the-best-life/2013/01/16/how-generations-can-thrive-under-the-same-roof> (suggesting ways to make

how to create an accessory dwelling unit from a basement, garage, or back bedroom, or to build an addition to a home or even add a temporary pod<sup>135</sup> on the same lot, the design community and the community that advocates for seniors<sup>136</sup> is devoting energy to problem-solving spatial design in the single-family home to make it multi-generationally friendly. The three key design components<sup>137</sup> promoted by those favoring smarter multigenerational housing are a separate entrance to retain independence and privacy, a kitchenette,<sup>138</sup> and universal design features that are useable by and accessible to individuals throughout the life and health cycle.<sup>139</sup>

Unfortunately, at this point, most of the energy behind these developments imagines a middle to upper middle class budget,<sup>140</sup> one

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multigenerational homes effective); *Multi-Generational Housing Plans & Styles*, ARCHIVAL DESIGNS (2014), <http://www.archivaldesigns.com/store/multi-generational-plans> (advertising multigenerational housing plans that are customizable and conform to housing codes); *GenSmart Suite*, PARDEE HOMES (2015), <http://www.pardeehomes.com/gen-smart-suite> (advertising multigenerational homes specifically for the accommodation of family members in transitional periods of life); ANDRE C. BALLARD, *THE LIFE CYCLE HOUSE: CREATING HOUSING THAT BRIDGES THE GENERATIONS* (2011).

135. Elaine Martin Petrowski, *ADU for Medical Caregiving: MEDCottage Offers Options for High-Tech Medical Monitoring and Security Equipment*, AARP (Oct. 18, 2010), [http://www.aarp.org/home-garden/housing/info-10-2010/adu\\_for\\_medical\\_caregiving\\_medcottage.html](http://www.aarp.org/home-garden/housing/info-10-2010/adu_for_medical_caregiving_medcottage.html) (discussing a temporary and moveable ADU built for rental by medical professionals).

136. Cobb & Dvorak, *supra* note 106.

137. *E.g.*, Susan Bady, *Multigenerational Homes: Multigenerational Living is Back*, NEW HOME SOURCE, <http://www.newhomesource.com/resourcecenter/articles/multigenerational-living-is-back-with-a-new-twist> (promoting benefits of well-designed multigenerational housing).

138. Anne Reagan, *Multigenerational Home Design: Is It Right For You?*, PORCH (Dec. 24, 2014), <http://porch.com/advice/multigenerational-home-design/> (examining the features of the multigenerational housing trend).

139. *What Is Universal Design?*, AARP (Sept. 30, 2009), [http://www.aarp.org/home-garden/home-improvement/info-09-2009/what\\_is\\_universal\\_design.html](http://www.aarp.org/home-garden/home-improvement/info-09-2009/what_is_universal_design.html) (defining universal design to incorporate accessibility); Rana Abu Ghazaleh, *Multigenerational Planning: Using Smart Growth and Universal Design to Link the Needs of Children and the Aging Population*, AM. PLAN. ASS'N, 11 (2011), <https://www.planning.org/research/family/briefingpapers/pdf/multigenerational.pdf> (discussing the “economic and community issues” that well-designed multigenerational housing attempts to solve).

140. *See, e.g.*, LENNAR NEXTGEN, <http://nextgen.lennar.com> (last visited Dec. 22, 2015) (advertising upscale multigenerational homes providing “privacy and togetherness” for extended families); Cavin Costello, *3 Failings of Lennar's NextGen Multigenerational Homes*, BLOOMING ROCK (Jan. 23, 2012), <http://bloomingrock.com/2012/01/23/3-failings-of-lennars-nextgen-multigenerational-homes> (critiquing Lennar NextGen homes for their car dependent locales, resource dependency, and commuting costs); Susan Bady, *The Multiplier*, PROF. BUILDER, 38-

that repurposes space already under a household's control or builds new construction with large suburban-style housing for parents with minor aged children and a comfortably sized accessory unit for aging grandparents.<sup>141</sup> Still, the creative energy behind this movement reveals concepts that could be transferred to urban settings with some adaptations. After all, there is already a trend toward micro-unit development in urban areas to meet the needs of single person households seeking to save money.<sup>142</sup> If micro-unit development principles could be brought into housing developments with mixed-size units, new normative families could access proximity and privacy and manage fluctuations in household membership without abandoning ties to neighborhood and family.

