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THE UNBOUNDED HOME

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Excerpted from The Unbounded Home: Property Values Beyond Property Lines by Lee Anne Fennell, to be published in September 2009 by Yale University Press.
The institution of homeownership, despite its familiarity, produces conflicting and even incoherent attitudes. People are shocked to learn that acts like building a fence or painting a door can be prohibited on their own property, but they are equally appalled at the prospect of a high-density development down the block. They are terrified that their beloved home might be taken through eminent domain, yet they are aghast if the city allows local conditions to erode their property values. Homeowners want an ironclad sphere of privacy and autonomy, but they want it wrapped in an environment that they can control in every particular. They want a secure and lucrative investment vehicle that doubles as an inviolable repository for subjective value. In short, people try to wring a great deal more from their homes than any property system can deliver.

How should law respond to these incongruous demands on residential property? The fact that people want inconsistent things from their homes need not be interpreted as a sign of entrenched mental confusion or shortsighted selfishness. Property theory has offered people no coherent vision of what it means to own a home that might be reconciled in even a loose way with lived experience. Homeowners have been given no tools for perceiving—much less making—the relevant trade-offs between individual and collective control. Rather, they oscillate in an unreflective way between asserting individual control over their own parcels and protecting their stakes in off-site occurrences.
Resolving this tension requires more than merely bringing people’s thinking about property up to date or increasing the sophistication with which they view the institution of homeownership. People already understand that the home’s value comprises more than the parcel contains. Rather, the poor fit of existing property models corresponds to substantive shortcomings in property law. Land use controls, as they exist today, operate mainly in a binary manner—either a use is banned, or it is allowed. There is almost never the openly acknowledged possibility that households could pay for the privilege of engaging in an unusual but especially valued use, such as adding a garage apartment, or that governing bodies could be required to pay for the privilege of banning a particular land use, such as multifamily dwellings. Moreover, few have thought creatively about the set of risks that the standard homeownership bundle should and should not contain as a default matter. For example, must homeowners be exposed to housing market risks that they have no power to control, or might these risks be more efficiently held by investors within diversified portfolios? By failing to probe such questions, property law has developed without a coherent understanding of the home as a resource.

In this book, I hope to advance a new understanding of residential property. In doing so, I chart the relevant trade-offs between household and community control and propose mechanisms to assist people and communities in making them. This task requires first stepping back to rethink the meaning of property. Above all, property represents a societal response to resource dilemmas. But property is also an inherently sticky institution that carries forward the forms and shapes that worked best in resolving resource dilemmas in the past. The adaptation of old property forms to new conditions presents familiar difficulties for property theory. Should we update property incrementally, expand it to include more legal interests, hold firm to our past understanding of it, or simply declare it dead as a distinct idea? Here, I approach property from a functional perspective by asking what property is meant to do.

In the balance of the chapter, I consider the function of property in a quite general way. This discussion sets the stage for the next chapter, in which I examine the special characteristics of the home as a resource. Chapter 3 will then introduce the commons and anticommons templates
that are used throughout the book to understand and devise solutions to a broad range of residential property dilemmas.

Property’s Work

Writing more than two hundred and forty years ago (and using a fair degree of hyperbole even then), William Blackstone articulated an ideal of property as “that sole and despotic dominion that one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” Legal thinkers have always recognized that property as it actually exists does not square with this model. Indeed, Blackstone himself did not endorse such an absolute view of property, as his writings make clear. But idealized visions of dominion and exclusion live on in the popular imagination as representing the true core of property. This model has worked less and less well as the spectrum of privileges conveyed by property ownership has narrowed and the percentage of value represented by factors lying outside the subject parcel has grown. Yet, no satisfactory model has emerged to replace it.

