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Consumption Property in the Sharing Economy

Shelly Kreiczer-Levy*

Abstract

Various doctrines from different areas of the law provide special legal protection for property that is produced and used for personal use, creating the legal category of “consumption property.” Zoning, criminal procedure, discrimination, foreclosure and bankruptcy, taxes, and eminent domain all treat property for consumption differently than commercial property. Recently, a new social phenomenon known as the sharing economy allows owners to rent out personal assets such as a room in their home, their private car, a bicycle, and even pets. The sharing economy challenges the foundational distinction between privately used property and commercial property and leads to fragmentation of uses and symbolic meanings. This fragmentation raises new questions: What are the boundaries of intimacy in the realm of modern consumption? How should the law regulate business transactions in intimate locations? This Article presents the category of personal consumption property, argues that the sharing economy profoundly challenges it, and then offers new ways to reinvent this category by introducing the framework of consumption property as a nexus of connections. The new framework also has numerous legal implications ranging from fair housing law and public accommodations law to taxes, business licenses, and other regulatory regimes.

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I. INTRODUCTION

A significant distinction in the law differentiates between property that is designed, produced, and purchased for private consumption and personal use and commercial property, a platform for multiple transactions and exchange.¹ This distinction—though not often mentioned or discussed²—has proven influential in shaping legal doctrines in property, criminal procedure, zoning, and privacy law.³ Loosely affiliated with the personhood theory,⁴ and based on values such as self-development, freedom, autonomy, and privacy, certain types of private property have received special treatment and enhanced legal protection,⁵ creating the category of “consumption

1. *See infra* Part II.

2. A distinction between privately used consumption property and productive property was made by Adolf Berle to warn against the concentration of productive property in the hands of corporations. The focus of the claim is on productive property and the perils of the corporation. *See* ADOLF A. BERLE & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* xxiii, xxviii-xxix (rev. ed. 1991); Adolf A. Berle, *Property, Production and Revolution*, 65 COLUM. L. REV. 1, 3 (1965); *see also infra* notes 71–72 and accompanying text.

3. *See infra* Parts II, IV.

4. *See infra* notes 52–63 and accompanying text.

5. *See infra* Part II.

property.” This distinction between personal consumption and commercial property is not only based on their different contribution to human values, but is also rooted in the foundational dichotomies between the intimate and commercial, the private and public, the personal and impersonal.⁶

Recently, a new economic phenomenon has been gradually changing the rules of the game.⁷ The sharing economy has taken the media, social networks, and public discourse by storm.⁸ It is an alternative form of consumption based on collaboration in the production, creation, or use of products and services.⁹ With that collaboration now simplified and redefined by technological advances and online communication, people are able to share, barter, lend, rent, swap, and gift¹⁰ their property. The sharing economy allows owners to rent out assets such as a car, a home, a bicycle, or even pets to strangers using new forms of peer-to-peer markets.¹¹ As a social trend, the sharing economy is gaining momentum.¹² Forbes estimated 3.5 billion dollars in revenue flowed through the sharing economy in 2013.¹³ Airbnb, a site that allows people to rent out houses for short-term periods, has facilitated over two million room rentals since its foundation in 2008 according to one estimate.¹⁴ In addition, it currently includes more than 1.5 million listings in 190 countries and 34,000 cities.¹⁵ Car sharing sites, such

6. See *infra* Part II.

7. See BETH BUCZYNSKI, SHARING IS GOOD: HOW TO SAVE MONEY, TIME, AND RESOURCES THROUGH COLLABORATIVE CONSUMPTION 2 (2013).

8. See RACHEL BOTSMAN & ROO ROGERS, WHAT’S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION (2010) (discussing the sharing economy); Rachel Botsman, *The Case for Collaborative Consumption*, TED (May 2010), http://www.ted.com/talks/rachel_botsman_the_case_for_collaborative_consumption?language=en; see also BUCZYNSKI, *supra* note 7, at 2.

9. See BUCZYNSKI, *supra* note 7, at 2.

10. BOTSMAN & ROGERS, *supra* note 8, at xv; see BUCZYNSKI, *supra* note 7, at 2.

11. Peer-to-peer (P2P) markets are markets where trade occurs between peers. See, e.g., Anindya Ghose, Panagiotis G. Ipeirotis & Arun Sundararajan, *Reputation Premiums in Electronic Peer-to-Peer Markets: Analyzing Textual Feedback and Network Structure*, PROC. ACM SIGCOMM 2005 3D WORKSHOP ON ECON. PEER-TO-PEER SYSTEMS (2005), <http://dl.acm.org/citation.cfm?id=1080207>.

12. See BUCZYNSKI, *supra* note 7, at 2.

13. Tomio Geron, *Airbnb and the Unstoppable Rise of the Share Economy*, FORBES (Jan. 23, 2013, 7:00 AM), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/>.

14. Benjamin G. Edelman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com 2* (Harvard Bus. Sch., Working Paper No. 14-054, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2377353#%23.

15. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Nov. 1, 2015). For

as RelayRides and Getaround, are also gradually gaining popularity. RelayRides is available in 2,300 cities and 300 airports.¹⁶ Other sites facilitate sharing of household possessions, tools, and bikes.¹⁷

The growing success of such collaborative consumption enterprises calls into question the foundational distinction between privately used property and commercial property.¹⁸ If people rent out their homes, cars, bikes, drills, and ladders for money, these properties are possibly no longer personally and individually used.¹⁹ As privately used property becomes a site for commercial transactions, presumably there is reason to question its contribution to self-development, autonomy, privacy, and intimacy. The conceptual framework of consumption is fragmented into discrete units of use with different symbolic meanings that include consumption and production.²⁰ This fragmentation raises new challenges to longstanding legal doctrines: What are the boundaries of property's intimacy in the realm of modern consumption? How should the law regulate business transactions in intimate locations?

Furthermore, consumers who prefer to use—rather than own—a car, a drill, or a bike challenge the perception that possession of property reflects and shapes personhood and contributes to self-development and autonomy.²¹ Traditional conceptualizations of typical personal possessions are becoming less relevant to new patterns of use, consumption, and production.²² Their long-established core as protecting privacy and freedom becomes fragmented, exposed, and in need of a new legal framework.²³ This Article presents the conceptual challenge to the distinction and offers an improved vision for the category.

different estimates, see Edelman & Luca, *supra* note 14, at 2.

16. Yuliya Chernova, *Peer-to-Peer Car Rental Startup RelayRides Hopes to Escape Silicon Valley Bubble*, WALL STREET J. (June 14, 2014, 9:27 PM), <http://blogs.wsj.com/venturecapital/2014/06/24/peer-to-peer-car-rental-startup-relayrides-hopes-to-escape-silicon-valley-bubble/>.

17. See NEIGHBORGOODS, neighborgoods.net (last visited Nov. 1, 2015).

18. This Article does not deal with all types of sharing economy transactions, as Part III explains.

19. Cf. Nicole Stelle Garnett, *On Castles and Commerce: Zoning Law and the Home-Business Dilemma*, 42 WM. & MARY L. REV. 1191, 1211 (2001) (discussing the challenge that home businesses pose to the traditional concept of the home).

20. See *infra* Part IV.A.

21. On deconstructing legal categories see J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 744 (1987).

22. See *infra* Part V.

23. See *infra* Part V.

Responses to the challenges prompted by the sharing economy could lead down one of two potential paths. A possible course of action is to constrain the phenomenon by means of legal regulation in order to restore traditional categories.²⁴ This path was chosen by several local governments in an attempt to make certain collaborative consumption transactions illegal.²⁵ A second path is to dismiss the distinction between commercial and personal consumption property altogether.²⁶ According to this view, a consumption property category is obsolete in this era of collaborative consumption; therefore, sharing economy transactions should be treated as commercial transactions for all intents and purposes.²⁷ This Article argues in favor of a third approach, which strives to reconstruct the category and its boundaries.²⁸ Although the current distinction is inaccurate, arcane, and strict, at its core it has some explanatory and justificatory force. Distinguishing among different assets based on their contribution to autonomy, dignity, or freedom is what typifies a rich and nuanced legal system.

Instead of dismissing the category, this Article calls for its reinvention.²⁹ Rather than focusing on the intimate-commercial dichotomy, this new conceptualization of the personal consumption property category is sensitive

24. See OFF. OF THE N.Y. ATT'Y GEN., AIRBNB IN THE CITY (Oct. 2014), <http://www.ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf>.

25. See *id.*; Julie Bort, *Airbnb: 124 New York Airbnb Hosts "May Be Flagrantly Misusing Our Platform"*, BUS. INSIDER (Aug. 22, 2014), <http://www.businessinsider.com/airbnb-gives-ag-info-on-124-ny-hosts-2014-8>; see also Lauren Frayer, *Uber, Airbnb Under Attack in Spain as Old and New Economies Clash*, NAT'L PUB. RADIO (July 29, 2014), <http://www.npr.org/blogs/parallels/2014/07/29/327796899/uber-airbnbunder-attack-in-spain-as-old-and-new-economy-clash> (describing the tension between tourism and taxi drivers' associations attempts to regulate "share economy" services and the individuals who rely on such services for primary or additional income); Brian Summers, *Airbnb's Short-Term Rentals Break Law in Los Angeles, Says City Memo*, DAILY BREEZE (Mar. 21, 2014), <http://www.dailybreeze.com/business/20140321/airbnbs-short-term-rentals-break-law-in-los-angeles-says-city-memo>; Brad Tuttle, *7 Cities Where the Sharing Economy Is Freshly Under Attack*, TIME (June 9, 2014), <http://time.com/money/2800742/uber-lyft-airbnb-sharingeconomy-city-regulation>.

26. On challenges to legal categories, and subsequently, suggestion to dismiss the category see *infra* notes 244–438 and accompanying text.

27. Cf. Adrian Glick Kudler, *LA Airbnb Landlords Going to Have to Start Paying Their Taxes*, L.A. CURBED (Sept. 9, 2014), http://la.curbed.com/archives/2014/09/la_airbnb_landlords_going_to_have_to_start_paying_their_taxes.php (stating that Los Angeles will begin collecting hotel taxes from Airbnb hosts).

28. See *infra* Part VI.

29. See *infra* Part VI.

to the complexity of human interactions and economic activities. Personal consumption property should be understood as an intermediate environment between the private, secluded, homogenous—and hence intimate—space and the public, regulated, commercial space.³⁰ The promise of an intermediate space lies in the possibilities it affords: new types of transactions and interactions and a unique set of personal and social benefits and costs.

The idea of a nexus of connections allows individuals to shape their personal space and provides an opportunity to engage with different people—friends, neighbors, strangers, and the community at large—in a variety of ways, including altruistic gift giving, commercial exchange, and the many shades of gray in between. Of course, the potential is not always fulfilled. The sharing economy is an intricate phenomenon that warrants a careful approach, one that appreciates both its potential and its risks.³¹

This vision supports a new legal framework. It advocates a complex set of legal rules that focus on the unique attributes of an intermediate space, instead of banning the sharing economy,³² regulating transactions such as commercial property,³³ or otherwise ignoring the activity.³⁴ This vision suggests that the values that underlie the category, namely intimacy, personhood, privacy, and dignity, should be reconfigured to fit the era of modern consumption. Because the distinction between consumption and commercial property centers on use,³⁵ the law should reflect how multiple forms of use manipulate the values that various doctrines set out to protect.³⁶ The role of intimacy, autonomy, or privacy is different across legal doctrines, such as local regulation, eminent domain, insurance, fair housing, and public accommodations.

Some doctrines remain untouched by changing patterns of use as long as

30. *See infra* Part V.

31. *See infra* notes 149–55 and accompanying text.

32. *See* Frayer, *supra* note 25.

33. *See* Kudler, *supra* note 27.

34. *Cf.* Daniel E. Rauch & David Schleicher, Like Uber, But for Local Governmental Policy: The Future of Local Regulation of the “Sharing Economy” 1 (Jan. 14, 2015) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2549919 (stating that there is an assumption that “if the sharing firms win these fights, their future will be largely free from government regulation,” but then arguing that this assumption is “almost surely wrong”).

35. *See infra* Part III.B.

36. *See infra* Part VI.

the core use is personal.³⁷ Yet, many other doctrines are still based on the assumption of consumption property as an intimate location. Consider, for example, the case of fair housing.³⁸ In 2012, the Ninth Circuit Court of Appeals ruled that the Fair Housing Act³⁹ did not apply to shared living situations and, hence, neither to advertisements seeking roommates.⁴⁰ The decision was based on the privacy of relationships inside the home and the right to intimate association.⁴¹ In intimate locations, owners hold the prerogative to choose with whom to share their property.⁴² The sharing economy introduces short-term multiple rentals, thereby blurring the distinction between a business transaction and an intimate choice of a long-term roommate.⁴³ This changes the meaning and function of intimacy in property law. Intimate locations, such as the home, the car, and personal items, are no longer limited to sharing with close relations, but may include commercial interactions with strangers.⁴⁴ Yet anti-discrimination rules still generally assume that consumption property precludes commercial transactions.⁴⁵ The new conceptualization provides a more nuanced account of the category and the doctrines that support it.

This Article provides guidelines to distinguish among different legal doctrines that support the consumption property category.⁴⁶ In addition, two types of legal doctrines are discussed in depth: (1) the boundaries of freedom of intimate association in property transactions, namely fair housing and public accommodation law, and (2) taxation and regulation.⁴⁷

Part II defines the category of personal consumption property and its legal significance, setting the boundaries for our exploration. In explaining the contours of this category, this Article will present it at its best, highlighting its most compelling arguments. As the argument of this Article

37. See *infra* notes 444–500 and accompanying text.

38. Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216, 1216 (9th Cir. 2012).

39. Fair Housing Act of 1968, 42 U.S.C. §§ 3601–19 (2012).

40. *Fair Hous. Council*, 666 F.3d at 1222.

41. *Id.* at 1220–21.

42. See *infra* Part VI.A.

43. See *infra* notes 148–55 and accompanying text.

44. See BOTSCHAN & ROGERS, *supra* note 8, at xii.

45. For public accommodation laws see Joseph William Singer, *No Right to Exclude: Public Accommodations and Private Property*, 90 NW. U. L. REV. 1283, 1448 (1995).

46. See *infra* Part VI.

47. See *infra* Part VI.

progresses, critiques of the category will be introduced and discussed. In addition, as we will see, not all types of consumption property receive the same protection or equally contribute to values such as autonomy, personhood, or freedom. The home is probably the strongest example of the category; it is revered by various doctrines and theories and understood as a shelter and a safe haven from the outside world.⁴⁸ It will thus serve as a paradigmatic example throughout this Article. Other personal consumption properties might be less central to legal theory and practice, but still build on the assumption of private use.

Part III presents the sharing economy phenomenon, distinguishing between major types of sharing economy and elaborating on the function of sharing sites such as Airbnb, car sharing sites, and NeighborGoods, which serve as prototypical examples of this Article's argument. Part IV then explains the challenge the sharing economy poses to personal consumption property. By contrasting two seemingly antithetical concepts—the home and the hotel—this Part details the rise and fall of the home as a pure shelter, detached from business and commercial interaction, and the fragmentation of the concept of the home into multiple uses. It also discusses the access revolution and consumers' preference to bargain for localized short-term use rather than own property. Part V reinvents the category of personal consumption property as an intermediate space, a platform for various relations borrowing from theories of public space and urban planning. It explains the connection between the sharing economy, home, public space, and urban planning. Part VI explores the legal implications of the analysis. Finally, Part VII offers concluding remarks.

II. PERSONAL CONSUMPTION PROPERTY: THE SELF AND BEYOND

A central legal distinction is the divide between property that is designed and purchased for personal use and commercial property. While the latter is exchanged for monetary value, the possession of the former property involves, in some cases, self-development, autonomy, freedom, and privacy.⁴⁹ The distinction between these two categories is not explicit, but is supported by a number of theories and doctrines, as this Part details.⁵⁰

48. *See infra* notes 80–81, 103 and accompanying text.

49. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 959–60 (1982).

50. *See infra* notes 148–264 and accompanying text.

Although each of these rules employs different justifications for the distinction, and therefore slightly different divisions, taken together they reflect a clear legal classification system.

First of all, the distinction evokes Margaret Radin's seminal work on property and personhood.⁵¹ Radin argued that people need to hold certain possessions in order to achieve self-development.⁵² She distinguished between fungible assets that do not warrant special protection and personhood property, suggesting "a hierarchy of entitlements: [t]he more closely connected with personhood, the stronger the entitlement."⁵³ A key example is the home.⁵⁴ The home is closely connected to personhood, according to Radin, because it is a "scene of one's history and future, one's life and growth."⁵⁵ The car is also part of the same list because cars are "the repository of personal effects, and cars form the backdrop for carrying on private thoughts or intimate relationships, just as homes do."⁵⁶

Property's role in the achievement of personhood and self-development is twofold.⁵⁷ First, people define themselves at least partly by what they have.⁵⁸ When a person changes, structures, or uses an object, according to the claim, she cements her identity in the object.⁵⁹ She has to acknowledge her responsibility when she changes the property, since the process is irreversible.⁶⁰ Second, objects tell us something about their owners.⁶¹ Objects reveal an owner's likes and dislikes, her tastes and preferences,⁶² her

51. Radin, *supra* note 49, at 957.

52. *Id.*

53. *Id.* at 986.

54. *Id.* at 991.

55. *Id.* at 992.

56. *Id.* at 1001.

57. *Id.* (noting the two avenues for answering the normative question of whether an object should be recognized as a reflection of personhood).

58. *Cf.* Nestor M. Davidson, *Property and Relative Status*, 107 MICH. L. REV. 757, 768 (2008) ("[I]t is clear that between what a man calls me and what he simply calls mine the line is difficult to draw. We feel and act about certain things that are ours very much as we feel and act about ourselves . . .").

59. JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* 372 (1988).

60. *Id.* at 364–65.

61. *See* Dudley Knowles, *Hegel on Property and Personality*, 33 PHIL. Q. 45, 56 (1983) (noting that people "identify [them]selves through the medium of [their] property and . . . accord others equivalent status").