As household occupants come and go, couldn't the space itself expand and contract? Imagine a large, multi-unit apartment or co-op building where every multi-bedroom unit included one or two bedrooms on the outer boundary of the unit to function as swing space. That swing space could be a part of the unit when household numbers are high, but could be designed to easily detach from the unit when household membership drops, becoming either a part of a neighboring unit, or an independent micro-unit with hookups ready for bath, kitchenette, and separate entrance. As an independent micro-unit, it could remain under the control of the original unit, so that its occupant could reflect new normative family preferences, housing, for example, a young adult family member or a co-parent to a child residing in the unit, if agreeable to all parties. Or it could be sold or independently leased, so that the original unit is no longer bearing the cost of unneeded space, with an option to re-incorporate the bedroom into the original unit when it becomes available again. This kind of design would make aging in place simpler, as the original owners could move to the micro-unit and turn the larger unit over to adult children and grandchildren. The same design concept could imagine two rooms as swing space instead of one. The design idea allows for the inevitable change in household composition with less disruption to familial and community ties. If units are leased but not owned, the building could still incorporate tenure options designed to

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43 (Dec. 2013), <http://www.nwhm.com/sites/default/files/pdfs/12.2013ProfessionalBuilderTheMultiplier.pdf> (showcasing Lennar's NextGen homes).

141. *E.g.*, Susan Bady, *Multigenerational Homes: Multigenerational Living is Back*, NEW HOME SOURCE, <http://www.newhomesource.com/resourcecenter/articles/multigenerational-living-is-back-with-a-new-twist> (promoting benefits of well-designed multigenerational housing); Anne Reagan, *Multigenerational Home Design: Is It Right for You?*, PORCH (Dec. 24, 2014).

142. See discussion of micro-units *supra* Part IV.A.4.

facilitate the separation and re-joining of units over the life cycle. Policies for turnover in rental units can countenance the linking of households.

Financing accessory dwelling units and micro-unit construction is already challenging.<sup>143</sup> Fannie Mae, which in effect sets the terms for the flow of credit in housing, undervalues accessory dwelling units and therefore makes it difficult to finance them.<sup>144</sup> According to one analysis of the financing challenges posed by Fannie Mae:

Taken together, these guidelines create a strong suggestion for loan originators and the appraisers that work with them: if an ADU is encountered, it is likely to be illegal, and it may (and perhaps should) be given only insignificant or incidental contributory value. The case of a legal ADU, where an owner can receive market rent and contributory value might be estimated with the income capitalization approach, is barely addressed. Freddie Mac states: “appraisals that rely primarily on the income or cost approaches to value in order to estimate market value are unacceptable.”<sup>145</sup>

Given the recognized challenges of financing today’s accessory dwelling units, the financing of the more complicated contracting and expanding unit that could better meet new family needs must be daunting to imagine. For example, how many iterations of household membership will happen over the course of the loan, and who will be earners, become earners, or stop being earners in that time frame? Financing of home ownership is *too* stable. It is akin to marriage—the “marriage” of housing forms: available to steady earners, rewarding to steady earners (in terms of tax policy via the home mortgage deduction), but less and less relevant to the bulk of working and low-income families. It is possible that this declining relevance is in part because of its rarified vision of household membership stability.

The concept of flexible unit size would face many practical barriers. But the idea addresses an important problem with housing stock, whether in cities with relatively compact, multi-use zoning, or in more sprawled areas with single-family home zoning: *household*

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143. Martin John Brown & Taylor Watkins, *Understanding and Appraising Properties with Accessory Dwelling Units*, APPRAISAL J., 297 (Fall 2012), <https://accessorydwellings.files.wordpress.com/2012/12/appraisingpropertieswithadusbrownwatkinsnov2012.pdf> (“Few forms of housing have caused as much excitement among planners and social advocates, and as much consternation among appraisers and other real estate professionals, as accessory dwelling units . . .”).

144. *Id.*

145. *Id.* at 302 (quoting Freddie Mac, Single-Family Seller/Service Guide, Section 44.15).

*membership is dramatically less permanent and stable than the built environment.* Families respond to this reality by moving out of their unit when household membership declines, as when children age out of a household, or couples separate. Those moves can be highly disruptive to ties to family and community, as the moving household or individual may need to go some distance before they find housing stock that is significantly different from the one they needed to leave. In moving that distance, disruption to meaningful new family ties can happen. As unconventional as scalable unit size may sound, it prioritizes the realities of new normative families better than our current developments do. Particularly when combined with universal design concepts that ensure accessibility as people age or develop disabilities, the housing stock could better incorporate the idea of change both over individual life cycles and in family life, both by anticipating variation in the need for overall space, and by allowing for linked but separate households that better address the evolving experience of family.

#### CONCLUSION

This Article invites a new lens for policymakers. It recognizes that the changes in family structure and the changes in household membership may be related, but they are not the same. The Article asks policymakers to resist the temptation to substitute households when the old family law categories of parent and marriage become inapt. A conceptual distinction between new families, on the one hand, and households, on the other, may refine and redirect policy thinking across an array of fields. As one example, this Article focuses on housing. The Article argues for the prioritization of extra-household relational proximity. In the movement for flexible housing design, the needs of lower-income and urban families for dynamic sizing in space should not require detachment from buildings, neighborhoods, and communities. As designers engage the planning community to make spaces available for changing household composition, the familial ties among multiple households should remain in focus, and might even be leveraged for more efficient and family-friendly housing arrangements. Framing this goal is just one example of the policy gains from distinguishing between household and family.