To be sure, many legal scholars (from the legal realists onward) have gravitated toward the metaphor of property as a “bundle of rights” or “bundle of sticks.” This approach has the advantage of permitting property to mean as much or as little as the situation requires—“sticks” can be added, subtracted, combined, and recombined in limitless ways, all without ever moving outside the category of property. But this theoretical strength is also a weakness. The sticks idea suggests that property lacks any stable core of meaning around which expectations might form; as such, it cannot help laypeople reconcile the shortcomings of the exclusion-based model. While the notion of a bundle of sticks may be helpful in understanding that property rights can be diminished without being extinguished, it is of little help in understanding why or how this diminution might occur.

Consider a simple dispute between Angus, who wishes to add a “granny flat” to his home to generate rental income, and his neighbor, Beth, who strongly opposes this use. Angus might argue that what happens on his property is subject to his own personal dominion and is simply none of Beth’s business. This argument, of course, proves too much. Even at com-
mon law, Angus could not defend his maintenance of a nuisance on his property using this logic. Beth, for her part, might invoke her own idea of exclusion by asserting that her dominion over her own property is compromised by the presence of granny flats within her viewshed. Abstract principles of exclusion on their own offer no way of choosing between Angus’s position and Beth’s. The bundle-of-sticks approach provides no determinacy either, as it would simply lead Angus and Beth to wrangle over who should be allotted the granny-flat stick associated with Angus’s property.

Neither the bundle-of-sticks metaphor nor the model of Blackstonian exclusion offers useful normative guidance in resolving land use disputes, because neither approach focuses on the appropriate function of property. One might say that property is meant to exclude. But exclusion is pointless on its own; it only becomes valuable when it enables property owners to do something—or some set of things. Modern advocates of an exclusion-based understanding of property indeed emphasize that exclusion is instrumental to performing any of a broad and indeterminate set of uses on one’s land. Moreover, these scholars suggest that exclusion is an attractive core approach to property precisely because it can be enforced without any inquiry into the specific uses that might be made of the owner’s exclusive realm. On this account, property’s job is to clear a space where diverse endeavors can be undertaken by an owner without interference.

By pushing a bit on this idea, we can see both the ways in which exclusion operates as advertised and the ways in which it falls short. Exclusion’s advantage lies in its ability to strengthen the relationship between an owner’s inputs and the outcomes that she enjoys or suffers. The idea is intuitive. Keeping others off the property safeguards one’s own inputs (for example, by keeping carefully distributed fertilizer from being displaced) while keeping out extraneous and potentially harmful inputs (such as crop-damaging cows). Exclusion also protects positive outcomes from being carried away—outsiders cannot simply show up and fill their knapsacks with ears of corn that have been painstakingly cultivated over a series of months. More generally, exclusion is a broad-gauge strategy for protecting from interference whatever (unknown and perhaps unknowable) activities may be going on inside the property boundaries. A culture of exclusion-based property ownership also encourages owners to
fence in factors (such as unruly dogs) that might produce unwanted impacts for neighbors.

Intuitive as a boundary-focused approach seems when discussing crops and animals, it appears somewhat anachronistic when applied to homes. Although boundaries remain unquestionably important (especially for protecting interior space), fortifying and defending the parcel’s boundaries is both an underinclusive and an overinclusive strategy for securing the home’s value. Today, most of the threats to the value of one’s home come not from marauding cattle or vegetable thieves, but rather from events and conditions that lie outside the parcel’s boundaries and never cross those boundaries in a physical sense. Larger economic and social factors determine the demand for, and supply of, housing in a particular location. For example, changes in local labor markets can influence both the costs of home construction and the demand for housing. Local governmental decisions about matters like transportation, land use, education, and policing can have dramatic effects on the home’s value. The aggregate actions of one’s neighbors also produce effects without manifesting themselves in physical intrusions. For such reasons, a homeowner’s defense of her boundaries is a radically underinclusive strategy for protecting and enhancing the value of her property.