62. *Id.* at 56–57.

status in life,⁶³ or the choices she has made.⁶⁴ Our property says something about us to the world and, at the same time, helps us shape an image of ourselves.⁶⁵ Think of personal possessions, such as clothes, books, and furniture. These objects allow owners to project their personality outwards and structure their experiences inwards.⁶⁶

However, the Radinian distinction focuses on the personal meaning of an asset, not on its primary function and use.⁶⁷ The home, car, bike, or ladder can be used personally without becoming intertwined with one's personhood.⁶⁸ Because personhood theory is essentially subjective,⁶⁹ it does not apply equally to similar types of property.⁷⁰ What the category of consumption property determines instead is whether the property has been purchased and designed for personal use or is a platform for commercial transactions and exchange. To illustrate the point, consider a similar distinction by Adolf Berle, one of the leading theorists on corporate governance.⁷¹ Berle distinguishes between productive property that is "devoted to production, manufacture, service[,] or commerce" of goods and consumption property that is an expression of personality.⁷² According to his argument, consumption property protects individual freedom, whereas productive property represents corporate power and is a threat to freedom.⁷³ Berle recognizes a separation between consumption and production not only as part of an economic theory, but also as different categories of property.⁷⁴ But because Berle was primarily concerned with the concentration of

63. Malla Pollack, *Your Image Is My Image: When Advertising Dedicates Trademarks to the Public Domain—with an Example from the Trademark Counterfeiting Act of 1984*, 14 CARDOZO L. REV. 1392, 1397–1406 (1993) (describing the significance of consumer goods as a means of "carry[ing] and communicat[ing] social meaning").

64. See Davidson, *supra* note 58, at 799.

65. *Id.* at 760.

66. See Pollack, *supra* note 63, at 1430.

67. Radin, *supra* note 49, at 962.

68. See Stephanie M. Stern, *The Inviolable Home: Housing Exceptionalism in the Fourth Amendment*, 95 CORNELL L. REV. 905, 927–28 (2010).

69. *Id.* at 927–28, 927 nn.113–14.

70. See Radin, *supra* note 49, at 959.

71. See generally AMNON LEHAVI, *THE CONSTRUCTION OF PROPERTY: NORMS, INSTITUTIONS, CHALLENGES* 179–85 (2013); Berle, *supra* note 2.

72. See Berle *supra* note 2, at 4.

73. LEHAVI, *supra* note 71, at 180.

74. *Id.* at 182.

productive property in the hands of corporations,⁷⁵ his argument distinguishes between individual and corporate owners and is less focused on the type of property.⁷⁶ Moreover, he was less interested in consumption property and did not fully develop the category.⁷⁷

The distinction between consumption and commercial property is also supported by legal doctrines and further justified by the values of freedom, privacy, and autonomy. These values justify the special legal protection of property that is designed for personal consumption rather than business use.⁷⁸ The home, as opposed to a house, is the clearest example of this unique legal treatment.⁷⁹ The home is perceived in legal scholarship and case law alike as a special locus for individual autonomy, dignity,⁸⁰ freedom, and privacy.⁸¹ The home is construed as a place free from the interference of others,⁸² and thus the home is treated differently from houses for commercial use.⁸³ In criminal law, for example, the punishments for invasion of a home “generally exceed the penalties imposed for invasions of other types of property.”⁸⁴ In addition, the Fourth Amendment,⁸⁵ search and seizure law, and general case law all reflect a commitment to privacy in the home.⁸⁶

Another important value supporting the distinction between consumption and commercial property is intimacy. It is by now almost

75. Berle, *supra* note 2, at 4; *see also* LEHAVI, *supra* note 71, at 180.

76. LEHAVI, *supra* note 71, at 180–81.

77. Eduardo M. Peñalver, Property, Power, and Freedom: Reich’s “New Property” at Fifty 22, 30–31 (unpublished manuscript) (on file with the author). In addition, Berle’s distinction does not accommodate small economic producers and is mainly concerned with the divide between individuals and corporations. *Id.* at 23 (noting that Berle “misapprehend[ed] the significance of the sorts of small economic producers”).

78. *See* Stern, *supra* note 68, at 907.

79. The home has an elevated status compared to other kinds of personal property, and it serves as the prototypical (though not sole) example of the thesis. *See* Radin, *supra* note 49, at 991–92.

80. Eduardo Peñalver, *Property Metaphors and Kelo v. New London: Two Views of the Castle*, 74 *FORDHAM L. REV.* 2971, 2972–73 (2006).

81. *See* D. Benjamin Barros, *Home as a Legal Concept*, 46 *SANTA CLARA L. REV.* 255, 259 (2006).

82. *See* Lisa M. Austin, *Person, Place, or Thing? Property and the Structuring of Social Relations*, 60 *U. TORONTO L.J.* 445, 450 (2010).

83. Barros, *supra* note 81, at 259 (“[H]omes are different from other types of property when issues of personal security, freedom, and privacy are at stake.”). In addition, Radin contends that the rights of landlord are fungible property. Radin, *supra* note 49, at 992–94.

84. Barros, *supra* note 81, at 262.

85. U.S. CONST. amend IV.

86. Barros, *supra* note 81, at 269–75, 269 n.57, 270 n.58.

cliché to say that property is a platform of human relations.⁸⁷ Within this general claim, consumption property is presumed to foster intimate relations founded on familiarity, closeness, and trust.⁸⁸ Sharing one's home, car, or books with family members, close friends, and neighbors remains within the contours of this general paradigm.⁸⁹ The home is often understood as a site that hosts intimate relations⁹⁰ and functions as a social and cultural unit of interaction between guests, neighbors, and the people living in the home.⁹¹ This type of sharing is considered to be part of the extended self⁹² because self-development requires intimate relations and social interactions.⁹³ However, commercial property supports a different type of relations, rooted in arm-length transactions and based on mutual economic interests rather than personal connections.⁹⁴ This distinction supports current housing

87. Relational and communal property scholars have similarly argued strongly for an understanding of property as a platform for relations. See generally Gregory S. Alexander, *Intergenerational Communities*, 8 L. & ETHICS HUM. RTS. 21, 21 (2014) (arguing that property owners owe an obligation to provide future generations with the necessary tools to complete “life-transcending projects” and future generations have a duty to carry out such projects); Gregory S. Alexander & Eduardo Peñalver, *Properties of Communities*, 10 THEORETICAL INQUIRIES L. 127, 127–28 (2009) (discussing the mutual dependence of the individual and their community); Jennifer Nedelsky, *Law, Boundaries, and the Bounded Self*, 30 REPRESENTATIONS 162, 162–63 (1991) (evaluating the boundary-like structure of property law and advocating for a change in the legal metaphor in order to further human autonomy); Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 617–18 (1988) (examining society's reliance on relationships by analyzing the legal protections and exposures of such reliance interest).

88. Cf. Austin, *supra* note 82, at 449.

89. See *id.* at 450 (discussing the home as a site that hosts meaningful intimate relations); see also Shelly Kreiczer-Levy, *The Informal Property Rights of Boomerang Children in the Home*, 74 MD. L. REV. 127 (2015) (discussing co-residence as a home-sharing community).

90. See ROBERT C. ELLICKSON, *THE HOUSEHOLD: INFORMAL ORDER AROUND THE HEARTH* xi, 1 (reprt. ed. 2008) (defining the household as a “set of institutional arrangements, formal or informal, that govern relations among the owners and occupants of a particular dwelling space”); see also Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226, 229–30 (2006) (analyzing informal household relations).

91. Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?*, 29 J.L. & SOC'Y 580, 600–01 (2002); Judith Sixsmith, *The Meaning of Home: An Exploratory Study of Environmental Experience*, 6 J. ENVTL. PSYCHOL. 281, 291–92 (1986); Sandy G. Smith, *The Essential Qualities of a Home*, 14 J. ENVTL. PSYCHOL. 31, 33 (1994); see also Shelley Mallett, *Understanding Home: A Critical Review of the Literature*, 52 SOC. REV. 62, 68 (2004) (defining the home as a “‘socio-spatial system’ that represents the fusion of the physical unit or house and the social unit or the household”).

92. Russell Belk, *Sharing*, 36 J. CONSUMER RES. 715, 726–27 (2010).

93. Austin, *supra* note 82, at 449.

94. See, e.g., Belk, *supra* note 92, at 719 (implying that a less personal business relationship has a greater impersonal commodity character than that of a more personal business relationship).

discrimination and public accommodations regulations, which allows owners to choose with whom to share their consumption property but regulates their decision to share in a place of business.⁹⁵ Although intimacy as a property value has not been addressed in the literature, it lies at the core of the consumption property category.⁹⁶

Another set of legal doctrines celebrates possession of the home as worthy of special protection. A legal focus on possession supports the personal consumption aspect of a home, since possession is the primary personal use of the property.⁹⁷ Protection of possession of the home has been justified based on the values of dignity and personhood⁹⁸ and is overwhelmingly supported by legal doctrines.⁹⁹ From bankruptcy¹⁰⁰ to post-foreclosure rights of redemption¹⁰¹ and just cause eviction rules,¹⁰² the law grants possession of the home preferential protection, so much so that Stephanie Stern refers to it as “residential protectionism.”¹⁰³

Although possession of a car, bike, or ladder is not uniquely protected, the law still singularizes personal property used for private consumption. Property tax law in most states distinguishes between personal property used for business purposes and property for personal use.¹⁰⁴ Some states limit tangible property tax to business-related property.¹⁰⁵ Other states—such as Alabama, Arizona, California, Connecticut, Montana, and Oklahoma—

95. See *infra* Part VI.

96. See, e.g., Mallett, *supra* note 91, at 84 (indicating that the home “can be associated with feelings of comfort, ease intimacy, relaxation and security and/or oppression, tyranny and persecution”).

97. See, e.g., Radin, *supra* note 49, at 990.

98. See *infra* Part VI.

99. See *infra* notes 258–70 and accompanying text.

100. See 11 U.S.C. § 1322(b)(5) (2012); see also Jay A. Kroese, *Undersecured Residential Mortgage Cramdown Under Chapter 13: Receiving the Attention of Both the Supreme Court and Congress*, 18 J. CORP. L. 737, 764 (1993) (noting that “[h]ome ownership is a highly desirable societal policy [supported by] the federal government”).

101. See, e.g., *Graves v. Wayman*, 859 N.W.2d 791, 793 (Minn. 2015) (discussing generally a homeowner’s exercise of the right of redemption to cancel a foreclosure sale); see also JESSE DUKEMINIER ET AL., *PROPERTY* 618–19 (7th ed. 2010) (discussing the history of the equitable and statutory rights of redemption).

102. See *Fed. Nat’l Mortg. Ass’n v. Nunez*, 952 N.E.2d 923, 930–31, 933 (Mass. 2011).

103. See Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1100 (2009); *infra* Part VI.

104. CCH STATE TAX LAW EDITORS, 2009 U.S. MASTER PROPERTY TAX GUIDE 7, 45–46 (Fred Conklin ed., 2009).

105. *Id.*

employ a personal property *ad valorem* tax, but exempt personal use property, household goods, or furniture.¹⁰⁶ Also, many state laws include statutory exemptions that limit a creditor's ability to collect from debtors in judgment enforcement.¹⁰⁷ Some states exempt property for personal use, such as clothes, books, musical instruments, and furniture.¹⁰⁸ Similarly, federal bankruptcy exemptions include a car, household furniture and goods, and books that are personally used.¹⁰⁹ These exemptions allow debtors to maintain their dignity and support recuperation for their family.¹¹⁰

To sum up, there are several rules that treat property designed, purchased, and used for personal consumption differently than other types of property.¹¹¹ The category is supported by different justifications, based on individual values, including personhood, autonomy, and freedom.¹¹² Yet the individual focus does not exclude cooperation. The idea of sharing is not foreign to this category. Although altruistic sharing poses no real threat to the category of personal consumption property, *commercial* sharing does not accord with the foundations of the category.¹¹³

Indeed, property can be used to extract profit when owners transfer partial use rights such as licenses or easements to others in exchange for monetary compensation.¹¹⁴ Depending on the type of transaction and its effect on possession, exchange value is perceived as antithetical to the concept of personal consumption property.¹¹⁵ The underlying assumption is

106. *Id.*

107. JAMES J. BROWN, JUDGMENT ENFORCEMENT §§ 10.1, 10.9 (2d ed. 1995 & Supp. 2015).

108. *See, e.g.*, DEL. CODE ANN. tit. 10, § 4902(a) (2015) (including family bible, school books, family library, family pictures, pianos, and sewing machines among exemptions); *see also* HAW. REV. STAT. § 651-121 (2015) (including all necessary household furnishings, appliances, clothing and books that are used by the debtor and his family as exemptions); BROWN, *supra* note 107, §§ 10.19, 10.24 (examining Kansas and Massachusetts exemptions). *But see* DEL. CODE ANN. tit. 10, § 4902(c) (“This provision shall not apply to persons who keep sewing machines for sale or hire.”).

109. 11 U.S.C. § 522(d) (2012); BROWN, *supra* note 107, §§ 10.09–10.

110. BROWN, *supra* note 107, § 10.09.

111. *See supra* notes 95–110 and accompanying text.

112. *See Austin, supra* note 82, at 450.

113. *See supra* notes 38–58 and accompanying text.

114. *See Rashmi Dyal-Chand, Useless Property*, 32 CARDOZO. L. REV. 1369, 1375–77, 1388–89 (2011) (arguing that use is derivative of ownership, which is a concept that runs counter to the current structure of property law).

115. *See, e.g.*, Belk, *supra* note 92, at 719 (arguing that there is a sliding scale between fungibility and personal connections with regard to personal property: as the transaction becomes more personal to the purchaser, such as in cases of secondary goods sold, the good loses its “impersonal commodity character”). This commodity character affects the value for both the seller and purchaser. *Id.*

that personal consumption property is designed and produced for personal, rather than commercial, use.¹¹⁶ If the property is used to extract significant exchange value, its unique qualities as personal use property diminish.¹¹⁷ For example, Radin contends that when a homeowner rents her house to a tenant, the rights of the landlord become fungible property and the occupational rights of tenants should be characterized as personhood property instead.¹¹⁸ This explains why mixing commercial and personal use could prove confusing for this legal category. Conceptually, it turns the property into something completely different, as Part IV explains.¹¹⁹

Finally, it is important to clarify that the distinction between consumption and commercial property, while important and pertinent to current legal reality, is by no means hermetic. Even the most powerful distinctions have fuzzy edges. One important complexity concerns homeownership.¹²⁰ There is a complex interplay between possession, consumption, and value.¹²¹ Most clearly, homeowners consume housing.¹²² Housing consumption also includes price protection and the options of decorating and landscaping.¹²³ Consequently, some argue that homeownership is a form of production of housing services and an investment in real estate.¹²⁴ It is clear, however, that homeowners who live in their home use their property primarily as a source of consumption. In addition, possession includes personhood values of an asset: the personal space it affords and its value in securing autonomy, dignity, and privacy for its possessors.¹²⁵ This is the added value that supposedly distinguishes personal possessions from other assets.¹²⁶

116. *Id.*

117. *Id.*

118. Radin, *supra* note 49, at 992–93.

119. *See infra* Part IV.

120. *See infra* notes 122–25 and accompanying text.

121. *See infra* notes 122–25 and accompanying text.

122. Lee Anne Fennell, *Homeownership 2.0*, 102 NW. U. L. REV. 1047, 1054–59 (2008).

123. *Id.*

124. JAMES M. BUCHANAN, PROPERTY AS A GUARANTOR OF LIBERTY 35 (Charles K. Rowley ed., 1993); Fennell, *supra* note 122, at 1054–59.

125. *See* Fennell, *supra* note 122, at 1054–59. Fennell bundles these two levels together as the consumption value of the home as opposed to the home as an investment bundle. *Id.*

126. *Id.* at 1054–63.

III. THE SHARING ECONOMY

A. *The Phenomenon: Background and Motivations*

It is now time to consider the sharing economy phenomenon and its social and economic implications. The term “sharing economy” refers to a variety of economic practices that are based on collaborative forms of consumption.¹²⁷ Collaborative consumption is about the “sharing, bartering, lending, trading, renting, gifting and swapping” of products and services, simplified and redefined by technological advances and online communication.¹²⁸ As the trend gains momentum,¹²⁹ social advocates passionately argue that it will revolutionize long-established conventions about economic production, consumption, and ownership.¹³⁰ Slogans such as “usage trumps possession,”¹³¹ “access is better than ownership,”¹³² and that the sharing economy is “as big as the Industrial Revolution”¹³³ mark the ambition of such advocates who are dedicated to transforming not only economic practices but also social processes.

This new trend relies on owners that are willing to share and users that prefer to use rather than own.¹³⁴ From the owner’s perspective, there are certain types of goods that have excess capacity when they are privately owned and consumed.¹³⁵ Because the excess capacity is not used, certain types of goods are systematically underexploited.¹³⁶ Think of a car, for example. Suppose someone only uses their car in winter but never in the summer. During the summer the car is simply parked in the driveway. Through sites such as Getaround, JustShareIt, and Turo, this person could benefit from the car’s use value not only in winter, but also in the summer,

127. BOTSMAN & ROGERS, *supra* note 8, at 71–75.

128. *Id.* at xv.

129. *See supra* notes 14–17 and accompanying text.

130. *See infra* notes 131–33 and accompanying text.

131. BOTSMAN & ROGERS, *supra* note 8, at 97–98.

132. *Id.*

133. *See* Danielle Sacks, *The Sharing Economy*, FAST COMPANY (Apr. 18, 2011, 1:05 AM), <http://www.fastcompany.com/1747551/sharing-economy> (interviewing Rachel Botsman).

134. Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273, 311–13 (2004).

135. *Id.*

136. *Id.*

on Thursdays, or during the evenings.¹³⁷ Whenever the car is being used, it can be rented out for money.¹³⁸ In addition, cars have another untapped potential. Many commuters drive to work alone, even though their car can seat four or five passengers. To make use of this excess capacity, car owners can simply carpool. As of 2003, carpooling was the second-largest commuter transportation system in the United States.¹³⁹ The mechanisms for carpools vary tremendously. They can involve explicit barter, cost sharing,¹⁴⁰ or payments.¹⁴¹ For example, in Northern Virginia and the San Francisco Bay area, solo drivers are picking up strangers at known meeting points in order to take advantage of high occupancy vehicle lanes.¹⁴²

From the user's perspective, potential users of goods and services prefer to pay or barter for use of a product, rather than purchase the product.¹⁴³ Reasons for this preference include obtaining access at a lower cost¹⁴⁴ and the flexibility of using items in different locations, which brings storage advantages because storage is the owner's responsibility.¹⁴⁵ There are also social and psychological gains, including making a personal statement that denies the traditional market ownership model and supports sustainability.¹⁴⁶ At the same time, there are also costs associated with sharing: the price of a shared product, the cost of learning to use unfamiliar products repeatedly, and the cost of searching for new products.¹⁴⁷

In economic terms, new technologies and online markets have significantly lowered transaction costs for short-term use of personal assets.¹⁴⁸ Reduced costs allow owners and users to benefit from excess

137. See *About Us*, JUSTSHAREIT, <http://www.justshareit.com/jsi/website/about.do> (last visited Nov. 3, 2015); *How It Works*, GETAROUND, <https://www.getaround.com/tour> (last visited Nov. 3, 2015); *How Turo Works*, TURO, <https://turo.com/how-turo-works> (last visited Nov. 3, 2015).

