Defining “Home” through Homestead Laws

Hannah Haksgaard
University of South Dakota School of Law

Follow this and additional works at: https://scholarship.law.berkeley.edu/bglj
Part of the Law Commons

Recommended Citation

Link to publisher version (DOI)
This Symposium is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Gender, Law & Justice by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Defining “Home” through Homestead Laws
Hannah Haksgaard†

INTRODUCTION

A home is important—for individuals, for families, for societal structure.1 But, the law does not provide a clear definition of “home.” Black’s Law Dictionary provides only the simple definition of “home” as “[a] dwelling place.”2 The Home & Homecoming symposium asked, in part, how the law defines “home.” This article provides one answer by looking at homestead laws. A “homestead” is “[t]he house, outbuildings, and adjoining land owned and occupied by a person or family as a residence.”3 At first glance, this is seemingly no more useful than the dictionary definition of “home.” But, homesteads are protected by state law, and states impose different value or size limitations on homesteads; some provide different area parameters for homesteads in a municipality (“urban homesteads”) or outside of a municipality (“rural homesteads”).4 Analyzing the protections and

† Assistant Professor of Law, University of South Dakota School of Law. BA, University of Kentucky, 2009; JD, University of California, Berkeley, School of Law, 2012. Thanks are due to Jordyn Bangasser for excellent editorial assistance, Thomas E. Simmons and Lisa R. Pruitt for comments, and the members of the Berkeley Journal of Gender, Law & Justice for hosting the symposium and editing this article.

1. See, e.g., JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY 1 (2009) (“Few concepts are as ubiquitous in ordinary human experience as the home. For most people, the home has formative cultural, emotional, and psychic significance.”).

2. Home, BLACK’S LAW DICTIONARY (10th ed. 2014). Derivative definitions are no more helpful: a “family home” is “[a] house that was purchased during marriage and that the family has resided in”; a “manufactured home” is defined by its size and capabilities as relevant to the UCC; a “matrimonial home” is defined through matrimonial domicile; and a “tax home” is not defined by where a person lives, but rather where business occurs. Id.

3. Homestead, BLACK’S LAW DICTIONARY (10th ed. 2014); see also CAL. CIV. PROC. CODE § 704.710 (“‘Homestead’ means the principal dwelling (1) in which the judgment debtor . . . reside[s] . . . .“); RUFUS WAPLES, A TREATISE ON HOMESTEAD AND EXEMPTION 1 (1893) (“Homestead is a family residence owned, occupied, dedicated, limited, exempted, and restrained in alienability, as the statute prescribes.”). To be clear, the homesteads discussed in this article are completely separate from the land obtained by homesteaders by grant from the federal government.

4. Although only Texas uses the terminology of “urban homestead” and “rural homestead” in its statute, secondary sources use this terminology whenever a state distinguishes between a homestead location inside or outside of a municipality. TEX. PROP. CODE ANN. § 41.002; George L. Haskins, Homestead Exemptions, 63 HARV. L. REV. 1289, 1291 (1950). In this article, “urban” means to be located within a municipality, and “rural” means to be located outside of a municipality. For an in-depth discussion of how to define “rural” in other contexts, see Lisa R. Pruitt, Gender, Geography & Rural Justice, 23 BERKELEY J. GENDER L. & JUST. 338, 343-58 (2008) [hereinafter Pruitt, Gender, Geography & Rural Justice], and Lisa R. Pruitt, Rural Rhetoric, 39 CONN. L. REV. 159, 177-84 (2006) [hereinafter Pruitt, Rural
parameters of homesteads—especially the urban/rural parameter distinction—leads to the conclusion that a “home” is more than a mere dwelling place, a “home” is the real property that allows a family to remain stable through difficult times.  