Boundary exclusion is also an overinclusive strategy for safeguarding home values. While homeowners may be quite vigilant about exclusion when it comes to the dwelling itself and its private fenced areas, strong exclusion from the parcel’s edges would be unworkable, even ludicrous. For example, only the most curmudgeonly homeowner would try to keep neighborhood children from making reasonable use of the front lawn to retrieve wayward toys or pets. Pedestrians are typically allowed to use the edges of front yards as walkways in areas lacking sidewalks, especially where traffic makes walking in the roadway unsafe. Likewise, homeowners routinely allow motorists to use their driveways to execute K-turns; they also allow uninvited individuals to approach the front door under most circumstances. And although one’s ownership interest rises “to the sky,” airplanes, satellites, and spacecraft are legally allowed to enter one’s airspace.

In addition to such obvious physical invasions, innumerable lesser boundary crossings occur at the molecular level. Fumes, odors, sound, and light cross freely over property boundaries. Even if banning all activ-
ities producing such cross-boundary impacts were possible, it would not be desirable—at least if we understand exclusion not as an end in itself but rather as a means to the end of safeguarding meaningful land uses. Because virtually any activity on one’s property will generate some extraboundary effects, such a rule would render property worthless as a practical matter. For example, simply walking across one’s own front yard stirs air molecules and doubtless causes some of them to cross the boundary line. Nor can we assume that these moving molecules will have no impact on a neighbor’s enterprises. For all we know, the neighbor is engaged in a sensitive weather experiment that will be grievously disrupted by even the slightest stirring of air across the boundaries.

The point is a simple one: some degree of exclusion helps property do its job of pairing inputs and outputs, but too much exclusion can be harmful to property’s ultimate ends. As exclusion rights become more and more categorical, they erode some of the use-content that exclusion was meant to protect in the first place. Hence, property law cannot simply adopt a rigid, categorical rule of exclusion but rather must decide on the strength and content of exclusion rights. Moreover, exclusion is not sufficient to deliver all of the protection that homeowners seek. Thus, the law must also decide what else it will do—or allow homeowners acting collectively to do—to influence events and conditions occurring outside individually owned parcels.

Traditionally, law has responded to the shortcomings of boundaries by deciding whether to permit various activities with extraboundary impacts or to prohibit them outright. As greater numbers of people live and work in close proximity and as activities with extraboundary impacts proliferate, so too does the number of required societal judgments about those activities. The bundle-of-sticks metaphor initially seems well suited to handle these adjustments. Disaggregating property into separate sticks representing different uses or different powers suggests that we can decide in an endlessly precise and customized manner what property should mean in any given instance. As legal theorists have noted, however, this decomposition threatens to destroy property as a distinct subfield of legal entitlements. Because the sticks metaphor is not tethered to a functional understanding of property, it contains no stopping point in breaking down familiar property forms and, as noted above, cannot provide any guidance in deciding how the various sticks should be distributed among owners.
I argue that property’s essential nature resides in the institution’s capacity to pool together inputs and outputs. It need not do so perfectly, of course. Routine spillovers across boundaries can be identified and readily controlled through standard legal instruments: regulation, tort law, contractual arrangements, or special-purpose property instruments like easements. But as the volume and proportion of extraboundary effects arising from activities undertaken on property grows, the property form itself (as it is currently conceived) becomes increasingly incapable of collecting together inputs and outputs and charging them to the account of the owner. The bundle-of-rights model never registers this problem—the bundle is simply split into ever more sticks. On a functional account, however, pervasive and uncontrollable off-site effects signal a fundamental failure in property’s configuration.

A Leaky Bucket of Gambles

A functional look at property suggests that a new metaphor is in order, one that focuses on property’s job of pairing together inputs and their (often quite uncertain) effects or outcomes. Taking a page from Henry Smith, who recently adopted an image William Markby employed more than a century ago, I suggest that a bucket offers the best working model of property. Smith finds Markby’s “bucket of water” metaphor compelling because it suggests that property is made up not of distinct, well-articulated sticks but rather of a unified and undifferentiated whole representing all the things that one might do with one’s property. I find the metaphor fitting for a second reason—buckets are not pristine, airtight containers but rather rough-and-ready catchments that are notoriously prone to leaks and sloshes.

