

Family Formation and the Home

Pamela Laufer-Ukeles & Shelly Kreiczler-Levy

Abstract

Intergenerational families, voluntary kin groups, non-conjugal adult room-mates, and unmarried couples with or without children, all build domestic family lives together without formal and consistent legal recognition. The variety of families that provide benefits to dependents and mutual support to adults is constantly evolving; but, living together and creating a joint home has always been a central aspect of family life. As traditional family life tied to marriage and biology is continuously challenged, and alternative forms of family formation are developed, the significance of the role of the home plays in creating legally significant ties has been largely overlooked. While domesticity has been intermittently used as a tool in defining family, we will demonstrate that how home sharing creates family rights and obligations is riddled with inconsistencies and conflicts. On the one hand, certain welfare-based entitlements and zoning cases use flexible standards for determining family based on domesticity. However, on the other hand, even the rare recognition of private rights and obligations among those who cohabit occurs when sexuality or reproduction are also involved in a manner that more closely mimics traditional marriage. Generally, domesticity is assumed to include sexuality and the focus on family formation has centered on the sexuality involved. However, in this article we consider how joint lives that are based under a common roof whether or not they include sexual relations can include many of the supports and normative benefits of family life. We will demonstrate based on social science studies and taking into account both the benefits and risks of home sharing, how domesticity has its own normative benefits and ways of creating emotional and physical bonds apart from sex. Finally, this article will lay out different possibilities for how the law can recognize and support the role home sharing plays in creating familial lives that provide mutual support, stability and other important benefits over an extended and stable period of time. Keeping in mind both the desire to foster diversity and autonomy and protect those who are most vulnerable, this article considers options for legal recognition of the status of domesticity in family formation. These alternatives include consideration of how vulnerability could justify the imposition of obligations and rights upon sexual or non-sexual cohabitants and how registrations systems can provide solutions to those seeking legal recognition of the mutual support systems and family lives they create in a diverse manner by sharing a home with loved ones and/or long-term trusted friends.