This article is limited in scope. It addresses only one issue: how homestead laws can be used to define “home.” It does not address the myriad other issues raised by examination of homestead laws, such as race, class, gender, the right to marry, and the overarching relationship to housing security. Although there is clearly more to be said, this article addresses only a preliminary and discrete issue: homestead laws as a way to understand and define “home.” Before addressing the definition of home, this article first examines the history of homestead laws, the historical and current protections for homesteads, and the modern-day homestead parameters. Then, particular attention is paid to the urban/rural parameter distinction and how homestead laws can provide a definition of home.

### I. Homestead Laws: History, Protections, and Parameters

Homestead laws provide special protections for family homes. They exist in state codes or constitutions, and their history is feminist in nature. In early America, as a general matter, women did not own property. Women were consequently provided some protection by the right of dower, a doctrine imported from the English common law and the precursor to homestead laws. The right of dower provided some economic protection to widows by giving a widow a life

---

5. The idea of “home” as being more than a dwelling place is not unique to this proposed definition. See, e.g., SUK, supra note 1, at 1-2 (“Home,’ as distinct from household or the physical structure of the house, emerged in the nineteenth century as a bourgeois idea of domesticity and privacy, closely associated with the affective private life of the family.”).

6. It is clear that race, class, gender, and other identities are relevant even just to the discussion of the urban/rural homestead distinction. Perhaps future scholarship can examine the urban/rural homestead distinction in a nuanced and intersectional way, but that examination is beyond the confines of this narrow article.

7. An 1892 treatise on the subject of homestead laws boasts an impressive 1027 pages on the subject. WAPLES, supra note 3. The depth of these statutes is also evidenced by the fact that Professor Thomas E. Simmons of the University of South Dakota School of Law has recently published the second of a three-part series of law review articles about homestead laws in South Dakota. Thomas E. Simmons, Homestead: A (New) Hope, 63 S.D. L. REV. 75 (2018) [hereinafter Simmons, Homestead]; Thomas E. Simmons, Prequel to Homestead, 62 S.D. L. REV. 332 (2017) [hereinafter Simmons, Prequel].

8. See infra Part II (providing a historical overview of American homestead laws).

9. See infra Part III (considering the merits and purposes of the urban/rural parameter distinction to define “home”).

10. Homestead laws were feminist insofar as they provided additional property rights to women. However, those property rights were limited to the home. Accordingly, while homestead laws increased women’s property rights, they may have also cemented the idea that women belonged in the home.

estate in one-third of her deceased husband’s realty. The dower right did not extinguish until a woman’s death and attached to any land owned by a woman’s husband during the marriage—including land that was conveyed to a third party during the marriage. This created a serious clog on title, which in turn harmed the real estate market. The right of dower was not meant to make widows independent; rather, “legislators designed dower laws to prevent impoverished wives from becoming wards of . . . the state.” In the nineteenth century, states—becoming increasingly concerned about dower’s clog on title—began to repeal their dower statutes.

With dower gone, states needed a different way to ensure widows would not become dependent on the state, especially because women still did not have equal control or ownership of marital property. States thus employed homestead laws to explicitly protect families. In the second half of the nineteenth century a wave of homestead laws were passed, and in that time period “[n]o legislation [did] more for the recognition of homes and families” than homestead laws. These new homestead laws provided three common protections for the family home. First, homestead laws guaranteed a surviving spouse would receive a life estate in the homestead, so long as it was used as a homestead (“the probate homestead”). Second, a homestead could not be conveyed, mortgaged, or leased without both spouses so agreeing (“the limitation on unilateral alienation”). Third, a
homestead was exempt from sale for the collection of debt (“the homestead exemption”). These three protections existed in many original homestead laws passed in the nineteenth century, but homestead laws are not just historic relics, they exist in various states today.23

The first protection, the probate homestead, guarantees a surviving spouse a life estate in the homestead. The surviving spouse’s interest in the probate homestead lasts only so long as it is used as a homestead. This right may exist for children, and it trumps intestacy schemes and wills. The probate homestead provides a different protection than the elective share—it specifically protects the right of a surviving spouse to continue living in the marital home. To the extent that the probate homestead limits the devisability of real estate owned in marriage, it replicates a protection of dower.