Property, true to its bucketlike form, can at best capture most of the outcomes associated with an owner’s inputs most of the time. Meanwhile, other sources of law (tort, regulation, and so on) stand ready to clean up routine spills and sloshes. When the sloshes start to overwhelm the system so that more is spilling out than is staying in, however, it is time to reconfigure the bucket—whether by making it larger, nesting it within other buckets, or devising special-purpose beakers and pails that can address identifiable sources of spillage. In later chapters, I suggest in a more con-
crete way how these possibilities might play out. For now, it is worth taking a moment to flesh out the metaphor.

What, exactly, is collected in the bucket? On one view, the bucket arrives prefilled with all the conceivable things that an owner might do with the property. The owner can then selectively dip out and transfer specific uses to others, or see particular use privileges siphoned away politically. While this way of thinking about the bucket vividly suggests that the initial set of use privileges represents an undifferentiated whole rather than discrete, enumerated entitlement sticks that have been stacked together, it does no better than the sticks analogy in offering intuitions about when subsets of the overall entitlement should be shifted to another party, or indeed about how large the bucket should be and what its contents should originally include.

A better way of understanding the bucket’s contents follows from a functional understanding of property. On this view, the bucket itself represents the conceptual boundaries of a particular property form, which is ideally capable of holding and amassing value for an owner over time. The owner puts content into the bucket by engaging in any of a wide variety of endeavors on or with the property; these endeavors will involve inputs of materials, time, effort, and skill. The associated choices represent gambles that will play out within the domain of the owner’s holding. The institution of property aspires to pair together, with some regularity, control over inputs and ownership of outcomes.

Of course, owners are not free to plunk all kinds of inputs into their property buckets willy-nilly. The law rules out some activities because they run afoul of normative constraints on action quite independent of property law (for example, murder is prohibited, even if an individual owns the place in which the murder would occur and the weapon for carrying it out). In other cases, law places constraints on what can be done with the property even though the activity in question carries social value, because of its tendency to produce harmful side effects. But property allows owners significant choice among inputs on the expectation that the results will be charged back against that same owner.

This picture of property suggests that the bucket (that is, the conceptual boundaries of the property) should be scaled in a manner that renders it generally capable of containing the outcomes, whether positive or negative, of the gambles that are typically undertaken by the person desig-
nated as owner. The task of appropriately scaling property is a dynamic one; changes in the way that owners use property may yield outcomes that are captured less well (or more well) by existing property forms. For example, in times and places where owners commonly used property for agriculture with only incidental residential uses, the recreational music-making of one family was unlikely to disturb a neighbor’s activities. As property holdings grew smaller, residences became more tightly spaced, and technologies for amplifying music became available, the inputs into the endeavor of merrymaking in one’s home became increasingly likely to yield outcomes that would interfere with the endeavors undertaken by neighboring property owners. In short, the scale of the activities that owners undertake on their property may fall out of alignment with the scale of the outcomes of those activities.\(^{21}\)

What should the law do about inputs that have a demonstrated or suspected tendency to generate negative effects beyond the property’s boundaries? There are many possible responses—some that are well recognized and others that have not been as carefully explored.

Four Rules

A standard starting point for analyzing society’s slate of choices for resolving land use conflicts is found in Guido Calabresi and Douglas Melamed’s groundbreaking 1972 *Harvard Law Review* article.\(^{22}\) Calabresi and Melamed offer a systematic look at the alternatives available to a court adjudicating a conflict between two neighboring parties, such as a factory spewing smoke and a homeowner suffering nearby. Their framework broke the court’s choice into two parts: which party holds the entitlement at issue (here, over what happens to the air shared by the factory and the homeowner) and how that entitlement is protected by the law.