138. See, e.g., *How Turo Works*, *supra* note 137 (discussing how to list one's car).

139. See Benkler, *supra* note 134, at 281 (citing John Pucher & John L. Renne, *Socioeconomics of Urban Travel: Evidence from the 2001 NHTS*, 57 *TRANSP. Q.* 49, 53 tbl.3 (2003)).

140. *Id.* at 282.

141. *Id.* at 282–83.

142. *Id.* at 284.

143. Cait Poyner Lamberton & Randall L. Rose, *When Is Ours Better Than Mine? A Framework for Understanding and Altering Participation in Commercial Sharing Systems*, 76 *J. MARKETING* 109, 111 (2012).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. See Benkler, *supra* note 134, at 282–83.

capacity of the property easily and efficiently.¹⁴⁹ Because the sharing economy is based mostly on contractual arrangements and users typically do not hold property rights, there is little danger of either overuse or underuse of the asset. Therefore, the notorious tragedies of the commons¹⁵⁰ or the anticommons,¹⁵¹ resulting from too many owners having privileges of use¹⁵² or rights to exclude¹⁵³ respectively, do not pose real threats here.¹⁵⁴ However, the sharing economy can also lead to negative externalities for neighbors and the community.¹⁵⁵

Although the sharing economy is only in its initial stages of revolutionizing consumption, it is important to study its effect on property law. First, it continues gaining momentum.¹⁵⁶ At this rate, and considering the very real motivations that support the phenomenon, one can anticipate its continuing rise. Second, the phenomenon poses a challenge already in these fairly early stages because it challenges the basic conventions of consumption and production of individual owners.¹⁵⁷

B. Categories in the Sharing Economy

The term sharing economy embraces a wide variety of sharing transactions.¹⁵⁸ The differences are remarkable. In order to make sense of the phenomenon as well as define the scope of inquiry, I suggest three main guidelines for characterizing various patterns of sharing. The first principle distinguishes between transactions that share products and transactions that provide services.¹⁵⁹ Peer-to-peer markets can include owners that share their property, such as cars, drills, bikes, and houses, or people wishing to share their time, skills, and expertise via sites like Skillshare¹⁶⁰ and TaskRabbit.¹⁶¹

149. *Id.*

150. Garrett Hardin, *The Tragedy of the Commons*, 162 *SCI.* 1243 (1968).

151. Michael A. Heller, *The Tragedy of the Anticommons: Property in Transition From Marx to Markets*, 111 *HARV. L. REV.* 621 (1998).

152. Hardin, *supra* note 150.

153. Heller, *supra* note 151, at 623.

154. *See* Benkler, *supra* note 134, at 304–05.

155. *See infra* note 397 and accompanying text.

156. *See supra* notes 14–16 and accompanying text.

157. *See supra* notes 14–16 and accompanying text.

158. *See supra* notes 127–28 and accompanying text.

159. *See* BOTSCHAN & ROGERS, *supra* note 8, at 71–72.

160. *See About Us*, SKILLSHARE, <https://www.skillshare.com/about> (last visited Nov. 3, 2015).

While sharing skills can be just as revolutionary as sharing property in terms of consumer behavior, only the latter is innovative in terms of property theory. The sharing of property—in particular consumption property that is routinely employed for private use—presents a challenge to key property theory assumptions, as will be discussed in the next Part.¹⁶²

The second principle distinguishes between commercial-based sharing and sharing by private individuals.¹⁶³ Consider the difference between Zipcar¹⁶⁴ and Turo.¹⁶⁵ Both sites provide creative ways to save on transportation costs.¹⁶⁶ Zipcar offers car-sharing services for cars owned by a commercial company.¹⁶⁷ Turo is a peer-to-peer service that allows private owners to rent their cars.¹⁶⁸ Both models reflect consumers' preferences to use rather than own, and in this sense they both challenge the premise of longtime attachment to personal possessions.¹⁶⁹ In essence, users reject the need for continuing entanglement with certain types of property.¹⁷⁰ Despite the similarities from the consumer's perspective, there is an important difference between the two business models. Because the owner in Zipcar is a commercial company, there is no consumption property involved in the transaction.¹⁷¹ Their cars are business inventory par excellence. In Turo, at least some of the vehicles available are personal cars rented out by individual owners when they are not using them.¹⁷²

A third principle concerns the distinction between payments for goods

(describing how Skillshare is an online learning community designed to help users master real-world skills through project-based classes). Skillshare's "mission is to . . . dismantl[e] the traditional barriers to learning so that anyone, anywhere in the world, can learn whatever they set their minds to." *Id.*

161. See *How TaskRabbit Works*, TASKRABBIT, <https://www.taskrabbit.com/how-it-works> (last visited Nov. 3, 2015) ("TaskRabbit is the smart way to get things done by connecting you with others in your neighborhood."). With TaskRabbit, users can outsource errands to a list of taskers that have been vetted. *Id.*

162. See *infra* Part IV.

163. See *supra* notes 127–28 and accompanying text.

164. See *How to Zip*, ZIPCAR, <http://www.zipcar.com/how> (last visited Nov. 3, 2015).

165. See TURO, *supra* note 137.

166. See *id.*; ZIPCAR, *supra* note 164.

167. See ZIPCAR, *supra* note 164.

168. See TURO, *supra* note 137.

169. See *id.*; ZIPCAR, *supra* note 164.

170. See generally Lamberton & Rose, *supra* note 143 (discussing property entanglement).

171. See ZIPCAR, *supra* note 164.

172. See TURO, *supra* note 137.

or services and bartering, or in-kind swapping. All of the above examples assume payment in return for use rights or services provided. As part of the consumption revolution, and following an environmental agenda, many online sites facilitate swapping in-kind goods. One can swap clothes on SwapStyle, books on PaperBackSwap, and any other items on Tradeaway.¹⁷³ Because in-kind swapping is based on barter, the parties to the transaction do not deal with use rights and the owner does not retain ownership rights.¹⁷⁴ It therefore does not pose a challenge to the legal doctrines framing consumption property.

To sum up, this Article focuses on a particular type of sharing economy transaction in order to discuss the clearest challenge to the concept of consumption property: physical goods that are privately owned and purchased for individual use, but then shared in exchange for monetary compensation in peer-to-peer markets.

C. *Sharing of Consumption Property*

Three types of online sharing sites serve as prototypical examples for the argument.¹⁷⁵ The first is Airbnb.¹⁷⁶ The site offers an online tourist marketplace that allows owners to share their homes for a fee.¹⁷⁷ Hosts usually offer short-term rentals of the home or spare rooms for travelers.¹⁷⁸ Airbnb accommodates a vast array of hosting options, including: shared accommodation where the owner and travelers live under the same roof; short-term rentals of the entire home when the owners go on vacation; and rentals of houses and apartments that the hosts do not actually live in.¹⁷⁹ At one end of the spectrum, there are housing units that are not being used as homes at all and pose little threat to core concepts of consumption property;

173. See *How to Swap Books*, PAPERBACKSWAP, http://www.paperbackswap.com/help/how_to_swap_books.php (last visited Nov. 3, 2015); SWAPSTYLE, <http://www.swapstyle.com/> (last visited Nov. 3, 2015); *What is Trade or Barter?*, TRADEAWAY, <http://www.tradeaway.com/abouttrade.php> (last visited Nov. 3, 2015).

174. See Benkler, *supra* note 134, at 304–05.

175. See *infra* notes 179–206 and accompanying text.

176. See AIRBNB, *supra* note 15.

177. *Id.*

178. *Id.*

179. See Georgios Zervas, Davide Proserpio & John W. Byres, *The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry* 26 (Bos. Univ. Sch. of Mgmt., Research Paper No. 2013-16, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2366898.

however, at the other end there are hosts sharing an intimate space with strangers and living with travelers.¹⁸⁰ The introduction of new touristic possibilities through Airbnb has blurred the distinction between home and hotel.¹⁸¹ If the home becomes part of the hospitality sector, is it still a home at all? If tourists are paying to stay at someone's home, is it really the same as a hotel?

The categorization is further complicated by comparison to another online sharing site called Couchsurfing.¹⁸² Couchsurfing also offers accommodation for travelers, but unlike Airbnb this accommodation is free.¹⁸³ The difference between gift exchange and market exchange¹⁸⁴ proves significant in terms of visual and discursive analysis¹⁸⁵ and in terms of users' expectations. In the Couchsurfing community, participants, or "surfers," are redefined as friends with a friendship ranking (such as good friend, close friend, or best friend).¹⁸⁶ In contrast, while the personal dimension is also evident on Airbnb, the site emphasizes the city and rooms available.¹⁸⁷ Additionally, hosts on Couchsurfing are expected to interact with their guests and show them the city.¹⁸⁸ On the other hand, Airbnb travelers are expected to be relatively independent.¹⁸⁹ For these reasons, Couchsurfing poses less of a threat to the concept of consumption property, at least in theory. Although it does challenge the social dichotomy between friends and strangers, it creatively redefines travelers as friends and keeps sharing within traditional boundaries: altruistic and friendly. This framing

180. *Id.* at 7–8.

181. *Id.* at 4–5.

182. *Share Your Life*, COUCHSURFING, <http://www.couchsurfing.com/about/about-us/> (last visited Oct. 14, 2015).

183. Natalia Yannopoulou, Mona Moufahim & Xuemei Bian, *User-Generated Brands and Social Media: Couchsurfing and Airbnb*, 9 CONTEMP. MGMT. RES. 85, 87 (2013).

184. See ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS 151 (1993); PETER M. BLAU, EXCHANGE AND POWER IN SOCIAL LIFE 89 (1964); Barry Schwartz, *The Social Psychology of the Gift*, 73 AM. J. SOC. 1, 2 (1967) (discussing the premise of gift exchange); see also Kieran Healy & Kimberly D. Krawiec, *Custom, Contract and Kidney Exchange*, 63 DUKE L.J. 645 (2012) (complicating the distinction between gift and market exchange using the example of kidney exchange).

185. See Yannopoulou et al., *supra* note 183, at 85.

186. *Id.* at 87.

187. *Id.* at 88.

188. See Tapio Ikkala & Airi Lampinen, *Defining the Price of Hospitality: Networked Hospitality Exchange via Airbnb*, CSCW COMPANION 173, 177 (2014).

189. See *id.* at 176.

defuses any danger that the home will function as a hotel and longstanding distinctions are preserved.¹⁹⁰

The duality embedded in the market of touristic home sharing has generated a fierce public debate. In New York, the Attorney General has decided to enforce hotel zoning laws and occupancy taxes on certain Airbnb hosts.¹⁹¹ According to New York regulations, owners or tenants cannot legally rent their apartments out for less than thirty days unless they are also living in the property.¹⁹² In San Francisco, Airbnb announced that it would collect and remit a 14% hotel occupancy fee.¹⁹³ These steps prove that the conceptual boundaries of home and hotel have become fuzzy. As the next Part will show, the home is a revered and protected locus in American law.¹⁹⁴ The blurring of boundaries challenges the necessity and applicability of the concept of “the home.”¹⁹⁵

The second prototypical example is car sharing.¹⁹⁶ Turo connects car owners with possible renters who need a car but prefer not to own one.¹⁹⁷ Some car-sharing sites offer specific campus or neighborhood sharing in various countries.¹⁹⁸ Indeed, private cars have limited usage per household and it is estimated that cars spend about 90% of their time parked in parking lots.¹⁹⁹ Car sharing allows owners to maximize utility of the property.²⁰⁰ This rationale is not restricted to cars.²⁰¹ There are various underused items

190. See Yannopoulou et al., *supra* note 183, at 89.

191. Ilya Shapiro & Gabriel Latner, *New York's Pursuit of Airbnb Is an Attack on Privacy*, DAILY CALLER (Dec. 18, 2013, 10:43 AM), <http://dailycaller.com/2013/12/18/new-yorks-pursuit-of-airbnb-is-an-attack-on-privacy/>.

192. N.Y. MULT. DWELL. LAW § 4 (McKinney 2011).

193. Dara Kerr, *Airbnb Begins Collecting 14% Hotel Tax in San Francisco*, CNET (Sept. 17, 2014, 12:23 PM), <http://www.cnet.com/news/airbnb-begins-collecting-14-hotel-tax-in-san-francisco/>.

194. See *infra* Part IV.

195. See *infra* Part IV.

196. See Eun Ji Cho & Liat Rogel, *Urban Social Sustainability Through the Web: Using ICTS to Build a Community for Prospective Neighbors*, I.C.T.A.S. 167, 168 (2013).

197. *How Turo Works*, *supra* note 137.

198. See Cho & Rogel, *supra* note 196, at 168 (noting the existence of international car-sharing sites, as well as a “campus-based service . . . operating at Stanford University, UC Berkeley, and UCLA”).

199. *Id.* (identifying cars as an under-utilized product in the United States, where, as of 2011, cars spent about “90[%] of the time sitting idle in parking lots”).

200. *Id.*

201. See *id.*

in every household.²⁰² NeighborGoods is a site that allows people that live nearby to share their goods either for a fee or entirely for free.²⁰³ Certain personal items—such as drills, ladders, lawnmowers, and bikes—are individually owned but only rarely used.²⁰⁴ Indeed, as the site’s explanatory video exclaims, “does everyone on your block need to own a lawnmower?”²⁰⁵ Because many of the items are underutilized, the potential economic benefits of such enterprises are considerable.²⁰⁶

These three sites facilitate the expanded utilization of items’ excess capacity by creating peer-to-peer markets for private individuals. All of these sites involve personal consumption property that is designed, marketed, and purchased for private use and is traditionally shared only with family and close friends.²⁰⁷ These sites have developed ways to expand the personal consumption property’s use. The next Part will explain how this purpose poses a threat to the concept of personal property.

IV. THE CHALLENGE

Inasmuch as the sharing economy movement will continue to gain momentum and become a significant social phenomenon, it presents a challenge to the legal concept of personal consumption property. Traditional conceptualizations of typical personal possessions, such as the home, the car, and household goods, are losing not only their centrality to the practice of property law but also their legal coherence. Their long-established core has become fragmented, exposed, and is now in need of a new legal framework. This challenge stems from two main sources that correspond to the two perspectives of sharing economy transactions: the owner’s perspective and

202. See NEIGHBORGOODS, *supra* note 17; *cf. id.* (suggesting that “[n]ot only physical assets, but also intangible assets, such as time and skill, can be shared (or exchanged)” to increase efficiency).

203. *Id.*

204. *See id.*

205. NeighborGoods, *How NeighborGoods Works*, VIMEO (2010), <https://vimeo.com/10659908>.

206. See Benkler, *supra* note 134, at 308 (“[T]he owner [of a shared item] has an opportunity to benefit if [the owner] can get any positive utility from allowing access to the excess capacity.”); see also Anders Fremstad, *Gains from Sharing: Sticky Norms, Endogenous Preferences, and the Economics of Shareable Goods 2* (Univ. of Mass. Amherst Dep’t of Econ., Working Paper No. 2014-02, 2014), http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1167&context=econ_workingpaper (“There are ‘gains from sharing’ when the cost to the lender is less than the benefit to the borrower.”).

207. *See supra* notes 177–204 and accompanying text.

the user's perspective.²⁰⁸ This Part begins with the former and then moves on to the latter.

A. Conceptual Fragmentation

The concept of personal consumption property refers to possessions that are deeply associated with self-development, personhood, and autonomy.²⁰⁹ The sharing economy splits the home, the car, or household possessions into discrete units of use with different symbolic meanings. Alongside personal use, these assets are exploited to produce profit, to interact with strangers, and to allow widespread impersonal and disposable use.²¹⁰ These seemingly different functions undermine the coherence of the concept.

To illustrate this argument, think of the home. The home is an important example because of its centrality in modern American culture as a symbol of an intimate haven, where the individual and a family are secured from the outside world.²¹¹ Although homeownership is fragmented in economic terms into consumption and investment,²¹² and even though American housing ethics include pluralist values,²¹³ the internal workings of the home remain, as a legal concept, personal and intimate.²¹⁴ In other words, the personal use of the home and intimate shared living space lie at the core of the legal regulation of the home.²¹⁵

The most striking portrait of the home as a secure shelter is found in zoning laws.²¹⁶ Zoning laws define the home as a sanctuary, physically

208. See *infra* Part IV.A–B.

209. See *supra* Part II.

210. See *The Rise of the Sharing Economy*, THE ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

211. See JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY (2009) (describing the American cultural and legal perception of the home as a secure, private, and individualized “castle”); Barros, *supra* note 81, at 259–60; Kreczner-Levy, *supra* note 89, at 139–40; Stern, *supra* note 103, at 1095–96.

212. See Fennell, *supra* note 122, at 1053–54.

213. Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511, 513–19 (2007) (identifying five distinct housing ethics in American law: “(1) housing as an economic good, (2) housing as home, (3) housing as a human right, (4) housing as social order, and (5) housing as one land use in a functional system”).

214. See *Kyllo v. United States*, 533 U.S. 27, 40 (2001); Barros, *supra* note 81, at 255–56.

215. See Barros, *supra* note 81, at 259–61 (suggesting that “the unique nature of the home justifies additional legal protection in some, but not all, circumstances”).

216. Cf. Garnett, *supra* note 19, at 1195–96 (noting the American conceptualization that “‘home’

separated from the realities of commerce and urban life.²¹⁷ The main purpose of zoning codes is to organize land use of private lands by dividing them into “zones.”²¹⁸ As several scholars have noted, this division creates a hierarchy of land uses.²¹⁹ At the top of the pyramid are residential zones, especially those reserved for the single family dwelling.²²⁰ Zoning laws protect homes from incompatible uses and defend residential areas against outside threats.²²¹ In filtering incompatible uses, zoning ordinances achieve two purposes: they preserve the home-business distinction and regulate familial life.²²²

First, zoning codes in many municipalities specifically restrict home-based businesses.²²³ As Nicole Stelle Garnett explains, some municipalities prohibit all home occupations in residential zones,²²⁴ others provide a list of prohibited occupations,²²⁵ and still others distinguish between professionals and nonprofessionals in granting permission to work from home.²²⁶ Second, certain local zoning ordinances restrict use in residential neighborhoods to narrowly defined single-family units.²²⁷ They regulate intimacy within the home and push out nontraditional living arrangements such as intergenerational families,²²⁸ college roommates,²²⁹ foster residence,²³⁰ and

and ‘work’ are incompatible”). See generally Joel Kosman, *Toward an Inclusionary Jurisprudence: A Reconceptualization of Zoning*, 43 CATH. U. L. REV. 59, 82 (1993) (describing the importance of the American understanding of the home as private and secure).