The second protection prevents unilateral alienation of land. It prevents a valid conveyance or encumbrance of a homestead “unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.” This prevents all conveyances and encumbrances, including the enforcement of a lease, easement, or mortgage against a non-signing spouse. When homestead laws were passed in the nineteenth century, women did not frequently own property. In states that followed a separate property/title regime for marital property, wives were at the whim of their husbands’ management of

unilateral alienation rights”); Simmons, Prequel, supra note 7, at 338 (noting homestead laws “retract[ing] the right of unilateral alienation”).
22. See Homestead Law, BLACK’S LAW DICTIONARY (10th ed. 2014) (using analogous definitions for “homestead law” and “homestead exemption” as a “statute exemption a homestead from execution or judicial sale for debt”).
23. Most states do not offer all three protections but rather offer one or two. For example, Missouri has a homestead exemption and a limitation on unilateral alienation. MO. ANN. STAT. § 513.475.
24. See, e.g., N.H. REV. STAT. ANN. § 480:6-a (“No devise of the homestead shall affect the estate of the surviving wife or husband in the homestead right.”).
25. See, e.g., TEX. CONST. art. XVI, § 52.
26. Id.; WAPLES, supra note 3, at 22. The probate homestead can be waived in some circumstances, including a premarital agreement. See, e.g., Williams v. Williams, 569 S.W.2d 867, 870 (Tex. 1978) (allowing premarital waiver of homestead right).
27. See IOWA CODE ANN. § 561.12 (titling the probate homestead statute as “Life possession in lieu of dower”); WAPLES, supra note 3, at 260-62 (comparing the probate homestead to dower).
28. MONT. CODE ANN. § 70-32-104; BOLLES, supra note 12, at 218, 971.
29. See McGhee v. Wilson, 20 So. 619, 621 (Ala. 1896) (holding husband’s unilateral grant of an easement is invalid without wife’s consent); BOLLES, supra note 12, at 972 (explaining that mortgage signed by husband is ineffective against wife and that conveyance requires wife’s consent); WAPLES, supra note 3, at 121 (providing that lease signed by a husband is ineffective against wife). But see Palm Beach Sav. & Loan Ass’n v. Fishbein, 619 So. 2d 267 (Fla. 1993) (allowing bank to foreclose against wife where husband forged wife’s signature on mortgage of homestead).
30. Reva B. Siegel, Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850-1880, 103 YALE L.J. 1073, 1082 (1994) (“Unless her family was wealthy enough to provide property in an equitable trust, a wife negotiated marriage as a dependent: without property or the legal prerogative to earn it, and impaired in her capacity to contract, to convey or devise property, and to file suit.”).
Homestead laws, however, provided limits on how the spouse who held title (generally the husband) could alienate the homestead. By imposing these limits, homesteads “served[d] to promote the individualism of the wife in her rights of contract and property disposition in the face of previously established jurisprudence.” To the extent that the homestead conveyance limitation imposes a limitation on the alienability of real estate during marriage, it replicates a protection of dower.

The third protection, the homestead exemption, makes the homestead exempt from certain creditors and in bankruptcy by protecting it from judicial sale. Within a short time period, many states passed homestead exemption laws, whose “principal object is to protect [homesteads] from seizure for the debts of their owners. Such a policy is deemed worthy by the state, as other persons beside the homesteaders are interested in their preservation.” The homestead exemption does not prevent judicial sale of the homestead when the homestead has been used as security for a mortgage or lien. To be clear, the homestead exemption is only one way that states protect debtors. States often exempt certain personal property in addition to the homestead; those exemptions are generally meant to “protect the debtor’s essential needs and to enable him to have a fresh start economically.”

The homestead exemption, focused on protecting the family’s home, is more specific in purpose. The homestead exemption is unlike dower because it operates while the marriage is ongoing, and it protects both spouses simultaneously.