As Ronald Coase emphasizes, it takes two parties to create a land use conflict.\(^{23}\) The law must therefore choose which party’s interests will receive priority. In a world of zero transaction costs, the Coase Theorem holds, the parties could bargain their way to an efficient solution regardless of the initial legal rule (although they might not reach the same solution from every starting point).\(^{24}\) But because transaction costs are often significant, the law’s choice about whom to entitle can matter a great deal.
Once that decision has been made, a second decision becomes necessary—how the entitlement will be protected. Calabresi and Melamed distinguish between two alternative protection regimes—property rules and liability rules. What they term “property rule” protection is exemplified by the sorts of injunctive relief typically available to property owners to prevent trespasses, although it would also encompass other, supercompensatory forms of relief, such as punitive damages. In contrast, “liability rule” protection, which provides only for compensatory damages, effectively sets a price at which an entitlement belonging to one party may be unilaterally obtained by another party without the original entitlement-holder’s consent. Combining the choice of initial entitlement assignment with the choice of entitlement protection yields a two-by-two grid, as shown in Table 1-1.25

Rules 1 and 3 represent the opposite poles of categorically allowing or prohibiting the factory’s operations. In each case, the party disfavored by the legal rule would be stuck with it unless she could successfully negotiate a change with the other party (that is, a move from a regime in which the factory’s operations were prohibited to one in which they were permitted, or vice versa). Rules 2 and 4 introduce the possibility that one party might begin with the right to control what happens to the air, but the other would be able to buy up that right unilaterally, over any objections of the original entitlement holder, at a price set by a third party. That the court’s choice set included not three possibilities but four was an important insight of the piece. Not only could the court (by setting damages)

<table>
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<tr>
<th>Homeowner holds entitlement</th>
<th>Factory holds entitlement</th>
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<tbody>
<tr>
<td>Protected by a property rule</td>
<td>Factory is enjoined (Rule 1)</td>
</tr>
<tr>
<td>Protected by a liability rule</td>
<td>Factory can pollute and pay damages (Rule 2)</td>
</tr>
</tbody>
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effectively establish a price at which the factory could emit over the objections of the homeowner, the court could also establish a price at which the homeowner could shut down the factory’s operations over the factory’s objections. As it happened, this unusual fourth alternative was independently approximated in a case decided by the Arizona Supreme Court around the time that Calabresi and Melamed published their article.

Although Calabresi and Melamed’s four-rule grid has not gone uncriticized, it has served as a crucial catalyst in thinking broadly and creatively about the many possible ways society might structure legal rules. Numerous scholars have used the Calabresi and Melamed framework as a springboard for exploring additional applications of the four rules originally outlined, as well as for adding new combinations and permutations to the choice list. Taken in combination with the insights of Coase, the Calabresi and Melamed framework leads to two observations that are foundational to the analysis here. First, at least where normative side constraints do not rule out the possibility, the law’s initial assignment of entitlements need not be the final assignment—instead, entitlements can be transferred between parties. Second, the law can choose how to structure those transfers. Thus, not only can entitlements be designed to permit movement from a given legal starting point upon mutual consent, they can also be formulated to give one party or the other the option of making a unilateral shift to a different legal regime at a particular price.

Scholarship building on the work of Calabresi and Melamed offers additional insights into the many ways that control over conflicting land uses might be structured. For purposes of the arguments in this book, one refinement is especially significant. In discussing pricing mechanisms in land use contexts, we can distinguish the pricing of inputs that generate a risk of harm from the assignment of liability for harmful outcomes. The next section explains.

Inputs and Outcomes

Suppose Edison runs over Ferris’s foot with his Land Rover. A court puts a dollar figure on the costs of the foot damage and makes Edison pay that amount to Ferris. On the popular scholarly understanding, this is a classic example of a liability rule in action, one in which Edison has
“bought out” Ferris’s entitlement not to have his foot crushed by paying for the damage caused. For many, this account grates against moral sensibilities.31 Beyond that, it is simply an odd way to describe what has happened. As Carol Rose has noted, participants in an accident are thrust into an interaction that was neither desired nor contemplated in advance, making it inapt to suggest, as the scholarly literature does, that the injurer has engaged in a purchase transaction or exercised an “option.”32 Normally, when one buys something, one learns the price in advance and makes a conscious decision to enter into the purchase transaction. Edison, the injurer in our story, did neither of these things; instead, he merely selected an input (the activity of driving at a particular level of inattentiveness) that triggered his liability for any resulting harmful outcome.