217. Garnett, *supra* note 19, at 1201.

218. *Id.* at 1206.

219. See, e.g., Kosman, *supra* note 216, at 79 (noting that zoning laws prioritizes residential “zones”).

220. Garnett, *supra* note 19, at 1201–02 (noting that zoning laws prioritized “physically set[ting] apart [the home] from the realities of the urban work-a-day world”); see also Kosman, *supra* note 216, at 79 (describing the modern zoning practice of prioritizing protection of residential districts which are “perceived as the cornerstone of American society of values”).

221. Garnett, *supra* note 19, at 1206.

222. See *id.* at 1195–96.

223. *Id.* at 1207.

224. See, e.g., MESA, ARIZ., ZONING ORDINANCES ch. 11, art. II, §§ 11-4-4, 11-5-5 (2014).

225. See, e.g., CORPUS CHRISTI, TEX., ZONING ORDINANCES art. I, § 3-1.36 (2010).

226. See, e.g., JEFFERSON PARISH, LA., COMPREHENSIVE ZONING ORDINANCE ch. 40, art. I, § 40-3 (2015); see also Garnett, *supra* note 19, at 1207–08.

227. See *Moore v. City of East Cleveland*, 431 U.S. 494, 495–96 (1934).

228. *Id.* at 498–99.

229. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 2–3 (1974); *Borough of Glassboro v. Vallorosi*, 568 A.2d 888, 889 (N.J. 1990).

230. *City of White Plains v. Ferraioli*, 313 N.E.2d 756, 757 (N.Y. 1974).

group homes.²³¹ Although courts have struck some of these ordinances down as violations of the freedom of association,²³² the regulation of residential units remains a prominent pillar of the home as a sanctuary. In short, zoning laws exclude both commercial production and non-familial living arrangements from the home.²³³ It thus serves to protect intimacy from the market and from strangers.²³⁴

Privacy in the home is another legal field that solidifies the vision of home as a castle.²³⁵ The four walls of the home define the boundaries of “spiritual territoriality.”²³⁶ Case law has strongly maintained that a search in the home cannot be conducted without a warrant.²³⁷ In a similar vein, in *Kyllo v. United States*, the Supreme Court held that a thermal imaging scan of the home was an illegal search.²³⁸ These cases often assert that the sanctity of the home and the right of the individual to retreat to his private dwelling are key elements of American constitutional law.²³⁹ In addition, case law emphasizes the intellectual and emotional needs that the privacy of one’s home, as the private realm of family life, protects.²⁴⁰

This perception is actually fairly new,²⁴¹ since for most of human history the household was a center of productive activity and there was no clear

231. *Berger v. New Jersey*, 364 A.2d 993, 995 (N.J. 1976).

232. *See, e.g., Moore*, 431 U.S. at 498–99 (“On its face [the regulation] selects certain categories of relatives who may live together and declares that others may not.”).

233. *See supra* notes 220–30 and accompanying text.

234. *See supra* notes 220–31 and accompanying text.

235. *See* SUK, *supra* note 211, at 2; *see also* Barros, *supra* note 81, at 259–60; Robert M. Rakoff, *Ideology in Everyday Life: The Meaning of the House*, 7 POL. & SOC’Y 85, 85 (1977); Smith, *supra* note 91, at 32; Stern, *supra* note 103, at 1100.

236. John Messerly, Comment, *Roommate Wanted: The Right to Choice in Shared Living*, 93 IOWA L. REV. 1949, 1964 (2008).

237. Barros, *supra* note 81, at 267–68.

238. *Kyllo v. United States*, 533 U.S. 27, 35–36 (2001) (holding that “thermal-imaging observations of the intimate details of a home are impermissible”).

239. *Id.* at 31–37 (emphasizing the importance of protecting the intimate details of the home); *accord* *Wilson v. Layne*, 526 U.S. 603, 610 (1999); *Payton v. New York*, 445 U.S. 573, 583–85 (1980); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976); *Silverman v. United States*, 365 U.S. 505, 511 (1961).

240. *See* *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977); *see also* *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) (affirming the right of an individual to “satisfy his intellectual and emotional needs in the privacy of his own home”); Brooke Wright, Comment, *Fair Housing and Roommates: Contesting a Presumption of Constitutionality*, 2009 BYU L. REV. 1341, 1356–57 (identifying the right to privacy, especially within the home, as a “fundamental liberty”).

241. Garnett, *supra* note 19, at 1199.

distinction between the home and the community.²⁴² The transition from a preindustrial society to a modern economic society brought with it a clear theoretical division between the domestic sphere and the market sphere.²⁴³ The home has been reconstructed to mean a shelter from the cold outside world, the tensions of commerce, and the backstabbing nature of competition.²⁴⁴ Defined as a shelter, the home is understood to be commerce-free and antithetical to the idea of production.²⁴⁵ Feminist scholars have criticized this vision, dubbed the separate spheres ideology, because it subjects and restricts women to the roles of homemaker and caretaker.²⁴⁶ Despite the prominence of such accounts, this division is still influential in the legal conceptualization of the home as intimate and secure for numerous reasons.²⁴⁷

Now consider the sharing economy.²⁴⁸ Airbnb poses a threat to the vision of the home as a pure, private, and revered sanctuary. It invites commercial transactions and strangers into the home.²⁴⁹ True, home business poses a threat to the commerce-free environment as well, as Garnett eloquently argues.²⁵⁰ Yet the sharing economy poses a bigger, more fundamental threat than working from home. Airbnb is not only a type of

242. *Id.*; Janet Halley, *What Is Family Law?: A Genealogy Part I*, 23 *YALE J.L. & HUMAN.* 1, 2–3 (2010); Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 *AM. J. COMP. L.* 753, 756–57 (2010) (describing the history of the American household as “an explicitly economic unit housing both human reproduction and material production”); Duncan Kennedy, *Savigny’s Family/Patrimony Distinction and Its Place in the Global Genealogy of Classical Legal Thought*, 58 *AM. J. COMP. L.* 811, 832 (2010).

243. Garnett, *supra* note 19, at 1201–02.

244. Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 *HARV. L. REV.* 1497, 1499 (1983).

245. *Id.* (“The . . . home [was] seen as [a] safe reposit[or]y for the virtues and emotions people believed were being banished from the world of commerce and industry.”). *But see* Jan De Vries, *The Industrial Revolution and the Industrious Revolution*, 54 *J. ECON. HIST.* 249, 255–57 (1994) (describing the household as a “unit of . . . production and labor power”).

246. Olsen, *supra* note 244, at 1510–12.

247. *See* Pamela Laufer-Ukeles & Shelly Kreiczer-Levy, *Family Formation and the Home*, 104 *KY. L.J.* (forthcoming 2016) (providing a progressive vision of the home and focus on stability, intimacy, and interdependence in cohabitation); Laura A. Rosenbury, *Friends with Benefits?*, 106 *MICH. L. REV.* 189, 191 (2007) (providing feminist account and critique); *see also* Stern, *supra* note 103, at 1109 (“The personhood theory of the home maintains that an individual constitutes herself as a person through a secure and ongoing relationship with certain property.”).

248. *See* Sacks, *supra* note 133.

249. *See* Geron, *supra* note 13.

250. Garnett, *supra* note 19, at 1209–17.

business; it is also a different mode of sharing one's residence.²⁵¹ It brings people into one's home, not as visiting customers, but as temporal, casual roomers.²⁵² According to Viviana Zelizer, living with others creates a certain type of intimacy.²⁵³ She defines intimacy as knowledge of and attention to details that would, were they to become public, create embarrassment or damage the individual's social esteem.²⁵⁴ Living with strangers mixes the distant with the intimate. However, unlike renting a room to a permanent tenant, the sharing economy opens up the possibility for short-term, casual renting patterns. The home becomes a platform for interactions and social exchange with strangers that come and go.²⁵⁵ The home, household goods, or the car turn into an open environment that is less intimate, private, and secure.

To rephrase the argument in Radin's terms, personhood property—be it the home or the car—distinctively contributes to self-development because it is a repository of personal thoughts, history, and memories of relationships.²⁵⁶ The sharing economy complicates this concept because it involves production, decentralization, and widespread use.²⁵⁷ A possible rebuttal is that when owners share their property with strangers as part of the sharing economy, their property is not personhood property in the Radin sense. This rebuttal helps keep the property category neat and clear, but it ignores the potential of individuals to shape their own private environment and invite in various types of interactions. Moreover, it may only be true as long as the sharing economy phenomenon is sporadic and uncommon. Inasmuch as the phenomenon will continue to gain momentum, it is bound to alter the way we think about this type of property.

A more salient configuration of the same argument is that the sharing economy phenomenon obscures the concept of home by blurring the line

251. *How It Works*, AIRBNB, <https://www.airbnb.com/help/getting-started/how-it-works> (last visited Dec. 16, 2015).

252. Garnett, *supra* note 19, at 1209–17.

253. VIVIANA ZELIZER, *THE PURCHASE OF INTIMACY* 213–14 (2007) (arguing that living in a household almost always engages household members in intimacy because cohabitants have information and attention that if made public could damage the reputation and welfare of other cohabitants).

254. *Id.* at 14–15.

255. *See* Geron, *supra* note 13.

256. *See supra* note 55 and accompanying text.

257. *See* BUCZYNSKI, *supra* note 7, at 2; *supra* note 9 and accompanying text.

between a home and a hotel. A hotel is “an establishment that provides lodging and usually meals, entertainment, and various personal services for the public.”²⁵⁸ As part of the hospitality business, a hotel is open to the public²⁵⁹ and is characterized by hospitable, yet impersonal, interaction.²⁶⁰ This dichotomy is a fairly new one, since historically the inn evolved from the private house.²⁶¹ It was common for householders to receive a stranger as a guest for the night.²⁶² Yet, under the current legal regime, the categories of *hotel* and *home* are perceived as antithetical.²⁶³ They rule each other out, with the home receiving superior legal protection.²⁶⁴ Similar, though less forceful, antithetical categories can be applied to cars²⁶⁵ and household possessions.²⁶⁶

The sharing economy challenges this type of antithetical reasoning.²⁶⁷ This social phenomenon unsettles a set of predetermined dichotomies.²⁶⁸ The hierarchy of home and hotel relies on the public-private dichotomy.²⁶⁹ The home is a private arena, shielded from prying eyes, while the hotel is

258. See *Hotel*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/hotel> (last visited Nov. 5, 2015). The legal definition of zoning law equally emphasizes the presence of lodging and food on the premises and the accommodation of strangers and travelers. See, e.g., MARK BOBROWSKI, HANDBOOK OF MASSACHUSETTS LAND USE AND PLANNING LAW § 12.12[O] (2d ed. 2002). It is kept public and open to the public. See JOHN E. H. SHERRY, THE LAWS OF INNKEEPERS: FOR HOTELS, MOTELS, RESTAURANTS, AND CLUBS 9 (3d ed. 1993).

259. See 42 U.S.C. § 2000a (2012); MERRIAM-WEBSTER, *supra* note 258.

260. Cf. SHERRY, *supra* note 258, at 9 (explaining that inns developed from private houses).

261. *Id.* at 6.

262. *Id.*

263. See *supra* notes 226–40 and accompanying text.

264. Although the police cannot search an occupied hotel room without a warrant, hotel workers can enter the room to provide services and, in certain cases, if the guest is disturbing other guests (occasionally upon calling the police). See *Stoner v. California*, 376 U.S. 483 (1964); *United States v. Jeffers* 342 U.S. 48 (1951), *overruled on other grounds by Rakas v. Illinois*, 439 U.S. 128 (1978); SHERRY, *supra* note 258, at 198–99.

265. There are distinct differences between a private car and rental cars or taxis. Natasha Meyers, Note and Comment, ELRAC, Inc. v. Masara: *Is the New York Court of Appeals Undermining the Concept of Permissive Use Under the New York Vehicle and Traffic Law?*, 18 TOURO L. REV. 409, 413 (2002) (noting that “car rental agencies are not in the same position as private car owners”).

266. Personal possessions can be contrasted with pawnshops. Pawnshops don’t rent items, but maintain possession of items as security for a loan. I use the example in order to draw a line between a distant commercial use and personal private use.

267. See Balkin, *supra* note 21, at 744–46.

268. See, e.g., Messerly, *supra* note 236, at 1963.

269. *Id.*

open to the public.²⁷⁰ If privacy is about keeping information concealed, and intimacy is about attention to and knowledge of sensitive details,²⁷¹ then the home is certainly more private than a hotel. However, if owners open up their home to strangers, then the home's privacy is compromised and it is in fact open to the public in a manner similar to a small hotel.²⁷²

Yet privacy can also mean the ability to choose "one's social relations free from social constraints."²⁷³ In fact, historically the word was associated with familiarity with others away from the discipline of family and the formality of public officials.²⁷⁴ The understanding of privacy as a choice is very much connected to the idea of private property.²⁷⁵ Leading theorists of property theory highlight the owner's prerogative to exclude others from the owner's property as the core of ownership and property law.²⁷⁶ This right to exclude can be restated to mean that the owner can choose to include people, share property, and allow others to participate in the process of shaping its contours.²⁷⁷ Despite important critiques of the exclusion approach²⁷⁸ that dispute its premise both descriptively²⁷⁹ and normatively,²⁸⁰ it demonstrates

270. See *id.* (explaining the public-private distinction in the context of the home).

271. See ZELIZER, *supra* note 253, at 14–15.

272. See *supra* notes 270–71 and accompanying text.

273. Austin, *supra* note 82, at 452.

274. *Id.* (quoting Roger Chartier, *Introduction: Community, State, and Family: Trajectories and Tensions*, in *A HISTORY OF PRIVATE LIFE: PASSIONS OF THE RENAISSANCE* 400 (Roger Chartier ed., Arthur Goldhammer trans., 1989)).

275. See Sherry F. Colb, *A World Without Privacy: Why Property Does Not Define the Limits of the Right Against Unreasonable Searches and Seizures*, 102 MICH. L. REV. 889, 890 (2003) (discussing the Fourth Amendment as a protection of property).

276. See J.E. PENNER, *THE IDEA OF PROPERTY IN LAW* 103 (1997); Larissa Katz, *Exclusion and Exclusivity in Property Law*, 58 U. TORONTO L.J. 275 (2008); Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1857, 1891 (2007); Ernest J. Weinrib, *Poverty and Property in Kant's System of Rights*, 78 NOTRE DAME L. REV. 795, 808 (2003).

277. Daniel B. Kelly, *The Right to Include*, 63 EMORY L.J. 857, 859 (2014); see also Katz, *supra* note 276, at 278 (defining the owner as the "supreme agenda setter for the resource").

278. See HANOCH DAGAN, *PROPERTY: VALUES AND INSTITUTIONS* 37–55 (2011) (providing a critique of the centrality of exclusion in property law); see also Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009); Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer & Laura S. Underkuffler, *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2009); Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889 (2005); Joseph William Singer, *Democratic Estate: Property Law in a Free and Democratic Society*, 94 CORNELL L. REV. 1009 (2009).

279. See DAGAN, *supra* note 278, at 35–37; Gregory S. Alexander, *Governance Property*, 160 U. PA. L. REV. 1853, 1855 (2012).

the intricacy of the concept of privacy in the realm of property.²⁸¹ If privacy is about control, an Airbnb host achieves privacy by managing her social relations. The property becomes a platform for social exchange and social interaction. When an owner decides to continuously share the asset for whatever purpose—economic or social—she opens it up as a site for interaction and communal activity. She moves further away, however, from the vision of the home as a secluded shelter.

Additionally, the hierarchy is also based on the distinction between personal and impersonal, business and intimacy. The assumption is that the hotel is a commercial enterprise whereas the home is personal, intimate, and a locus of familial relations.²⁸² This dichotomy is also based on the distinction between the sphere of domestic bliss and the sphere of commercial market transactions.²⁸³ This approach strictly separates the intimate from the commercial as two incompatible “hostile worlds.”²⁸⁴ The sharing economy, however, allows homes to have multiple symbolic roles. Thus, the home becomes a site for commercial transactions concerning shared living arrangements.²⁸⁵ These shared residences are short-term, casual, and do not provide opportunity for personal connection. The home becomes at the same time commercial and intimate, personal and impersonal, private and public, moving away from a clear and coherent conception.²⁸⁶

It is tempting to think of the sharing economy as a retreat to collectivism or an anti-consumerism movement.²⁸⁷ As I explain in the next Part, this is not an accurate description of the phenomenon, and the reality is more complex.²⁸⁸ The true challenge to property theory in the modern economy lies in rediscovering the socioeconomic potential of private assets, which, despite having historical roots, has been transparent in previous decades.

280. See *supra* note 278 and accompanying text.

281. See DAGAN, *supra* note 278, at 38.

282. See Messerly, *supra* note 236, at 1966–67.

283. Olsen, *supra* note 244, at 1497–98.

284. Cf. ZELIZER, *supra* note 253, at 22–23 (arguing that the “feared contamination [between the separate spheres] runs in both directions”); Pamela Laufer-Ukeles, *Mothering for Money: Regulating Commercial Intimacy*, 88 *IND. L.J.* 1223, 1240 (2013).

285. Cf. De Vries, *supra* note 245, 255–57 (comparing the historical analysis of the industrious revolution and the role of household production).

286. See Messerly, *supra* note 236, at 1958–61.

287. See *infra* notes 405–12 and accompanying text.

288. See *infra* Part IV.B.

This multifaceted structure depletes the concept of personal consumption property of its compelling socio-legal symbolic power. This can result in two opposite conceptual outcomes. One is that the concept of property becomes devoid of meaning. The other is that the concept of personal consumption property deserves a richer, more complex understanding.