The protections that states provide to homesteads—at probate, about alienation, and for debt satisfaction—are vitally important to families because they protect the family home. The protections were particularly important to women before the modern era of more equalized land ownership. Perhaps the passage of these homestead laws was a normative statement about recognizing “the family

31. Id. (“The common law charged a husband with responsibility to represent and support his wife, giving him in return the use of her real property and absolute rights in her personality and “services”—all products of her labor.”).
32. WAPLES, supra note 3, at cxviii.
33. Texas passed the country’s first homestead exemption in 1839. Haskins, supra note 4, at 1289; see also FRIEDMAN, supra note 12, at 113 (“The homestead exemption began in Texas; from there, it spread to the North and the East.”).
34. BOLLES, supra note 12, at 214.
35. But, in relationship to the protection against unilateral alienation, if a husband alone mortgaged a property, a foreclosure could not proceed because the wife had not relinquished her homestead right. See Wilson v. Christopherson, 5 N.W. 687, 687-88 (Iowa 1880) (holding that, despite signing the mortgage and explicitly waiving her dower rights, wife had not waived her homestead rights, and the foreclosure proceedings against the homestead could not proceed); WAPLES, supra note 3, at 23 (“Creditors may enforce against the homestead any lien bearing upon it—any property-debt of the homestead itself—since exemption has reference to personal debts only.”).
37. Another topic, not considered in this article, is how a homestead becomes a homestead. In some jurisdictions a homestead becomes protected merely by being used as a homestead, but in others an official declaration is needed. An interesting right given to women early in the history of homestead laws was the right to “make the declaration if her husband fail[ed] or refuse[d] to do so.” Haskins, supra note 4, at 1298.
institution as an essential element of the governmental and social organism.”

Perhaps the passage of these homestead laws was a response to the decline of dower and the recognition that women still needed extra protections. Regardless of the original reason, homestead laws currently serve an important purpose in protecting the family home from heirs; from conveyees, lessees, and mortgagees; and from creditors.

States define homesteads and determine their parameters in different ways. From their origin, the homestead statutes have imposed limitations that “are quantitative or monetary, or both, varied in quantity between urban and rural homesteads.” Although not all of the states use the terminology of “homestead” in their protective laws, only two states offer no protection for the family home. Forty-four states impose a value limitation on homesteads. Thirty-two of those states limit homesteads only through dollar amounts, while twelve states limit homesteads through both value and land area. Accordingly, four states limit