Entitlement transfer mechanisms may involve liability payments triggered by accidental outcomes (such as a crushed foot), or may instead involve pricing inputs that create a risk of unwanted results (such as driving in a certain manner). While advance input-based payments to potential victims are hard to imagine in the accident context, they are much more plausible in land use settings. Land use conflicts do not present one-off chance encounters among strangers; they produce ongoing interactions among neighbors. The explicit pricing of privileges to undertake particular endeavors on land (such as keeping pets or making particular aesthetic choices) therefore forms a viable alternative to an outright ban on the activity or a rule allocating liability for harmful outcomes.

Pricing inputs has some underappreciated advantages. First, because the price term is not tied to the actual manifestation of harm, it can be consciously adjusted to meet distributive or other goals. The amount might be set equal to an objective projection of the expected harm, but it might also be keyed to the subjective value placed on the exercise (or nonexercise) of the input by one party or the other. The explicit pricing of an entitlement to engage in an otherwise legitimate input activity also avoids the implication (commonplace where liability for actual harm is characterized as a mere “price”) that a party is buying the right to harm another person. Instead, input pricing makes clear that the payment is being made only for the privilege of engaging in the legitimate activity itself.

Another closely related point involves incentives for the “victim” in the interaction. Suppose Jack pays Jill a lump sum in advance for the en-
itlement to throw boulders down his hill toward Jill’s property. If the rolling boulders create a risk of harm for Jill, she has no less incentive than she did before the payment to engage in efficient self-help or mitigation efforts (such as staying out of the rolling boulders’ path).33 Not so, if Jack will have to pay Jill for the damage actually caused. Although we can assume that Jill has her own reasons for not wanting to be crushed by a boulder (even if she—or her estate—were compensated for it), it is not implausible that she would be at least marginally less careful about keeping her personal property out of harm’s way if payments were based on realized harm.34

One disadvantage of paying for an input in advance is that it leaves any luck-based risk to fall on the victim. If random factors determine whether a given boulder rolls in a straight (and hence avoidable) path or instead careens crazily through Jill’s property, and if we assume that Jill is less able to insure against risk than is Jack, then making Jack liable for the actual harm may have advantages. Improving Jill’s access to insurance would be another alternative, of course. To the extent we can identify the factors that influence outcomes and isolate their impacts—perhaps boulders roll crazily in snowy or muddy conditions but in a predictable path when the ground is dry—the risk associated with the occurrence of those factors can be alienated to some third party who is well positioned to bear it. Precisely such slicing and dicing of risks can be seen in innovations like weather derivatives—financial instruments that pay off only if certain weather conditions obtain, permitting weather-sensitive businesses to hedge against bad weather luck.35

Another problem with prepaying for inputs involves Jack’s future incentives to make use of innovative new technologies to reduce harm. Having already prepaid to roll boulders, Jack might not seem to have any reason to employ a newly invented boulder-removal machine that would cost less to buy and operate than the expected value of the harm to Jill. The dissenting judge in Boomer v. Atlantic Cement made precisely such an argument against allowing a factory to proceed with its operations upon payment of a preset amount in “permanent damages” to neighbors harmed by those operations.36 Making payment for inputs iterative (rather than once and for all) offers a solution, but one that may be administratively cumbersome. Alternatively, we might devise mechanisms whereby
Jill can buy back Jack’s boulder-rolling privileges in accordance with specified protocols at some point in the future. We would expect Jack to give up his boulder-rolling privileges if Jill offered him enough money to purchase the boulder-removal machine and still come out ahead, but negotiations may be difficult. Giving Jill the right to require Jack to adopt new externality-reducing technologies, provided she pays for them, could offer a more streamlined solution.