B. Access or Ownership

The sharing economy is not just about the owners of homes, cars, and other valued possessions who are looking for new ways to make use of their property. It is equally about users: consumers who choose not to purchase property, but rather to bargain for short-term use.²⁸⁹ They pay per use of a car, bike, or drill only when they need to use it.²⁹⁰ This consumer trend poses a fundamental challenge to the personal consumption property argument.²⁹¹ Indeed, a number of scholars have criticized Radin's argument, questioning the essentialism and political background of the connection between property and personhood and highlighting its subjective nature.²⁹² Stephanie Stern argues that there is little evidence from psychological research to support the argument that the home constructs identity.²⁹³ Rather, the home expresses and maintains identity at best.²⁹⁴ What contributes to human flourishing, according to her argument, are not mere possessions, but rather social interactions.²⁹⁵ Stephen Schnably has further claimed that "[t]he ideal of the home is not one simply constructed by individuals, but is one that has been actively fostered by the state and other 'private' actors wielding significant social power."²⁹⁶

A different critique of the personhood theory is that attachment to material possessions draws, at least partly, on comparisons to others.²⁹⁷

289. See Sacks, *supra* note 133.

290. *Id.*

291. See *infra* note 292 and accompanying text.

292. See Fox, *supra* note 91, at 581–86 (responding to the argument that attachment to the home is subjective).

293. Stern, *supra* note 103, at 1110.

294. *Id.*

295. *Id.*

296. Stephen J. Schnably, *Property and Pragmatism: A Critique of Radin's Theory of Property and Personhood*, 45 STAN. L. REV. 347, 373–74 (1993).

297. Davidson, *supra* note 58, at 759–60.

Property signals relative status because material possessions mark and reinforce economic, social, and cultural hierarchies.²⁹⁸ This potential interrelation between personhood and possessions may fuel competitive consumption.²⁹⁹ Indeed, ecological and anti-consumerism motivations steer individuals away from ownership as a source of personal meaning.³⁰⁰

The sharing economy seems to fit perfectly with this movement.³⁰¹ Facilitated by online communication, the sharing economy is driven by the power of social media to utilize excess capacity of property.³⁰² For users, social networks facilitate efficient short-term use by significantly lowering transaction costs.³⁰³ Instead of ownership, consumers find other means for achieving and projecting personal identity.³⁰⁴ As Rachel Botsman and Roo Rogers argue in their popular book about collaborative consumption, online social networks provide new ways of self-expression.³⁰⁵ People share what they are doing (Twitter), what they are reading (Shelfari), and who their friends are (Facebook).³⁰⁶ They further explain: “[A]s our online ‘brands’ define ‘who we are’ and ‘what we like,’ actual ownership becomes less important than demonstrating use or use by association. We can now show status, group affiliation, and belonging without necessarily having to buy physical objects.”³⁰⁷

The outcome of this consumer trend results, for several reasons, in a gradual tendency towards access to property in preference to ownership of

298. *Id.* at 760–61.

299. *Id.* at 799–800.

300. Stephen Zavestoski, *Environmental Concern and Anti-Consumerism in the Self-Concept: Do They Share the Same Basis?*, in *EXPLORING SUSTAINABLE CONSUMPTION: ENVIRONMENTAL POLICY AND THE SOCIAL SCIENCES* 173, 175–76 (Maurie J. Cohen & Joseph Murphy eds., 2001). See generally KIM HUMPHREY, *EXCESS: ANTI-CONSUMERISM IN THE WEST* (2013) (detailing anti-consumerism with the western nations).

301. Lamberton & Rose, *supra* note 143, at 109.

302. Benkler, *supra* note 134, at 338.

303. GABRIEL H. MUGAR, *A PRACTICE PERSPECTIVE ON WEBSITES FOR THE SHARING ECONOMY* 738, 738–41 (2012) (describing the role of websites in the sharing economy).

304. See Lauren I. Labrecque, Jonas vor dem Esche, Charla Mathwick, Thomas P. Novak & Charles F. Hofacker, *Consumer Power: Evolution in the Digital Age*, 27 *J. INTERACTIVE MKT.* 257, 266 (2013) (describing the effect of technology and the sharing economy on the balance of power between consumers and firms).

305. BOTSMAN & ROGERS, *supra* note 8, at 98.

306. *Id.*

307. *Id.*

property.³⁰⁸ Jeremy Rifkin made this projection almost fifteen years ago in his influential book *The Age of Access*.³⁰⁹ According to his argument, ownership of market goods becomes outdated in the hyper-capitalist economy.³¹⁰ Exchange of ownership is too slow of a mechanism to adapt to fast technological advances, information flows, and human creativity.³¹¹ In the new economy, “markets are making ways for networks and ownership is steadily being replaced by access.”³¹² Instead of buyers and sellers, servers and clients bargain for short-term access through leases, rentals, subscriptions, or memberships.³¹³ Take, for example, cars. When a dealer sells a car to a buyer, their relationship is limited and short-term.³¹⁴ If the client gains access to the car in the form of a lease, however, the relationship is ongoing, renewable, and potentially perpetual.³¹⁵ These become what Rifkin terms “commodifying relationships.”³¹⁶ Consequently, “[w]hen everyone is embedded in commercial networks of one sort or another and in continuous association by way of paid leases, partnerships, subscriptions and retainer fees, all time is commercial time.”³¹⁷ This description, along with other insights, contributes to Rifkin’s conclusion that the network economy leads to the commodification of time and experiences.³¹⁸

Although it is tempting to treat the sharing economy as part of the network economy portrayed by Rifkin, the challenge the sharing economy presents is quite different. First of all, the type of sharing economy transactions analyzed in this Article deals with private assets owned and purchased for the purpose of private consumption. It is a socioeconomic phenomenon whose uniqueness lies in that it concerns not only businesses but also individuals seeking either to lower costs of consumption or make

308. JEREMY RIFKIN, *THE AGE OF ACCESS: THE NEW CULTURE OF HYPERCAPITALISM, WHERE ALL OF LIFE IS A PAID-FOR EXPERIENCE* 4 (2000).

309. *Id.*

310. *Id.* at 5–6.

311. *Id.*

312. *Id.* at 4.

313. *Id.* at 6.

314. See, e.g., *10 Steps for Selling Your Car*, KELLEY BLUE BOOK, <http://www.kbb.com/sell-your-car/completing-the-sale-of-your-car/> (last visited Nov. 17, 2015).

315. RIFKIN, *supra* note 308, at 10.

316. *Id.*

317. *Id.*

318. *Id.*

use of excess capacity.³¹⁹ Second, Rifkin focused on changing patterns of capitalist consumption as the driving force of the network economy rather than the sharing among individuals at the center of the sharing economy.³²⁰ However, this is an important characteristic that makes the phenomenon unique and challenging. The sharing economy cannot be reduced to either Rifkin's vision of hyper-capitalism or a utopian vision of sharing. On the one hand, the sharing economy involves social and commercial networks, fast flows of information, and a strong focus on access.³²¹ On the other hand, the sharing of property among individuals results in decreased levels of consumption³²² and increased efficiency in the use of property.³²³ In this sense, it drifts away from prophecies of over-consumption into the realm of sustainability.

Indeed, users' preferences to share rather than own can be driven by economic, social, or ecological motivations³²⁴ and present a competing view of the relations between objects and people. The sharing economy is thus entangled with the ideologies and politics of consumption, capitalism, and markets.³²⁵ My argument, however, is not that ownership is obsolete. Even in the era of modern consumption, people still value attachments to personal possessions.³²⁶ The argument is that the sharing economy should direct our attention to multiple uses, functions, and values that are at stake here, not only autonomy and self-development.³²⁷

V. REINVENTION OF THE CATEGORY

The inherent difficulties within the concept of personal consumption property, now intensified by the sharing economy, can lead to the conclusion that the concept is obsolete. Personal consumption property does not make any sense under current legal reality, if it ever did. I would suggest not

319. *See supra* notes 301–04 and accompanying text.

320. RIFKIN, *supra* note 308, at 143–44.

321. *See supra* notes 301–04 and accompanying text.

322. *See generally* Boyd Cohen & Jan Kietzmann, *Ride On! Mobility Business Models for the Sharing Economy*, 27 *ORG. & ENV'T* 279, 280 (2014) (describing the new popularity of sharing economy).

323. *See generally* Benkler, *supra* note 134, at 279.

324. *See supra* notes 301–02, 322 and accompanying text.

325. Michel Bauwens, *Class and Capital in Peer Production*, 33 *CAP. & CLASS* 121, 125 (2009).

326. *See supra* note 91.

327. *See infra* Part V.

rushing to this type of conclusion. Although it may be too strict, at its core the distinction has some explanatory and justificatory force. Distinguishing among different assets based on their contribution to autonomy, dignity, or freedom is what typifies a rich and nuanced legal system.³²⁸ Assets have different economic functions and symbolic meanings.³²⁹ However, the notion of personal consumption property captures only a fragment of the fuller, more complex picture. As the sharing economy phenomenon reveals, consumption property can encompass a range of uses and legal relations.³³⁰ Therefore, the concept of an interactive personal space is more attuned to the variety of networks that affect the home and other personal possessions. The personal use of property serves as a potential platform for additional interaction. Like many challenges, the sharing economy provides an opportunity to redefine personal space by opening up new possibilities of communal and commercial interactions.³³¹ This Part will explore these possibilities, and map the structural relations engendered by the sharing economy in an interactive personal space. Four focal points of the transaction run through this analysis: (1) the owner; (2) the user; (3) the social and economic role of the asset; and (4) the community.

To understand the role of the sharing economy in structuring relationships, it is useful to think of Zelizer's theory of connected lives.³³² The distinction between the intimate and commercial, market and home, or personal and impersonal location, relies on the "hostile world" or "separate sphere" approach.³³³ This approach marks "distinct arenas for economic activity and intimate relations."³³⁴ Against this approach, Zelizer points out that many transactions involve a mixture of economic and intimate characteristics.³³⁵ Furthermore, the structure of economic transaction and the intimacy of social relations are, in some sense, interdependent.³³⁶

328. On the importance of context-based analysis in property law, see *infra* note 425 and accompanying text.

329. See, e.g., Davidson, *supra* note 58, at 761 ("[P]roperty serves as an important locus for symbolic meaning.").

330. See, e.g., Lamberton & Rose, *supra* note 143, at 109–10.

331. See ZELIZER, *supra* note 253, at 3.

332. ZELIZER, *supra* note 253, at 2 ("[P]eople lead connected lives, and that plenty of economic activity goes into creating, defining, and sustaining social ties.").

333. *Id.*

334. *Id.* at 20–21.

335. *Id.* at 11.

336. *Id.* at 20–21.

According to Zelizer, as certain transactions become common, they transform the meaning and type of relationship by challenging former categories.³³⁷ Consequently, people begin to renegotiate previous social boundaries and distinctions.³³⁸ Zelizer cites childcare as an example: commercial adoption agencies, commercial childcare, and the system of public foster care have changed the definition of parenthood.³³⁹ This results in new distinctions among the birth child, adopted child, client's child, foster child, and so on.³⁴⁰ Similarly, as the sharing economy becomes prevalent, it will ultimately change definitions of personal consumption property and offer new distinctions within the concept of home, hotel, car, household goods, and more. When people choose a type of transaction, they will actually be choosing a type of relationship with their paying guests, neighbors, and community.³⁴¹

The sharing economy both structures new legal relationships and reshapes the meaning and function of the asset.³⁴² A transaction's rules, customs, and forms shape not only social relations but also the property's nature, function, and value.³⁴³ This influences the asset's market value, symbolic meaning, and physical traits. Consider the complex system of property relationships that the previously discussed websites have developed. The sharing economy is made possible because of vast technological improvements that have facilitated communication between owners and sharers.³⁴⁴ Most of these transactions are made via the Internet, through websites that also include reputation mechanisms.³⁴⁵ The user

337. *Id.* at 38.

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.* at 37.

342. As property scholars have emphasized, property cannot be adequately understood and theorized without considering the ways people share property and cooperate in property-related projects. See Nedelsky, *supra* note 87, at 184; Carol M. Rose, *Property as Story Telling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J.L. & HUMAN. 37, 48–53 (1990); Singer, *supra* note 87, at 619, 621.

343. Property analysis has to be mindful of governance structures, or the internal workings of property interactions. See Alexander, *supra* note 279, 1863–65.

344. Benkler, *supra* note 134, at 278.

345. See, e.g., *How Do Reviews Work?*, AIRBNB, <https://www.airbnb.com/help/article/13> (last visited Nov. 5, 2015) (explaining the details of the review system); *NeighborGoods FAQ*, NEIGHBORGOODS, <http://neighborgoods.net/faq> (last visited Nov. 5, 2015).

writes a review on the sharing experience, the property, and the owner.³⁴⁶ In some cases, the property owner also writes a review of the sharer's use.³⁴⁷ Reputation works as a safeguard for prospective users, and it also raises the value of the property.³⁴⁸ A host on Airbnb can charge a higher price when her reviews are impeccable.³⁴⁹ Sharers participate in shaping the value and function of the asset by influencing the price, marketability, and even physical attributes.³⁵⁰ Indeed, owners are occasionally willing to add furniture, change facilities, or even own new pets to secure a positive review.³⁵¹ Market forces and social norms thus create a voice-inducing participation mechanism that improves the market value and usability of assets. Instead of repeat players or formal right-holders, an entire network of users, owners, and future users participate in the sharing economy and the sites that host it.³⁵²

Moreover, collaborative consumption builds new forms of commercial relations. Instead of a consumer and a seller (often a commercial company) there is an owner and a user. Unlike commercial companies that rent out cars, for example, the owners in our cases are invested in the property because they are still the primary users. The owner and the user actually share the consumption of the same property and the user participates in the utilization of the property.³⁵³ This makes property somewhat more personal, connected, and—as the name would suggest—collaborative.

One must also consider the role of consumption property in the neighborhood or larger community. The vision of the home as a detached

346. See *How Do Reviews Work?*, *supra* note 345.

347. See *generally Help Center*, AIRBNB, <https://www.airbnb.com/help/article/241/i-m-a-guest--what-are-some-safety-tips-i-can-follow?topic=245> (last visited Nov. 5, 2015).

348. *Id.* (“I’m a guest. What are some safety tips I can follow? 1. Look at the profiles and reviews of potential hosts.”).

349. See, e.g., *Your Airbnb Pricing Strategy Sucks*, LEARNAIRBNB, <http://www.learnairbnb.com/airbnb-pricing-strategy-sucks/> (last visited Nov. 5, 2015) (“When you first list your unit, especially if it’s your first unit, you have little credibility with the community You need your Airbnb pricing well below market price But after you build up your reviews, you’ll need to raise your prices accordingly.”).

350. See Rachel Botsman, *The Currency of the New Economy Is Trust*, TEDGLOBAL (Sept. 24, 2012), http://www.ted.com/talks/rachel_botsman_the_currency_of_the_new_economy_is_trust (discussing a case where the owner decided to get a cat to avoid a negative review concerning mice on the premises).

351. *Id.*

352. See *supra* notes 342–49 and accompanying text.

353. See *supra* note 344 and accompanying text.

private territory, isolated from outside threats, is mostly an illusion.³⁵⁴ The home is influenced by the community surrounding it.³⁵⁵ It is affected by what happens outside its four walls.³⁵⁶ The home's market and personal values are affected by schools, highways, land use, and, most of all, the neighborhood ambiance and composition of the community.³⁵⁷ This delicate interplay between the home and the community is layered into the conceptual structure of the home in law, yet the vision of this relationship is limited.³⁵⁸

The law accommodates certain communal environments. I refer mostly to residential communities, particularly common interest communities (CICs) that include homeowner associations, condominiums, and cooperatives.³⁵⁹ CICs rely on private rules to enforce a number of covenants, conditions, and restrictions (CC&Rs) that secure a protected environment.³⁶⁰ These restrictions deal with the aesthetic of landscape—the exterior of housing units, outside storage, or display of unused cars—or activities that affect the neighborhood.³⁶¹ Although they are aimed at preserving the market value of dwellings and a safe neighborhood,³⁶² these restrictions have broader implications. In the name of security, privacy, and the social fabric, CICs create restrictions that protect the community to the

354. Nadav Shoked, *The Community Aspect of Private Ownership*, 38 FLA. ST. U. L. REV. 759, 771 (2011).

355. LEE ANNE FENNEL, *THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES* 1–5 (2009); *see also* Shoked, *supra* note 354, at 771 (suggesting that “the individual and the private abode are meaningless when separated from their surrounding community”).

356. Shoked, *supra* note 354, at 762.

357. *See* FENNEL, *supra* note 355, at 1–3; Shoked, *supra* note 354, at 762.

358. *See* Shoked, *supra* note 354, at 761 (“But the state appellate court was undeterred by the unconventionality of the legal challenge, and it reversed the decision. It explained that ‘even if [Ms. Rodriguez’s] property might experience net dollar value increases, theoretically realizable in the future,’ she would suffer harms, ‘including destruction of . . . neighborhood social and commercial fabric.’ Accordingly the court concluded that she had stated a constitutional claim.” (citing *Rodriguez v. Henderson*, 578 N.E.2d 57, 59 (Ill. App. Ct. 1991))).

359. DUKEMINIER ET AL., *supra* note 101, at 896; *see also, e.g.*, Uniform Common Interest Ownership Act, W. VA. CODE §§ 36B-1-101 to 207 (2015).

360. *See* Amnon Lehavi, *Community and Property: How Property Can Create, Maintain, or Destroy Community*, 10 THEORETICAL INQ. L. 43, 57–58 (2009); David J. Kennedy, Note, *Residential Associations as State Actors: Regulating the Impact of Gated Communities on Nonmembers*, 105 YALE L.J. 761, 762 (1995); Ross Thomas, Note, *Ungating Suburbia: Property Rights, Political Participation, and Common Interest Communities*, 22 CORNELL J.L. & PUB. POL’Y 205, 206–07 (2012).

361. Amnon Lehavi, *Mixing Property*, 38 SETON HALL L. REV. 137, 163–66 (2008).

362. FENNEL, *supra* note 355, at 75–80; Kennedy, *supra* note 360, at 765–66.

exclusion of others.³⁶³ As they maintain the character of community and real estate values, residential communities are becoming more homogenous, segregated, and privatized.³⁶⁴ Indeed, homogenous communities appear to be appealing to homebuyers.³⁶⁵ Moreover, governmental failures have led communities to own and operate playgrounds, swimming pools, parks, tennis courts, and community centers.³⁶⁶ Streets in neighborhoods are becoming private and the public space is getting smaller.³⁶⁷

This new urban planning has drawn criticism. Legal scholars are concerned about exclusion, segregation based on class and race, and the lack of pluralism.³⁶⁸ These legal claims fit within a larger movement of social critics that protest against the destruction of the public sphere.³⁶⁹ According to this claim, commercial and private spaces, such as shopping malls, gated communities, and other commercial venues, are replacing areas of face-to-face interaction with people of different ages, appearances, and classes.³⁷⁰ The loss of open public space creates a spatial environment characterized by impersonality, alienation, and commodification.³⁷¹ A competing vision supported by these critics refers to an “ideal of community as pure copresence of subjects”³⁷² or “a collective of strangers sharing equal regard.”³⁷³

363. Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1, 12–16 (1989); Kennedy, *supra* note 360, at 765–66; Thomas, *supra* note 360, at 206–08.