---

38. WAPLES, supra note 3, at xcvi.
39. See supra notes 16-17 and accompanying text.
40. See, e.g., Simmons, Prequel, supra note 7, at 337 (“The basic thrust of homestead rights is to secure a family’s shelter against financial misfortune...[and] to provide some degree of protection to the marital relationship.”).
41. WAPLES, supra note 3, at 23.
42. See N.J. STAT. ANN. §§ 2A:17-19 to -28.1 (providing exemptions not including the homestead); 42 PA. CSA § 8124 (same). Many states, including New Jersey, provide tax advantages for homesteads. See N.J. STAT. ANN. §§ 54-4-8.57 to .75.
43. ALASKA STAT. § 09.38.010 ($54,000); ARIZ. REV. STAT. § 33-1101(A) ($150,000); CAL. CIV. PROC. CODE § 704.730 ($75,000, $100,000, or $175,000); COLO. REV. STAT. § 38-41-201 ($75,000 or $105,000); CONNECT. GEN STAT. § 52-352b(b) ($75,000); 10 DEL. CODE ANN. § 4914(c)(1) ($125,000); GA. CODE ANN. §§ 44-13-1 ($21,500); IDAHO CODE § 50-1003 ($100,000); 735 ILL. COMP. STAT. ANN. 5/12-901 ($15,000); IND. CODE ANN. § 34-55-2-1(e)(1) ($15,000 per creditor); KY. REV. STAT. ANN. § 427.060 ($5,000); 14 ME. REV. STAT. ANN. § 4422(1) ($47,500 or $95,000); MD. CODE ANN., CTS. & JUD. PROC. § 11-504 (amount tied to federal statute); MASS. GEN. L. CH. 188 § 1 ($500,000); MO. ANN. STAT. § 513.475 ($15,000 for homestead exemption; no limit on unilateral alienation); MONT. CODE ANN. § 70-32-104 ($250,000); NEV. REV. STAT. §§ 21.090(1)(i); 115.0101(1)-(2) (the entire homestead or $550,000); N.H. REV. STAT. ANN. § 480:1 ($120,000); N.M. STAT. ANN. § 42-10-9 ($60,000); N.Y. CIV. PRAC. L. & R. § 5206 ($150,000, $125,000, or $75,000 depending on county); N.C. GEN STAT. § 1C-1601(a)(1) ($35,000 or $60,000); N.D. CENT. CODE §§ 47-18-01 ($100,000); OHIO REV. CODE ANN. § 2329.66(A)(1) ($125,000); R.I. GEN. LAWS § 9-26-4.1 ($500,000); S.C. CODE ANN. § 15-41-30(A)(1)(a) ($50,000 or $100,000); TENN. CODE ANN. § 26-2-301 (between $5,000 and $25,000); UTAH CODE ANN. § 78B-5-503 ($30,000 or $60,000); 27 VT. STAT. ANN. § 101 ($125,000); VA. CODE ANN. § 34-4 ($5,000 or $10,000 plus $500 per dependent); WASH. REV. CODE § 6.13.030 ($125,000); W. VA. CODE § 38-10-4(a) ($25,000); WV. STAT. ANN. § 1-20-101 ($20,000). This is also what the federal bankruptcy code provides. 11 U.S.C. § 522(d)(1) ($23,675).
44. ALA. CODE § 6-10-2 (160 acres and $15,000); ARK. CONST. art. IX, §§ 3-5 and ARK. CODE ANN. § 16-66-210 (160 acres if rural; one acre if urban, and $2,500); FLA. CONST. art. X, § 4 and FLA. STAT. ANN. §§ 222.01 (160 acres if rural; ¼ acre if rural, and $25,000); HAW. REV. STAT. ANN. § 651-92(a) (one parcel and $30,000 or $20,000); IOWA CODE ANN. § 561.2 (40 acres if rural; ¼ acre if urban, and $500); LA. REV. STAT. ANN. § 20.1 (200 acres if rural; 5 acres if urban, and $35,000); MICH. COMP. LAWS ANN. § 600.5431 (40 acres if rural; 1 lot or parcel if urban, and $30,000 or $45,000); MINN. STAT. ANN. § 510.02 (160 acres and $390,000 or $975,000); MISS. CODE ANN. § 85-3-21 (160 acres and $75,000); NEB. REV. STAT. §§ 40-101 (160 acres if rural; 2 lots if urban, and $60,000); OH. REV. STAT. ANN. §§ 18.395, 18.402 (160 if rural; 1 block if urban, and $40,000 or $50,000); WIS. STAT. § 815.20; § 990.01 (40
homesteads only by land area, not value. Of the sixteen states that impose any limitation based on land area, five impose a single area parameter, while eleven use the urban/rural parameter distinction.

With a basic understanding of the protections provided by homestead laws and the parameters imposed by state laws, the rest of this article addresses how these homestead laws can help define “home.”

II. USING THE PARAMETERS OF HOMESTEADS TO DEFINE “HOME”

The urban/rural parameter distinction gives one indication of what states consider to be a “home,” and therefore worth protecting. The distinction is not a historic relic—comparison of state laws over time shows that while some states have gotten rid of the distinction, others have added it. The distinction is also not a social welfare program—homestead laws protect poor and wealthy families without any cost to the government. The distinction is not about recognizing that rural land may be worth less than urban land—states could control for this directly by imposing a value limit rather than an area limit on homesteads. The distinction is not about guaranteeing wealth transfer to a surviving spouse—states already do this through the elective share.