**Pricing and Property’s Function**

It is helpful at this point to step back and examine how the notion of pricing inputs connects to the functional understanding of property introduced earlier. If property is understood as a reservoir for containing inputs and their outcomes, enforcement of property boundaries represents only one way of accomplishing the containment function. There are a number of other possibilities. First, activities that have a propensity to generate too many harmful outcomes can simply be banned. For example, the law might forbid the Jacks of the world from heaving boulders across the landscape. Alternatively, prohibitions could be stated in terms of outcomes—Jack could be forbidden to roll boulders that cross within ten feet of Jill’s dwelling—with supercompensatory penalties attached to violations. It would also be possible to charge harmful outcomes back to the actor whose actions produced those outcomes. Here, Jack could compensate Jill for the harm she suffered as a result of his boulder-rolling activities. Finally, inputs that produce a risk of harmful outcomes for others might be priced, as discussed above.

Although remedies for nuisance have included damages as well as injunctive relief, spillovers have primarily been managed through prohibitions on particular land uses. Because nuisance covers only a limited spectrum of impacts, zoning or covenants are typically at issue when homeowners attempt to expand the envelope of control beyond their individual parcels. These land use controls tend to rely on bans that can be enforced injunctively. As the volume and extent of these input-based prohibitions grows, almost unbearable pressure is placed on the understanding of ownership as a realm of relative autonomy. The relief valves that exist tend to be political in nature.
Explicitly pricing inputs may offer a better way to reconcile the prerogatives of land ownership with the realities of community interdependence. Where a multitude of activities undertaken on property are central to a landowner’s own legitimate ends and at the same time potentially detrimental to the legitimate ends of neighboring landowners, blunt categorical bans fall short—they either underprotect owners or overregulate them. More nuanced solutions are possible through pricing mechanisms. In Parts II and III, I flesh out how such mechanisms could operate to resolve two distinct sets of conflicts in neighborhoods that are schematically represented in Figure 1-1.

The letter A in Figure 1-1 represents a single residential parcel of land. As the next chapter discusses in more detail, Parcel A is a porous resource that both impacts and is impacted by its neighbors. Zoning or covenants might be employed to establish a larger envelope of control, represented by the oval labeled B. This outward expansion of control indeed helps to address the problem of spillovers, but it can generate problems of its own. Difficult trade-offs must be made between the rights vouchsafed to the community falling within the expanded area of control and those left with individual parcel-holders. The sorts of relatively inalienable, categorical...
rules that are most often used to govern realm B may not work especially well at striking that balance. Moreover, even if all of the interests within B could be perfectly addressed through a governance regime that shifted an optimal amount of control to the community, the policies enacted by B might create inefficiencies within the larger community of which B is a subset, represented by the larger oval labeled C in Figure 1-1. In Parts II and III, respectively, I explore mechanisms that can be used in conjunction with the traditional homeownership paradigm to address these two sets of problems.

Part IV, in contrast, challenges the traditional homeownership paradigm directly. Increasingly refined mechanisms for pricing inputs into common environments can make headway in reducing the divergence between the choices made by homeowners and the impacts that the homeowner suffers or enjoys. However, not all inputs into home price volatility can be captured through such mechanisms, and not all inputs that can be captured in this manner are most efficiently managed by individual homeowners. Rather than focus on ways to extend control to match exposure, the final part of the book considers ways to scale back the homeowner’s exposure so that it aligns more closely with the homeowner’s effective sphere of control. In other words, I examine whether the home should be turned into a less porous entity, at least as far as investment risk is concerned, through institutional mechanisms that absorb some of the shocks to home values.

To set the stage for the analysis that follows in Parts II, III, and IV, two additional pieces of groundwork are necessary. The next chapter discusses more concretely the unbounded nature of residential property in metropolitan areas. Doing so requires considering the many components of the home that go beyond its physical structure. Although I refer to the whole as a “bundle” and the home purchase as a “bundled” one, I do so not to invoke the bundle-of-rights or bundle-of-sticks metaphor for property, but rather to draw attention to the elements that constitute the home as a resource and that account for its value. Many of these elements are shaped by the choices that other actors, whether neighboring homeowners or local governments, make. Chapter 3 concludes this part with a game-theoretic discussion of the dilemmas arising from those interdependent decisions, which are more fully explored in Parts II and III.