364. Kennedy, *supra* note 360, at 766.

365. *Id.*

366. Thomas, *supra* note 360, at 211.

367. Kennedy, *supra* note 360, at 769–71.

368. Alexander, *supra* note 363, at 1–3; Kennedy, *supra* note 360, at 769–71; Thomas, *supra* note 360, at 211; see Alexander Kedar, *On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda*, 5 CURRENT LEGAL ISSUES 401, 411–13 (2003); see also ISSACHAR ROSEN-ZVI, *TAKING SPACE SERIOUSLY: LAW, SPACE AND SOCIETY IN CONTEMPORARY ISRAEL* (2004) (discussing the nature of space and spatial exclusion through an examination of Israel).

369. See, e.g., MIKE DAVIS, *THE CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES* 3 (1992); MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS AND THE ETHICS OF QUEER LIFE* 149–52 (1999); IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 226–256 (1990); Davina Cooper, *Regard Between Strangers: Diversity, Equality and the Reconstruction of Public Space*, 18 CRITICAL SOC. POL’Y 465, 465–66 (1998).

370. DAVIS, *supra* note 369, at 3; YOUNG, *supra* note 369, at 232, 240; see Cooper, *supra* note 369, at 472–74.

371. YOUNG, *supra* note 369, at 232.

372. *Id.*

373. Cooper, *supra* note 369, at 474.

More concretely, according to the social doctrine termed “new urbanism,” the built environment can create a sense of community.³⁷⁴ The design and planning principles of new urbanism include walkability, connectivity, increased density, green transportation, and mixed use.³⁷⁵ These principles are thought to encourage community life. Walkability, for instance, is about designing streets as public space, rather than mere voids between buildings, which contributes to street life, pedestrian activity, and a sense of place.³⁷⁶ Another important principle is mixed use. Places of residence should be juxtaposed with places of business, shopping, and recreation. This encourages integration of people of different ages, races, and income levels because people walk more, drive less, and have a better chance of meeting.³⁷⁷

The mixture of residential and commercial land uses creates a multipurpose space where lingering is encouraged, which creates a setting for “repetitive chance encounters” that, in turn, builds and strengthens community bonds.³⁷⁸

Although the sharing economy is not about city planning, there is a useful analogy here. The sharing economy creates a spatial environment that stands between CICs’ private or semiprivate space and the public space advocated by the social critics.³⁷⁹ The sharing economy can be viewed as supporting an intermediate physical space between purely private and public spaces.³⁸⁰ Indeed, collaborative consumption could be a driving force that solidifies community ties.³⁸¹ NeighborGoods and car sharing sites all encourage swapping, lending, and renting possessions to others who live nearby.³⁸² They bring neighbors together and contribute to the unique social

374. See Vincent Scully, *The Architecture of Community*, in *THE NEW URBANISM: AN ARCHITECTURE OF COMMUNITY* 221 (Peter Katz ed., 1994).

375. See *Principles of Urbanism*, NEW URBANISM, <http://www.newurbanism.org/newurbanism/principles.html> (last visited Nov. 5, 2015); see also *The Charter of the New Urbanism*, CONGRESS FOR NEW URBANISM, <https://www.cnu.org/who-we-are/charter-new-urbanism> (last visited Nov. 5, 2015).

376. Emily Talen, *Sense of Community and Neighborhood Form: An Assessment of the Social Doctrine of New Urbanism*, 36 *URB. STUD.* 1361, 1364 (1999).

377. *Id.*; see also Hollie Lund, *Testing the Claims of New Urbanism: Local Access, Pedestrian Travel, and Neighboring Behaviors*, 69 *J. AM. PLAN. ASS'N* 414, 427–28 (2003).

378. See Lund, *supra* note 377, at 427–28.

379. See *supra* notes 359–64, 368–373 and accompanying text.

380. See Lund, *supra* note 377, at 428.

381. *Id.*

382. Cho & Rogel, *supra* note 196, at 169.

fabric.³⁸³ The role of peer-to-peer markets in bolstering social interaction fits nicely with the call for reinventing the public space.³⁸⁴ Without changing the planned environment, the sharing economy expands the use of residential neighborhoods to include aspects of both a commercial and personal nature.³⁸⁵ In addition, peer-to-peer sharing sites encourage social interaction that includes personal exchanges of goods and money in a way that potentially crosses ages, races, and income levels.³⁸⁶ The sharing economy also promotes integration because it allows lower-income owners to earn money and afford housing.³⁸⁷

As the sharing economy phenomenon gains force, it is hard to dispute that it is connecting people of various ages and statuses.³⁸⁸ It not only connects them virtually (similar to the Internet)³⁸⁹ but also facilitates face-to-face communication with neighbors, the community, and beyond.³⁹⁰ It promotes commerce among individuals who often meet in person and become enmeshed in each other's social environment.³⁹¹ Like the traditional marketplace, it is a location that hosts communal interactions.³⁹² It thus certainly restructures relations among neighbors and the community at large.³⁹³ Strangers become familiar, and friends may engage in commercial

383. *Id.*

384. *See generally* Yan Song & Gerrit-Jan Knaap, *New Urbanism and Housing Values: A Disaggregate Assessment*, 54 J. URB. ECON. 218 (2003) (describing the benefits of new urbanism).

385. Cho & Rogel, *supra* note 196, at 168–69.

386. *But see* Edelman & Luca, *supra* note 14 (finding discrimination against black hosts in Airbnb transactions).

387. On the other hand, short-term rentals by owners that do not live in the house they rent out can lead to a shortage in long-term housing. *See generally* Arvind Malhotra & Marshall Van Alstyne, *The Dark Side of The Sharing Economy . . . and How to Lighten It*, 57 COMM. A.C.M. 24 (2014).

388. *Id.*

389. *See* Celene A. Navarrete & Esperanza Huerta, *Building Virtual Bridges to Home: The Use of the Internet by Transnational Communities of Immigrants*, 11 INT'L J. COMM. L. & POL'Y 7, 7 (2006); Nicholas Suzor, *Order Supported by Law: The Enforcement of Rules in Online Communities*, 63 MERCER L. REV. 523, 523–24 (2012) (discussing the growing importance of online communities).

390. *See supra* note 377 and accompanying text.

391. *Cf.* YOUNG, *supra* note 369, at 232.

392. SOPHIE WATSON & DAVID STUDDERT, *MARKETS AS SITES FOR SOCIAL INTERACTION* vii (2006) (“The findings indicated that markets are indeed important sites of social interaction for local communities. Although the markets in the study varied considerably in the level of social interaction, the strength of social ties, the level of social inclusion and the use of the market by different groups, in all the markets some degree of social interaction took place and in most cases respondents confirmed the significance of the market as a social space.”)

393. *See* Cho & Rogel, *supra* note 196, at 169.

transactions.³⁹⁴

Yet, alongside this regeneration of the public space, the sharing economy is not a truly open environment.³⁹⁵ First, local government and private regulations may restrict the market for short-term tourist rentals.³⁹⁶ Frequent short-term rentals may influence the noise, cleanliness, and density of population, and a constant flow of strangers that come and go may affect the atmosphere of the neighborhood,³⁹⁷ leading to new restrictions and regulations. Second, sharing sites could de facto enhance solidarity within a given community but not with people outside of it.³⁹⁸ One unpublished study found that “non-black hosts earn roughly 12% more” than black hosts for the equivalent rental and rating, and attributes it to renters’ preference to rent units from non-black hosts and inaccurate inferences.³⁹⁹ In addition, some argue that Airbnb only seems to help individuals increase income; however, in the long run it will actually aggravate the housing crisis by excluding lower-income individuals from cities.⁴⁰⁰ More empirical research is required to see if and to what extent the sharing economy has created the proverbial public square, and what its possible biases are.⁴⁰¹ New data will help evaluate its possible commercial and privatized aspects.⁴⁰² For now, its familiar characteristics point to a vision of an intermediate space and potential new markets for interaction.⁴⁰³

394. *Id.*

395. *See, e.g.*, Greg Harman, *The Sharing Economy Is Not as Open as You Might Think*, THE GUARDIAN (Nov. 12, 2014, 11:18 AM), <http://www.theguardian.com/sustainable-business/2014/nov/12/algorithms-race-discrimination-uber-lyft-airbnb-peer>.

396. *See, e.g.*, Joanna Penn & John Wihbey, *Uber, Airbnb, and Consequences of the Sharing Economy: Research Roundup*, JOURNALIST’S RESOURCE (July 13, 2015), <http://journalistsresource.org/studies/economics/business/airbnb-lyft-uber-bike-share-sharing-economy-research-roundup>. “Berlin has banned regular short-term rentals in the most popular parts of the city without prior permission from the authorities. Paris passed a law in February 2014 to allow city inspectors to check rental homes whose owners are suspected of renting them out to visitors illegally.” *Id.*

397. SAMUEL NADLER, THE SHARING ECONOMY: WHAT IS IT AND WHERE IS IT GOING? 8 (2014), <http://dspace.mit.edu/handle/1721.1/90223#files-area> (analyzing the recent history of the sharing economy and suggests methods for maximizing efficient utilization of items and services).

398. *See* Edelman & Luca, *supra* note 14, at 9.

399. *Id.* at 9–10.

400. Rebecca Burns, *The ‘Sharing’ Hype: Do Companies like Lyft and Airbnb Help Democratize the Economy?*, THESE TIMES (Jan. 27, 2014), http://inthesetimes.com/article/16111/the_sharing_economy_hype.

401. *See* Cho & Rogel, *supra* note 196, at 169.

402. *See id.* at 168–69.

403. *Id.* at 173.

The potential of the sharing economy to become an intermediate space with private and public aspects should not be confused with an anti-capitalist social agenda.⁴⁰⁴ Some critics insist that the sharing economy represents corporate capital that is monetizing a part of the social world that it previously avoided.⁴⁰⁵ Because Airbnb is a site that earns profit by charging a fee on every transaction,⁴⁰⁶ it is “a new space of capitalist exchange where it didn’t previously exist or predominate.”⁴⁰⁷ Turo also charges owners a 25% commission per rental,⁴⁰⁸ and other car-sharing sites have similarly high commissions and booking fees.⁴⁰⁹ However, other sites are less profit-driven, such as NeighborGoods that does not charge a fee,⁴¹⁰ and more about community and solidarity.⁴¹¹

The above critique accentuates the complexity of the phenomenon and should caution those who view the sharing economy as a manifestation of socialism.⁴¹² Indeed, the commercial and social aspects of the sharing economy are in constant tension. The sharing economy encompasses a wide array of practices and transactions, some driven by solidarity and altruism, while others are essentially business-like transactions.⁴¹³ Commercial sharing in intimate locations raises the concern of a world where everything, including one’s home, is monetized.⁴¹⁴ This concern restates the challenge to the category of consumption property. The new conceptualization of intermediate space allows individuals to create their own space by

404. See, e.g., Burns, *supra* note 400.

405. *Id.*

406. See NADLER, *supra* note 397, at 39–40. Airbnb takes a fee of 9–15% of the reservation: the host pays 3%, and the guest pays the rest. *Id.* at 40.

407. Burns, *supra* note 400.

408. Carolyn Said, *RelayRides Lands \$25 Million Funding to Help Car Owners Rent Idle Vehicles*, TECH CHRONICLES (June 14, 2014, 4:01 AM), <http://blog.sfgate.com/techchron/2014/06/24/relayrides-lands-25-million-funding-to-help-car-owners-rent-idle-vehicles/>.

409. See, e.g., *Getaround, Inc Fee and Commission Schedule*, GETAROUND, <https://www.getaround.com/fees> (last visited Nov. 6, 2015).

410. See *NeighborGoods FAQ*, *supra* note 345.

411. See Mike Pepi, *Solidarity After “Sharing:” Notes on Internet Subjects # 1*, RHIZOME (June 20, 2014, 1:35 PM), <http://rhizome.org/editorial/2014/jun/20/sharing-and-solidarity/> (noting the distinction between peer economy and solidarity economy).

412. Bauwens, *supra* note 325, at 131–32.

413. Christoffer O. Hernoes, *Sharing Is Everything but Caring in the Sharing Economy*, TECH CRUNCH (Feb. 27, 2015), <http://techcrunch.com/2015/02/27/sharing-is-everything-but-caring-in-the-sharing-economy/>.

414. See *id.*

combining different interactions.⁴¹⁵ The fact that the home, car, or bike is partially monetized does not necessarily mean that it has become completely commodified.⁴¹⁶ This may be true,⁴¹⁷ but in most cases the intimate and commercial exist side by side.

Instead of stressing the socialist features of sharing, or the emotional and economic benefits of sharing per se,⁴¹⁸ I argue that the sharing economy conceivably opens a new intermediate sphere for social interaction.⁴¹⁹ How does this new intermediate space translate into a richer category for consumption property? One needs to consider property as a spatial environment that hosts various kinds of relations.⁴²⁰ These relations include the altruistic gift exchange structure that typifies familial ties and friendships.⁴²¹ They also include commercial ties with the greater community, neighbors, and strangers.⁴²² Yet, unlike typical commercial transactions, the platform for interaction here is an asset that is purchased and used for private and personal consumption.⁴²³ The core use of the asset is personal use that contributes to personhood, autonomy, and freedom and supports intimacy.⁴²⁴ This core should not be disregarded because of the existence of commercial and quasi-commercial peripheries. At the same time, one cannot ignore the peripheral commercial aspects altogether. Instead, a personal asset should be understood as a platform for interaction that serves as a nexus of connections.

The idea of a nexus of connections creates the potential for individuals to shape their personal space. Personal assets provide an opportunity to engage with a variety of people (friends, neighbors and strangers) and also in

415. *See supra* Part V.

416. *Contra* Tsilly Dagan, *Itemizing Personhood*, 29 VA. TAX REV. 93, 109–10 (2009) (identifying the problems inherent in the commodification of personal items and interactions).

417. *See infra* notes 518–23 and accompanying text.

418. *See* Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L.J. 549, 572–74 (2001) (describing the benefits of sharing).

419. *See infra* Part VI.

420. *See supra* note 87 and accompanying text.

421. Dagan, *supra* note 416, at 130 (describing the “mutual benefits” derived from altruistic social exchange as “expressions of shared understandings, affections, and commitments”).

422. Instead of a set of dichotomies between personal and business, or between commodification and non-commodification, one needs to explore the normative considerations of a legal problem or concept. *See* Tsilly Dagan & Talia Fisher, *Rights for Sale*, 96 MINN. L. REV. 90 (2011); Dagan & Heller, *supra* note 418, at 552–54.

423. *See infra* Part VI.A.

424. *See infra* Part VI.A.

a variety of ways, including altruistic sharing, commercial transaction, and the many shades of gray in between.⁴²⁵ Indeed, many owners become involved in collaborative consumption because of economic hardship and are careful in their sharing decisions.⁴²⁶ Yet, with the range of options available for individuals facing economic problems, the sharing economy provides a unique choice. It provides the individual the possibility to define his personal space based on goals that are important to him, in particular sustainability and social and environmental justice.⁴²⁷ Personal space becomes a trajectory to the social, communal, commercial, and ecological self.

Unlike accounts of property that emphasize social obligation,⁴²⁸ my point here is that the challenges of the sharing economy to consumption property are still very much a matter of individual choice. The owner chooses how to shape his personal space, and he is able to redefine it whenever he pleases. It is a private property regime that is governed by the right to exit⁴²⁹ and, to a lesser extent, the right to exclude.⁴³⁰

However, the sharing economy—by choice of the owner—invites other values as well, including efficiency, sustainability, community, and cooperation.⁴³¹ These interests and values stem from the new function of consumption property and should be considered in the reconstruction of the category, as the next Part elucidates.

The value of the argument does not lie in its emphasis on context-based analysis, but rather in adding a new perspective to the metaphor of private property that is designed for personal use.⁴³²

The benefit of this approach is threefold. First, the idea of an intermediate space is not tied down to the very narrow conception of the

425. See *infra* Part VI.

426. See *supra* note 387 and accompanying text.

427. See *infra* Part VI.

428. See Alexander, *supra* note 278; Singer, *supra* note 278; Stern, *supra* note 87.

429. See Dagan & Heller, *supra* note 418, at 567–69; Carolyn J. Frantz & Hanoch Dagan, *The Properties of Marriage*, 104 COLUM. L. REV. 75, 85–88 (2004).

430. See *supra* notes 276–77 and accompanying text.

431. See Dagan & Heller, *supra* note 418, at 572–74.

432. See also Joseph William Singer, *The Rule of Reason in Property Law*, 46 U.C. DAVIS L. REV. 1369, 1373 (2013) (providing a nuanced property analysis based on justified expectations). See generally DAGAN, *supra* note 278 (defining property as a set of social institutions that serve as default frameworks for interpersonal interaction).

home and neighborhood.⁴³³ It provides a conceptual opportunity to think of the home as a platform for multiple interactions. Contrary to the pure and isolated sanctuary that is built within a homogenous community, there is a possibility of a more diverse, though not entirely heterogeneous and pluralistic, environment.⁴³⁴ Second, this approach supports autonomy because it allows people to signal their chosen personality on the spectrum between private, commercial, and open to others. Third, this approach is responsive to the new ways in which people are using their property and allows for flexibility in shaping the rules regarding such consumption property.⁴³⁵ It goes beyond binary distinctions between full-blown protection of the home and a non-protective approach and calls for a nuanced set of rules that apply to this new category in the era of the sharing economy.⁴³⁶ Conceiving consumption property as a personal space and platform for interaction thus provides an opportunity for rethinking current rules that stem from the distinction between private and public or intimate and commercial.