Finally, the urban/rural parameter distinction is not just about benefiting agricultural businesses. Rural property has traditionally had a “business component” because it is a farm or ranch. This “business component,” however,

45. KAN. STAT. ANN. § 60-2301 (160 if rural and farming land; 1 acre if urban); 31 OKLA. STAT. ANN. § 2 (160 acres if rural; 1 acre if urban); S.D. CODIFIED LAWS § 43-31-4 (160 acres if rural; 1 acre if urban); TEX. PROP. CODE ANN. § 41.002 (10 acres if urban; 100 or 200 if rural).

46. Alabama, Hawaii, Minnesota, Mississippi, and Wisconsin impose a single area parameter. Supra note 44. Arkansas, Florida, Iowa, Louisiana, Michigan, Nebraska, Oregon, Kansas, Oklahoma, South Dakota, and Texas have an urban/rural parameter distinction. Supra notes 44 and 45.

47. Although more states have gotten rid of the urban/rural parameter distinction than have added it, states have made changes in both directions. For example, in 1968 Louisiana had a single size limitation on homesteads—160 acres. CHARLES WALTERS, JR. & GEORGE J. WALTERS, A FARMER’S GUIDE TO HOMESTEAD RIGHTS 33 (1968). As of 2018, Louisiana limits homesteads to $35,000 and either 200 acres if rural or 5 acres if urban. LA. REV. STAT. ANN. § 20:1.

48. WAPLES, supra note 3, at 3 (“[H]omestead statutes are not poor laws made for the benefit of the impecunious only . . . .”); see also Eric A. Posner, Contract Law in the Welfare State: A Defense of the Unconscionability Doctrine, Usury Laws, and Related Limitations on the Freedom to Contract, 24 J. LEGAL STUD. 283, 311 (1995) (“And in the popularity of state homestead exemptions . . . one can see the appeal of a system that protected individuals against the risk of economic failure without creating disincentives to work or save. Homestead exemptions cost the taxpayer nothing, while preventing borrowers from taking the ‘undue risks’ that made them vulnerable to economic downturns and other misfortunes.”). Of course, the government saves money when families do not become homeless. Simmons, Prequel, supra note 7, at 338.

49. New York has a unique valuation law; the protected value of the homestead depends on county. N.Y. CIV. PRAC. L. & R. § 5206.

50. See, e.g., Perry v. Dearing, 289 B.R. 860, 868 (W.D. Tex. 2002) (“Traditionally, rural property in Texas has always had a ‘business’ component, that is, Texans use rural land to raise crops
cannot explain the urban/rural parameter distinction because states could allow for a larger exemption for agricultural land if they so desired. In fact, Minnesota does this. Minnesota imposes an area limitation (160 acres) and a value limit on homesteads. That value limit is over twice as high when the homestead is used for “agricultural purposes.” \(^{51}\) In Minnesota, then, the larger exemption amount is specifically codified to protect agricultural businesses that are part of a homestead. Other states could do this, but they do not—the different parameters in most states are not tied to agricultural use, but rather location. \(^{52}\)

None of the foregoing observations explains the area differential, but clearly there is a reason states drafted the urban/rural parameter distinction in the nineteenth century and continue to use it today. The most compelling explanation is that states think there is something different about the rural family home. Potentially states are trying to attract residents to rural areas; however, state laws do not generally advantage rural families and homes, and in fact may disadvantage them in some ways. \(^{53}\) It is also possible states think rural residents have a stronger “attachment to place” than do urban residents. \(^{54}\) Regardless of why states think rural family homes are different, the urban/rural parameter distinction shows that states think more land is necessary for a rural family. More land is necessary for rural families because states do not think of a “home” as merely the dwelling place in which a family lives, but rather as the dwelling place and the associated land on which the family lives and which allows the family to thrive. And rural families have distinctly different needs, including the need for more land.