VI. RETHINKING LEGAL DOCTRINES

The sharing economy is gradually changing practices of consumption,⁴³⁷ and thus it necessarily continues to push the boundaries of consumption property. It blurs familiar distinctions between intimate property and a place of business, leading to new questions regarding the scope of legal protection of intimacy, privacy, and autonomy. Faced with other spatial challenges to legal categories, several scholars have advocated for dismissing property categories altogether and replacing it with a focus on relationships and substantive human interests.⁴³⁸ This Article argues instead that property categories do matter, and that spatial distinctions may prove valuable.⁴³⁹ Yet

433. See Fox, *supra* note 91, at 600–01.

434. Cf. Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833, 891–93 (2007).

435. See LEHAVI, *supra* note 71, at 179–80 (describing the drawbacks to a classical conception of property).

436. See Radin, *supra* note 49, at 978–79.

437. See BUCZYNSKI, *supra* note 7, at 17.

438. See Rosenbury, *supra* note 434, at 891–92 (arguing that “the actual location . . . matters much less than do the actors who engage in the socialization of children in those spaces”); Stern, *supra* note 68, at 905 (arguing against strict protection of the home and for replacing an emphasis on the physical home with an emphasis on private interests and intimate association).

439. See *supra* Part III.B.

these categories have to be mindful of the use and function of the property. Therefore, legal rules should replace the intimate or commercial binary with a more nuanced approach, even at the cost of reaching conflicting solutions in different areas of the law.⁴⁴⁰ The nexus of connection model acknowledges that the same property can be intimate *and* commercial and that regulation, eminent domain, insurance, fair housing, zoning, and public accommodations laws should treat this hybrid use differently.⁴⁴¹ What seems like a loss in legal coherence⁴⁴² is actually a distinct understanding of the category based on the role that intimacy, autonomy, or privacy plays in each of these doctrines. Once we accept that personal assets have various functions, we can begin to rethink the role of intimacy, privacy, and autonomy in crafting legal rules.

Some doctrines remain unfettered by the changes of modern consumption.⁴⁴³ Eminent domain rules and Fourth Amendment protection single out consumption property as a source of individual safety, control, and privacy.⁴⁴⁴ The home's purpose, in these cases, is to create a secure space where one can control his environment.⁴⁴⁵ The sharing economy, with its mixture of intimate and commercial aspects, does not fundamentally challenge the freedom-oriented rationale of these doctrines.⁴⁴⁶

Yet, the sharing economy transforms the role of intimacy, privacy, and autonomy in other areas of the law. Legal regulations, such as tax law, business permits, and insurance codes, often engage in boundary setting between categories of living.⁴⁴⁷ Business permits and taxes distinguish

440. See RONALD DWORKIN, *LAW'S EMPIRE* (1986); Aldo Schiavello, *On "Coherence" and "Law": An Analysis of Different Models*, 14 *RATIO JURIS* 233, 235 (2001).

441. See *infra* Part VI.A–B.

442. See DWORKIN, *supra* note 440; Schiavello, *supra* note 440, at 242.

443. See U.S. CONST. amend. IV.

444. See Barros, *supra* note 81, at 259; Peñalver, *supra* note 80, at 2974; Stern, *supra* note 68, at 913; see also Janice Nadler & Shari Seidman Diamond, *Eminent Domain and the Psychology of Property Rights: Proposed Use, Subjective Attachment, and Taker Identity*, 5 *J. EMPIRICAL LEGAL STUD.* 713, 727 (2008) (discussing personal control in eminent domain).

445. Nadler & Diamond, *supra* note 444, at 746; see also Fox, *supra* note 91, at 590 (“[H]ome as a territory offers security and control, a locus in space, permanence and continuity and privacy.”); Radin, *supra* note 49, at 957.

446. See Barros, *supra* note 81, at 257 (discussing freedom in search and seizures); Katherine M. McFarland, *Privacy and Property: Two Sides of the Same Coin: The Mandate for Stricter Scrutiny for Government Uses of Eminent Domain*, 14 *B.U. PUB. INT. L.J.* 142, 155 (2004).

447. See, e.g., Cass R. Sunstein, *On the Expressive Function of Law*, 144 *U. PA. L. REV.* 2021, 2022–23 (1996).

between locations and types of activity.⁴⁴⁸ They regulate actions by creating a set of incentives that affect economic choices and communicate a social message regarding the desirability and normative value of a given practice.⁴⁴⁹ Rules should thus acknowledge the variety of choices that the sharing economy provides and allow owners to engage with their property without classifying the use in one of the two dichotomous possibilities.⁴⁵⁰ In the context of a regulation, the law should develop subcategories to allow for multiple uses of consumption property.⁴⁵¹

Lawyers should also rethink the scope of intimate association protection in property law. Property is a platform for interaction with others,⁴⁵² and different types of property beget different types of relations.⁴⁵³ Property rules allow owners to choose whether and with whom to share their property in the private sphere but regulate these choices in the public arena.⁴⁵⁴ Consumption property breeds intimacy and relations based on familial affection, friendship, and trust.⁴⁵⁵ Commercial property is a platform for market transactions based on self-interest and utility.⁴⁵⁶ This sharp division has significant legal implications, especially in the case of discrimination.⁴⁵⁷ Because the sharing economy challenges the distinction, the law of discrimination has to adapt. As this Part explains, owners can choose a type of use for their property, which can be a mixture of intimate and commercial, but not the legal ramifications of said use.⁴⁵⁸ New subcategories should be based on the type of use, the preferences of the owner, and the nature of interaction.

The changing form of consumption property affects the community as well.⁴⁵⁹ If people open up their homes, their cars, and their personal belongings to others, their neighbors become exposed to a flow of

448. See *infra* notes 552–60 and accompanying text.

449. See Dagan, *supra* note 416, at 105; Dagan & Heller, *supra* note 418.

450. *Id.*

451. *Id.*

452. See generally Nedelsky, *supra* note 87; Singer, *supra* note 87.

453. See generally Singer, *supra* note 87.

454. See *infra* Part VI.A.

455. See *supra* Part IV.A.

456. See *supra* Part IV.A.

457. See *infra* Part VI.A.1–2.

458. See *supra* notes 449–57 and accompanying text.

459. See Barros, *supra* note 81, at 289.

strangers.⁴⁶⁰ They are forced to give up their intimacy.⁴⁶¹ On the one hand, zoning laws have to be mindful of the freedom of individuals to commercially share their consumption property by supporting efficiency, sustainability, and integration.⁴⁶² On the other hand, zoning laws must be mindful of the possible negative externalities for the neighborhood.⁴⁶³

The rationales for protecting intimacy in consumption property are varied. Each of these examples employs a different aspect of this protection and is distinctively challenged by the sharing economy phenomenon. The answer lies in targeting the specific challenge in any given doctrine and reconstructing the category accordingly. In doing so, one must engage with the values, purposes, and interests that the sharing economy promotes because these interests complicate the treatment of intimacy, privacy, and autonomy.⁴⁶⁴ In the previous Part, three main values and interests were discussed: efficiency, a platform for interaction, and sustainability.⁴⁶⁵

In order to demonstrate the usefulness of this nuanced approach and provide substance to the new understanding of the category, this Part considers in more depth two sets of legal doctrines: (1) the boundaries of freedom of intimate association in property transactions, namely fair housing and public accommodation law,⁴⁶⁶ and (2) taxation and regulation of consumption property in the era of the sharing economy.⁴⁶⁷ The purpose of these examples is twofold: First, to add an important perspective to current debates that is particularly relevant to the sharing economy. Second, to demonstrate the limits of contemporary binaries. I do not, however, intend to offer a comprehensive account of the issues nor suggest new rules for immediate consideration.

A. Consumption Property, Intimacy, and Equality

The legal protection of intimacy becomes complicated when the

460. See ZELIZER, *supra* note 253, at 213–14.

461. *Id.*

462. See *supra* notes 216–27 and accompanying text.

463. See *supra* notes 228–32 and accompanying text.

464. See, e.g., ZELIZER, *supra* note 253, at 213–14.

465. See *supra* Part V.

466. See *infra* Part VI.A.1.

467. See *infra* Part VI.B.

property is used personally but at the same time is open to the public.⁴⁶⁸ In the sharing economy, do owners enjoy freedom of intimate associations?

The protection of intimacy in the law is complex and has different manifestations in different contexts.⁴⁶⁹ This Part discusses a specific legal question within the context of intimacy and property law.⁴⁷⁰ It concerns the owner's prerogative to choose with whom to share her property.⁴⁷¹ Generally, an owner can decide who she wants to invite to her home for dinner, to lend her car to, or to trade her gardening tools or books with.⁴⁷² This model of ownership and intimacy is based on the much-discussed right to exclude, which allows owners to exclude others from engaging with the owner's property.⁴⁷³ Although some scholars characterize the right to exclude as fundamentally social,⁴⁷⁴ conceptual theories of exclusion focus on the right of the individual to exert control over her property. In other words, she is the "supreme agenda setter for the resource."⁴⁷⁵

However, the prerogative to choose cooperative interaction is also supported by a broader conception of property law.⁴⁷⁶ According to scholars that emphasize the social and relational aspects of ownership, property cannot be adequately understood and theorized without considering the ways people share property and cooperate in property-related projects.⁴⁷⁷ Indeed, sharing that successfully builds on cooperation with others strengthens interpersonal relations and is good in and of itself.⁴⁷⁸ People enjoy

468. Cf. Kenneth L. Karst, *The Freedom of Intimate Association*, 89 YALE L.J. 624, 626 (1980); Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century*, 16 GEO. MASON U. C.R. L.J. 269, 274 (2006) (emphasizing the legal protection of intimate association as a private and personal right).

469. See Marcus, *supra* note 468, at 274–75; see also Karst, *supra* note 468.

470. See *infra* notes 472–13 and accompanying text.

471. See *infra* notes 472–13 and accompanying text.

472. See Tim Iglesias, *Does Fair Housing Law Apply to "Shared Living Situations"? Or, the Trouble with Roommates*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 111, 115 (2014) ("We do not apply antidiscrimination norms to whom you invite to dinner at your home or whom you befriend.").

473. See *supra* notes 276–81 and accompanying text; see also Henry Smith, *Property as the Law of Things*, 125 HARV. L. REV. 1691, 1693–94 (2012).

474. See James Penner, *Ownership, Co-Ownership, and the Justification of Property Rights*, in PROPERTIES OF LAW 166, 166–67 (Timothy Endicott, Joshua Geltzer & Edwin Peel eds., 2006); see also Merrill & Smith, *supra* note 276, at 1891–92 (highlighting the social utility in exclusion).

475. Katz, *supra* note 276, at 278.

476. See *infra* notes 477–82 and accompanying text.

477. See generally Nedelsky, *supra* note 87; Rose, *supra* note 342; Stern, *supra* note 87.

478. Dagan & Heller, *supra* note 418, 572–73.

cooperating, which may foster a sense of unity, trust, or intimacy.⁴⁷⁹ Choosing to interact with others is therefore a positive attribute of autonomous ownership, not only a form of negative freedom.⁴⁸⁰ This approach is sensitive not only to freedom of association but also to the importance of relationships and possible responsibilities that stem from such engagements.

This is all true of property law for intimate locations.⁴⁸¹ But when we discuss a place of business, this prerogative is significantly curtailed. There are several federal and state laws that restrict the owner's choice of association.⁴⁸² The right to exclude in a commercial context is limited in order to prevent business owners from discriminating when providing services.⁴⁸³ The justification for this limitation is that certain "preferences and habits are not acceptable or conducive in the public realm."⁴⁸⁴ When individuals enter the public space, they are no longer free to choose their conduct or values.⁴⁸⁵ In other words, "by opening one's property to the public for business purposes, the owner waives a part of her right to exclude."⁴⁸⁶ An alternative justification focuses on protection from market power.⁴⁸⁷

This argument is deeply rooted in the dichotomy between intimate and commercial locations. It is, in essence, a spatial argument that relies on distinctions between private and open to the public, between intimate and business.⁴⁸⁸ The underlying assumption is that there are different audiences involved. A place of business serves the public, and the home is meant to

479. *Id.* at 573–74.

480. ISAIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 121–72, reprinted in *LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY* 166 (Henry Hardy ed., 2002); see also DONALD P. KOMMERS, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 252 (1997) (explaining that property provides space for autonomy and self-realization, associated with both liberty and personhood).

481. See *supra* notes 477–80 and accompanying text.

482. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.); Fair Housing Act, 42 U.S.C. §§ 3601–19 (2012); CAL. GOV'T CODE § 12955 (West 2011); FLA. STAT. §§ 760.20–.60 (2010); HAW. REV. STAT. § 515-3 (2008); MONT. CODE ANN. § 49-2-305 (2009); N.C. GEN. STAT. § 41a-4 (2013).

483. Iglesias, *supra* note 472, at 114–15.

484. *Id.* at 114.

485. *Id.*

486. Singer, *supra* note 45, at 1448.

487. Berle, *supra* note 2; Peñalver, *supra* note 77, at 23.

488. See *supra* notes 482–85 and accompanying text.

serve household members. Yet the sharing economy, and the changing patterns of consumption that come with it, challenge this premise. The challenge calls for a new discussion of the boundaries of intimacy in property law. It requires thinking about the home, private car, and other personal possessions as an intermediate space and reconsidering the role of intimacy in these locations. This Part considers two contemporary debates: fair housing and public accommodation in personal consumption property.

1. Fair Housing

Recent legal scholarship has struggled with the question of whether federal and state fair housing acts apply to shared living situations and the associated advertising.⁴⁸⁹ First, one must review the legal framework for housing discrimination. The first important law is the Civil Rights Act of 1866, which prohibits racial discrimination in property transactions.⁴⁹⁰ According to the Act, all citizens have the same right to “inherit, purchase, lease, sell, hold, and convey real and personal property.”⁴⁹¹ Racial discrimination in housing is thus illegal with no exemptions.⁴⁹² Another significant law is the federal Fair Housing Act that prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, familial status, or national origin.⁴⁹³ State housing acts occasionally expand the list of protected groups and make discrimination based on sexual orientation, source of income, or familial responsibilities illegal.⁴⁹⁴ Unlike the Civil Rights Act, the Fair Housing Act of 1968 includes exemptions.⁴⁹⁵ Most important for this discussion is the so-called Mrs. Murphy exemption,⁴⁹⁶ which stipulates that dwellings intended for occupation by four or fewer families are beyond the reach of the law if the owner lives in

489. Iglesias, *supra* note 472, at 111; Messerly, *supra* note 236, at 1951–53; James D. Walsh, *Reaching Mrs. Murphy: A Call for Repeal of the Mrs. Murphy Exemption to the Fair Housing Act*, 34 HARV. C.R.-C.L. L. REV. 605, 630 (1999); Kevin M. Wilemon, Comment, *The Fair Housing Act, the Communications Decency Act, and the Right of Roommate Seekers to Discriminate Online*, 29 WASH. U. J.L. & POL’Y 375, 377 (2009); Wright, *supra* note 240, at 1341–42.

490. 42 U.S.C. § 1982 (2012).

491. *Id.*

492. *See id.*

493. Fair Housing Act, 42 U.S.C. §§ 3601–31 (2012).

494. Messerly, *supra* note 236, at 1957.

495. § 3603(b).

496. DUKEMINIER ET AL., *supra* note 101, at 433 (explaining that during congressional deliberation on the Act, the exemption was discussed as an imagined Mrs. Murphy’s boarding house).

one of the units.⁴⁹⁷ The exemption applies to most shared living arrangements and allows owners to discriminate between potential roommates.⁴⁹⁸ Despite this exemption, however, discriminatory advertising is still prohibited.⁴⁹⁹ Publishing any statement, notice, or advertisement based on protected classification is illegal.⁵⁰⁰ Therefore, while an owner can discriminate at the door based on sex or religion, she cannot advertise a discriminating ad based on these criteria.⁵⁰¹

This framework is the legal background for a recent Ninth Circuit Court of Appeals decision.⁵⁰² In *Fair Housing Council of San Fernando Valley v. Roommate.com, L.L.C.*,⁵⁰³ the court had to decide whether the Fair Housing Act applies to a commercial website that helps people find roommates.⁵⁰⁴ The website required users to disclose information about their sex, sexual orientation, and familial status and matches potential roommates accordingly.⁵⁰⁵ The Fair Housing Council of San Fernando Valley claimed that this requirement violated the Fair Housing Act.⁵⁰⁶ Because the Act makes it illegal to “make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling”⁵⁰⁷ that is discriminatory, the court had to interpret the meaning of the term “dwelling” and determine whether it applies to shared living arrangements.⁵⁰⁸ In its opinion, the court read dwelling to mean an independent housing unit.⁵⁰⁹ Any other interpretation would, according to the court, deprive people of their constitutional right to intimate

497. § 3603(b)(2); see also Walsh, *supra* note 489 (describing the Mrs. Murphy exemption and its background).

498. Messerly, *supra* note 236, at 1959. Messerly points out that large-scale shared living arrangements, such as communes or larger houses, would not fall within the boundaries of this exemption. *Id.* at 1959 n.75.

499. § 3604(c).

500. *Id.*; Messerly, *supra* note 236, at 1959.

501. § 3604(c).

502. *Fair Hous. Council of San Fernando Valley v. Roommate.com, L.L.C.*, 666 F.3d 1216, 1216 (9th Cir. 2012).

503. *Id.*

504. *Id.*

505. *Id.* at 1218.

506. *Id.*

507. 42 U.S.C. § 3604(c) (2012) (emphasis added).

508. *Fair Hous. Council*, 666 F.3d at 1220.

509. *Id.* at 1222.

association.⁵¹⁰ This right includes “the freedom to enter into and carry on certain intimate or private relationships.”⁵¹¹

The court’s analysis goes beyond the issue of advertising and stresses the importance of intimacy in the home and the inevitable compromise of privacy when living with others:

Aside from immediate family or a romantic partner, it’s hard to imagine a relationship more intimate than that between roommates, who share living rooms, dining rooms, kitchens, bathrooms, even bedrooms The home is the center of our private lives. Roommates note our comings and goings, observe whom we bring back at night, hear what songs we sing in the shower, see us in various stages of undress and learn intimate details most of us prefer to keep private. Roommates also have access to our physical belongings and to our person.⁵¹²

This perception of intimacy is entangled with privacy, or rather with the access of people to the private lives of their roommates.⁵¹³ Indeed, both supporters and critics of the court’s approach share the focus on intimacy.⁵¹⁴ While supporters highlight intimacy as an inescapable element of living with others,⁵¹⁵ critics stress the wide variety of shared living arrangements⁵¹⁶ and emphasize, in a similar vein, the business aspects of roommate agreements.⁵¹⁷ People typically live with roommates in order to save costs

510. *Id.*

511. *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987).

512. *Fair Hous. Council*, 666 F.3d at 1221.

513. *ZELIZER*, *supra* note 253, at 213.