There is some level of agreement that the family is the foundation of society. \(^{55}\) But homestead laws are not just about protecting the family, they are about protecting the family home. Homestead laws are also not just about protecting the dwelling and land and livestock in order to support the family that lived on it."); Pruitt, *Rural Rhetoric*, supra note 4, at 238 (“If, for example, bankruptcy law distinguishes in size between rural and urban homesteads because the owner of the former is expected to make a living from her land, few exurban homesteads would qualify for the more generous exemption.”).

\(^{51}\) MINN. STAT. ANN. § 510.02.

\(^{52}\) It is notable that rural states tend to extend the exemption to crops while more urban states do not. Haskins, *supra* note 4, at 1309.

\(^{53}\) See Luke A. Bosco, *Urban Bias, Rural Sexual Minorities, and the Courts*, 60 UCLA L. REV. 562, 611-16 (2013) (discussing children, parenthood, and the LGBTQ communities in rural areas); Pruitt, *Rural Rhetoric*, supra note 4, at 187-88 (discussing nuisance law in rural areas); Romero, *Rural Property Law*, 112 W. VA. L. REV. 765, 767-68 (2010) (discussing nuisance law in rural areas). Regarding nuisance law, there are ways in which the rural family home may be disadvantaged (claims of agricultural nuisance are more difficult to win), but also ways in which the rural family home may be advantaged (claims of noise nuisance are easier to win). Pruitt, *Rural Rhetoric*, supra note 4, at 187-88; Romero, *supra*, at 767-68.

\(^{54}\) Pruitt, *Gender, Geography & Rural Justice*, supra note 4, at 355 (discussing “attachment to place” as a “recurrent finding” in empirical evidence about rural residents).

\(^{55}\) This is why the entire doctrine of family law exists. The state has an interest in regulating the family because it believes families are important. And because the state places value on the family, individuals and groups fight for recognition as families; a modern example is the recent fight for marriage, adoption, and parenting equality in the LGBTQ community.
where a family has created its home.56 These laws, then, are a recognition that there is something about the home, broadly including the dwelling and land of a family, that should be protected from death, unilateral alienation, and insolvency. Protecting the family home allows families to flourish in a way that benefits society. In other words, homestead laws establish that homes (meaning a dwelling and land owned by family) are foundational to society—“[h]omestead laws protect the family as an institution and thereby advance societal goals of stability and cohesion.”57 And the urban/rural parameter distinction takes this even further: in order for a rural home to support a family in a way that benefits society, more land is needed. States have decided that an urban homestead can sufficiently provide stability to a family with only a lot or two, but a rural homestead might require 160 acres to reach that same goal.

Accordingly, taking into account the history, protections, and parameters on homesteads, homestead laws can provide one definition of home. “Home,” using homestead laws, can be defined as the real property that allows a family to remain stable through difficult times.

CONCLUSION

While acknowledging that “the legal meanings of home are ambivalent and contested,”58 this article provides an answer to one question posed by the Home & Homecoming Symposium: how does the law define “home?” This definition of home—the real property that allows a family to remain stable through difficult times—is descriptive; it is not aspirational. This article does not suggest that the law should always define home in this way; in fact, that would be a mistake. Any family who does not have an ownership interest in their dwelling would not have a “home” under this definition. But as a normative statement of how the law defines home, homestead laws—and particularly the urban/rural parameter distinction—define “home” based on what makes a family stable, and thus able to form a strong foundation for society. In other words, homes are not protected because they are mere dwelling places; homestead laws “protect homes as the pillars of the state edifice.”59

56 See Simmons, Prequel, supra note 7, at 338 (“A ‘homestead’ imparts a greater sum than merely ‘shelter.’”).
57 Id. at 340.
58 SUK, supra note 1, at 3.
59 WAPLES, supra note 3, at 3; see also Haskins, supra note 4, at 1289 (“The principal objective of the homestead laws is generally regarded as the security of the family, which in turn benefits the community to the extent that such security prevents pauperism and provides the members of the family with some measure of stability and independence.”).