514. *See, e.g., Iglesias*, *supra* note 472, at 133 (critiquing the court’s approach, arguing that it ignores the commercial aspects of the transaction); *Messerly*, *supra* note 236, at 1965–68 (supporting the position that the right of choice in shared living is based on the right to privacy and intimate association); *Wright*, *supra* note 240, at 1355–56 (“Home is a sanctuary where privacy is expected and because most intimate associations are centered in the home.”).

515. *See Messerly*, *supra* note 236, at 1978 (“The right to choice acknowledges that the roommate-housemate relationship has the potential to become a deep, intimate relationship where mutual support, companionship, and trust play integral parts.”); *Wright*, *supra* note 240, at 1355–57 (stressing the importance of intimacy in the home).

516. *See Iglesias*, *supra* note 472, at 127–30 (indicating that there are four common types of roommate relationships: independent living, which is purely commercial; compatibility; active companion; and intimate companionship).

517. *Walsh*, *supra* note 489, at 613 (asserting that by publicly renting one is involved in a

or earn money as part of a commercial transaction.⁵¹⁸

The sharing economy reveals a continuum of possibilities between the two extremes that the current binary view fails to appreciate.⁵¹⁹ Instead, the law should employ subcategories that focus on the type of use, the owner's preferences, and the nature of the interaction with users.

First, the use of property has to preserve a core of intimacy for the property to be regarded as a home, a private car, or any other personal consumption property.⁵²⁰ It cannot be purely commercial.⁵²¹ A host that rents out an apartment that he does not live in is not opening up his personal space. The apartment is simply business property. In this sense, the New York distinction mentioned earlier is perfectly logical.⁵²² According to New York regulations, only owners or tenants that are living in the property can legally rent their apartments for short periods of time.⁵²³

This brings us to the Mrs. Murphy exemption⁵²⁴ and how it applies to the sharing economy. This exemption has been forcefully criticized because it is much too wide to protect intimacy in the home.⁵²⁵ A landlord that rents out four units does not necessarily interact with her tenants. The problem with this critique is that in extenuating the business aspect of the transaction, it often ignores other aspects of the use of property.⁵²⁶ The nexus of connections offers a new perspective for thinking about this exemption.⁵²⁷ Unlike a binary set of categories, a perception of personal space allows us to think of the home as an open environment for interaction without reducing it to a place of business.

business).

518. Iglesias, *supra* note 472, at 121.

519. *Id.* (noting that the court in *Roommate.com* only mentioned the business aspect twice).

520. See generally Messerly, *supra* note 236, at 1961–64 (emphasizing the right to privacy and that “privacy and property unite in the context of shared living”).

521. See Walsh, *supra* note 489, at 608 (“The relationships involved in [rental] situations are clearly and unmistakably of a much closer and more personal nature than in the case of major commercial establishments.” (quoting BERNARD SCHWARTZ, 2 STATUTORY HISTORY OF THE UNITED STATES: CIVIL RIGHTS 1194 (1970))).

522. N.Y. MULT. DWELL. LAW § 4 (McKinney 2011).

523. *Id.*

524. See Messerly, *supra* note 236, at 1959.

525. See Walsh, *supra* note 489, at 606 (“Congress drew the line in the wrong place, rendering the exemption over-inclusive as a protector of liberty.”).

526. See, e.g., *id.*; Iglesias, *supra* note 472, at 127–28 (recognizing the possible different types of roommate relationships, but emphasizing the commercial aspects of “independent living” or “compatibility”).

527. See *supra* Part VI.

In the context of discrimination, a new platform for interaction with others is particularly important. Because the sharing economy opens up a new sphere of interaction and exchange, discrimination based on race,⁵²⁸ color, religion, familial status, or national origin undermines this purpose and the values it stands for. The power of this phenomenon lies in its potential for connecting people of different age groups, income levels, sexes, and races within the context of a private and intimate setting. On the other hand, the possibility of connectivity should not distract us from the personal dimension of the property and the importance of intimacy, security, and safety in the home. Therefore, when a woman living alone does not feel comfortable renting a room to a man because she fears for her personal safety, the personal dimension of the property becomes prominent.⁵²⁹

The specific balance of intimacy and diverse interaction is intricate. Owners have substantially different uses and preferences for their property.⁵³⁰ The nexus of connection model stresses the owner's ability to choose how to shape her personal space, but not the legal implications of said choice. People can choose a very intimate and secluded space or instead opt for an intermediate space where the personal and commercial aspects of the property coexist.⁵³¹

In the sharing economy, personal spaces can be characterized by significant commercial aspects and can be open to the public in a way that calls for rethinking the Mrs. Murphy exemption.⁵³² Although this Article does not claim to be a conclusive argument, intimacy can no longer serve as an all-inclusive exemption.⁵³³ A more nuanced approach might consider the frequency of sharing transactions and the intensity of the interaction. Some owners rent out a room in the house they currently live in and share their living room, kitchen, and bathroom with guests.⁵³⁴ Others rent out their

528. *See supra* notes 493–500 and accompanying text.

529. *See, e.g.*, CAL. GOV'T CODE § 12927(c)(2)(B) (2015) (allowing for advertisements that “imply that the housing being advertised is available only to persons of one sex” in cases where sharing living areas in a single unit are involved).

530. *See supra* Part III.C.

531. *See supra* note 472 and accompanying text.

532. *See also* Walsh, *supra* note 489, at 614–16 (suggesting that the Mrs. Murphy exemption should not apply when it is a mere “collection of persons”).

533. *See id.*

534. *See generally* Tomio Geron, *Airbnb Had \$56 Million Impact on San Francisco: Study*, FORBES (Nov. 9, 2012, 3:00 AM), <http://forbes.com/sites/tomiogeron/2012/11/09/study-airbnb-had-56-million-impact-on-san-francisco/> (“Airbnb hosts made an average of \$9,300 annually for listing a home and \$6,900 for listing a private room or shared space.”).

home only when they are on vacation. If a room in the home is routinely rented to guests, and if it is a fairly separate unit, then the open-to-the-public elements are prominent.⁵³⁵ Similarly, a room that is rarely rented out to strangers and where houseguests effectively live with the owners makes a stronger case for intimacy.⁵³⁶ To sum up, the model insists that an analysis should focus on the purpose and characteristics of the project, rather than simply applying a dichotomy between private and commercial use. The law should develop subcategories based on the type of use and frequency of interaction, the owner's preferences, and the nature of the interaction with users.

2. Public Accommodation

A consideration of public accommodation law complements the fair housing analysis by applying the argument to a broader market. Although some of the provisions in public accommodation law affect housing,⁵³⁷ the focus in this subpart is on rental markets. Public accommodation law generally prohibits discrimination against protected classes in places that are open to the public and accept or solicit the patronage of the general public.⁵³⁸ The term "public accommodation" was devised by drafters of discrimination laws to separate the public sphere from more private places, such as schools, workplaces, and homes.⁵³⁹

State and federal public accommodation laws differ in the list of protected classes, the list of places and markets that count as public accommodations, and the remedies available.⁵⁴⁰ Several state laws include

535. See *supra* notes 486–89 and accompanying text.

536. Cf. ELLICKSON, *supra* note 90, 263–64 (discussing the benefits of having a trustworthy relationship with the landlord).

537. An interesting discussion is whether Airbnb hosts are, in fact, operating a hotel because they provide short-term rentals of housing units. Yet according to the Civil Rights Act of 1964, "a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence" is exempt. 42 U.S.C. § 2000a(b)(1) (2012).

538. See, e.g., MASS. GEN. LAWS ch. 272 § 92A (2014) (banning owners of public accommodations use of advertisements "intended to discriminate against or actually discriminating against persons of any religious sec, creed, class, race, color, denomination, sex, sexual orientation . . . nationality, or because of . . . any physical or mental disability").

539. See Lisa Gabrielle Lerman & Annette K. Sanderson, Comment, *Discrimination in Access to Public Places: A Survey of State and Federal Public Accommodations Laws*, 7 N.Y.U. REV. L. & SOC. CHANGE 215, 217–18 (1978).

540. *Id.*

rental establishments⁵⁴¹ or a broad definition of public accommodations that may include the rental market.⁵⁴² Yet these laws still employ exemptions and limitations.⁵⁴³ The pertinent New Jersey law explains that “[n]othing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private.”⁵⁴⁴

Should these laws apply to a person renting her car through Turo, Getaround, or JustShareIt? Should it apply to people renting out their drills, bikes, or gardening tools through NeighborGoods? As the previous subpart explained, the sharing economy challenges the dichotomy of open to the public and private. Under current law, an argument can be made that renting out one’s own car occasionally is not an instance of public accommodation. Moreover, enforcing public accommodation laws will arguably deter individuals from engaging in a resource-saving and environmentally friendly activity.⁵⁴⁵

We must rethink current property distinctions and consider a richer analysis of the values involved in the nexus of connection model. Rather than suggest a comprehensive solution, this Article encourages scholars to rethink the basic premise of the problem and employ a wider set of categories and values. First, the values of sustainability and efficiency are especially important with regard to cars.⁵⁴⁶ Cars are underutilized in current modern reality, leading to heavy traffic, pollution, and high-density levels.⁵⁴⁷ When owners a priori limit certain transactions based on race, class, or gender, they are limiting consumers’ ability to use—rather than own—property and thereby indirectly damage the goals of sustainability and

541. See MASS. GEN. LAWS ch. 272 § 92A; NEV. REV. STAT. § 651.050 (2007).

542. See N.J. STAT. ANN. § 10:5-5(1) (West 2013); OR. REV. STAT. § 659A.403 (2013); VT. STAT. ANN. tit. 9, § 4502 (2007). But see Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 821 n.13 (1991) (“State civil and human rights statutes also fail explicitly to protect either women or blacks from discrimination in the sale of consumer goods and services.”).

543. The Civil Rights Act of 1964 includes an exemption for particular types of hotels. See *supra* note 537 and accompanying text; see also NEV. REV. STAT. § 651.050.

544. N.J. STAT. ANN. § 10:5-5(l).

545. See Richard A. Epstein, *Public Accommodations Under the Civil Rights Act of 1964: Why Freedom of Association Counts as a Human Right*, 66 STAN. L. REV. 1241, 1277–87 (2014) (discussing public accommodations in small business).

546. See Cho & Rogel, *supra* note 196, at 168.

547. See *id.* at 167.

efficient use.⁵⁴⁸ Second, changing patterns of consumption could eventually lead to an important amount of *public* interaction within the *private* sphere. Some individuals choose to shape their property as an intermediate space that is partially open to the public. The potential of such spatiality depends on their inclusiveness and connectivity. The platform for interaction consideration stresses the symbolic harms of discrimination.⁵⁴⁹ According to these values, the frequency of rental transactions and the identity of the people that use the property are important guidelines. When an individual rents out his car every Thursday to complete strangers, he is engaging in the public space more than an individual that occasionally rents out his car to mostly neighbors and acquaintances.

B. Taxation and Regulation

Various tax codes and local regulations have attempted to regulate the sharing economy phenomenon. Some of these regulations are based on a strict distinction between the home and the hotel and between personal consumption and commercial use.⁵⁵⁰ Others offer a more nuanced approach.⁵⁵¹ I will give one example of each strategy. First consider, for example, the fairly recent statement by Airbnb that it will collect and remit a 14% hotel occupancy fee in San Francisco.⁵⁵² The transient occupancy tax is collected from all Airbnb transactions in the area, provided the reservation is for twenty-nine nights or shorter.⁵⁵³ This statement complies with article 7 of the San Francisco Business and Tax Regulations Code.⁵⁵⁴ According to the Code, a transient occupancy tax applies to hotels or guest rooms.⁵⁵⁵ A hotel is defined as “[a]ny structure . . . containing guest rooms and which is occupied, or is intended or designated for occupation, by guests, whether

548. See Margareta Drzeniek Hanouz, *Why Discrimination Is Bad for Business*, AGENDA (Mar. 6, 2015), <https://agenda.weforum.org/2015/03/why-discrimination-hurts-competitiveness/>.

549. See Singer, *supra* note 45, at 1448; *supra* note 486 and accompanying text.

550. See *infra* notes 558–61 and accompanying text.

551. See *infra* notes 562–63 and accompanying text.

552. See Kerr, *supra* note 193.

553. See *id.*

554. See S.F., CAL., BUSINESS AND TAX REGULATIONS CODE art. 7, § 501(g) (2015) (noting a permanent resident is a person who has occupied “any guest room in a hotel for at least 30 consecutive days”).

555. *Id.* §§ 501–04.

rent is paid in money, goods, labor, or otherwise.”⁵⁵⁶ The definition highlights the main use of a structure and appears to single out large and small commercial hotels.⁵⁵⁷ Yet, according to the new arrangement for Airbnb users, even hosts that rent out a room for only a few nights a year will be considered hotels for the purpose of the tax.⁵⁵⁸ The frequency of sharing transactions and their characteristics are not even considered in collecting the tax.⁵⁵⁹ The owners’ use and preferences in shaping the contours of their property are not considered. In the dichotomy between home and hotel, this arrangement classifies all sharing economy transactions as purely commercial. The nexus of connection model requires a more nuanced arrangement, one that is sensitive to the characteristics of the property, the type of use, and the frequency and nature of sharing transactions.⁵⁶⁰ Although tax rules require simple and clear guidelines,⁵⁶¹ this Article encourages policymakers to consider these criteria in devising a rule.

A different example draws on the regulation of business licenses in local governments. Generally, in considering insurance rules or business permits, lawyers have to recognize the economic and ecological contribution of the sharing economy.⁵⁶² Restrictive regulations may result in a chilling effect, limiting the efficient use of personal consumption property.⁵⁶³ On the other hand, negative externalities regarding safety, cleanliness, and density are also important.⁵⁶⁴

In Grand Rapids, Michigan, new regulations allow owners to rent out rooms via websites such as Airbnb, with several important restrictions.⁵⁶⁵

556. *Id.* § 501. Note that the definition does not specify the inclusion of “private residences” but is otherwise broadly drawn, and includes “any lodginghouse, roominghouse, [and] dormitory.” *Id.*

557. *See id.*

558. Kerr, *supra* note 193.

559. *See id.*

560. *See supra* notes 423–27 and accompanying text.

561. Stanley S. Surrey & Gerard M. Brannon, *Simplification and Equity as Goals of Tax Policy*, 9 WM. & MARY L. REV. 915, 915 (1968) (“It must appear to an observer of the tax scene that simplification is the most widely quoted but the least widely observed of the goals of tax policy.”).

562. *See generally* JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMY (2013) (discussing the different areas of law that a “sharing lawyer” must know about in today’s society).

563. *Cf.* Epstein, *supra* note 545, at 1277–87; *supra* note 545 and accompanying text.

564. *See* NADLER, *supra* note 397, at 8; *supra* note 397 and accompanying text.

565. *See generally* GRAND RAPIDS, MICH., CITY CODE tit. V, ch. 61, art. 5, §§ 5.5.01–.05 (2015); *id.* tit. VII, ch. 116, art. 7, §§ 7.640–.651.

An owner must obtain a formal permit.⁵⁶⁶ In order to get a permit, the property must be the principal dwelling of the owner during the rental activity, the license is subject to a fee, only one room can be rented, and all owners and residents within 300 feet of the property must be notified.⁵⁶⁷ A zoning ordinance in Portland, Oregon has adopted similar regulations.⁵⁶⁸ These regulations strike a balance between competing values.⁵⁶⁹ They permit sharing economy transactions while also minimizing negative externalities. More importantly, they do not fall into the familiar dichotomy of home and hotel, intimate and commercial.⁵⁷⁰ The license creates a new category of a home (the owner must occupy the property) that has an additional commercial function and is regulated in order to address the concerns of the nearby community.⁵⁷¹ It acknowledges the complexity of the consumption property category.

These two examples demonstrate the wide range of legal tools available to local governments and regulators in regulating sharing economy transactions. Other regulations potentially include zoning laws, consumer protection laws, and insurance codes. In the heat of regulation, policymakers must be careful neither to replicate an outdated conception of consumption property nor simply reclassify the home as a commercial enterprise. The nexus of connection model for consumption property offers more sophisticated solutions that acknowledge the richness of the consumption property category.

566. See GRAND RAPIDS, MICH., CITY CODE tit. V, ch. 61, art. 5 §§ 5.5.01–.05; see also Josh Sidorowicz, *Airbnb Licensing to Pick up Speed in GR, City Manager Promises Enforcement*, FOX 17 W. MICH. (Nov. 13, 2014, 11:25 PM), <http://fox17online.com/2014/11/13/airbnb-licensing-to-pick-up-speed-in-gr-city-manager-promises-enforcement/>.

567. GRAND RAPIDS, MICH., CITY CODE tit. V, ch. 61, art. 5 § 7.6448; see also *One-Room Short-Term Rentals Fact Sheet*, CITY OF GRAND RAPIDS, <http://grcity.us/city-clerk/Documents/One%20room%20rental%20fact%20sheet.pdf> (last visited Nov. 8, 2015).

568. PORTLAND, OR., ZONING CODE §§ 33.207.010–.070 (2015).

569. See §§ 33.207.010–.020.

570. *Id.* § 33.207.010 (“The regulations are intended to allow for a more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential. In some situations, the operator can take advantage of the scale . . . of a residence. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting.”).

571. See *id.* § 33.207.040(A)(1) (noting the owner must occupy the dwelling “for at least 270 days during each calendar year”).

VII. CONCLUSION

This Article has portrayed the challenge posed by the sharing economy phenomenon to a unique property category. The changing patterns of consumption in the modern economy are pushing and altering the old boundaries between commercial and personal consumption property.⁵⁷² Multiple uses of assets and property create a fragmented, rather than coherent, concept of personal possessions. This Article has presented a new way of thinking about the category of consumption property and emphasized the potential of the sharing economy to create an intermediate space that allows for connectivity and multiple types of relationships.⁵⁷³

This new framework makes it necessary to rethink various legal doctrines, some of which have been discussed in this Article.⁵⁷⁴ Other doctrines, such as zoning rules and insurance, were not explicitly discussed but are also unsettled by the challenge to the distinction between business and intimate, private and open to the public, and may equally require reconstruction.

However, the challenges of the sharing economy to property law do not stop at the door of personal consumption property. The sharing economy holds the potential to revolutionize basic property concepts of acquisition, ownership, possession, and use rights by ultimately shifting the focus of property law and challenging its longstanding conventions. This vision has yet to materialize, but it might be lurking in the shadows, and it definitely merits reflection. This Article is a first step in grappling with the effect of the sharing economy on property law and theory.

572. See *supra* notes 7–11 and accompanying text.

573. See *supra* Part VI.

574. See *supra* Part VI.

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