III. What May Owners Do with Their Property?

What may owners do with their property? In this section we analyze some traditional restrictions on property rights. We postpone discussing modern government regulations such as zoning ordinances till the final section of the chapter.

A. Bequests and Inheritances: Circumvention Costs and Depletion Costs

In a feudal or tribal world, law typically stipulates the heirs to land, rather than the owner choosing heirs. To illustrate, the eldest son inherited all of his father's land in medieval England,[44] and in matrilineal tribes the land is often inherited by the niece from her aunt. Furthermore, feudal and tribal societies typically restrict the sale of land. As law modernizes, owners increase their power to stipulate the terms of inheritance and sales. The law in Western countries has evolved over centuries toward more freedom for the owner to specify who may have the property after his or her death and what they may do with it. We discuss briefly the economic analysis of this trend.

Any restriction on the owner's choices creates an incentive to circumvent it. To illustrate, imagine an owner who wants to bequeath her land to a particular friend, and imagine that the law will award the property to someone else. The owner can circumvent the law, say, by transferring title to the friend today and leasing it back for $1 per year until her death. Circumventing the law usually requires the assistance of a good lawyer. In general, owners use costly legal resources to circumvent restrictions on the use of property.

Now change the example and imagine that tight laws and costly lawyers prevent the owner from circumventing restrictions on bequests. Because her desire to designate her heir was frustrated, the owner may deplete her property before she dies. For example, she might cut timber prematurely, or exhaust the soil's fertility by intensive farming, or postpone needed improvements to buildings. In general, rules that restrict transfer undermine the owner's incentive to maximize the value of the property.

Circumvention costs and depletion costs provide two reasons for allowing an owner freedom in transferring property at death. However, these same reasons justify restricting

[44] In most of England from 1066 (the date of the Norman conquest) until 1925, the general rule for disposing of real estate on one's death was that it passed intact to the decedent's eldest son, a system called *primogeniture*. Testators were not free to alter this rule except under very narrow circumstances.

the freedom of an owner in special circumstances. Most property rights live forever, but all owners die. Sometimes one generation of owners wants to limit the discretionary power of subsequent owners. To illustrate, suppose that I own my family's ancestral home, Blackacre, and I stipulate in my will that no one will ever use Blackacre for purposes other than as a residence. Subsequently, I die and my heir wants to develop Blackacre into a golf course. Should the law enforce the restrictions in my will or set it aside and allow my heir to build a golf course? If the law routinely sets aside such restrictions, then I have an incentive to deplete the resource or circumvent the law prior to my death. If the law enforces such restrictions, then my wishes may be fulfilled but at the social cost of making it difficult, if not impossible, to move Blackacre to a higher-valued use than its use as a residence.

In the preceding example, the owner apparently wants to restrict future uses of Blackacre for his own, perfectly legitimate reasons. In other examples, an owner creates a trust (called a "spendthrift" trust) to protect someone from his or her own bad judgment,[45] or a bequest attempts to keep property in the family forever,[46] or a restrictive covenant attempts to channel future sales to certain classes of buyers.[47] In general, the principle that the current owner should be free to structure transactions as he or she wishes runs up against a difficulty when the owner wants to restrict future owners. In these cases, a conflict exists between the freedom of sequential owners of the same property. Any reduction in the freedom of any owner in the sequence may cause economic waste, regardless of whether the reduction in freedom comes from law or a private transaction.

English common law responded to these facts generally by being skeptical of "restraints on alienation," as they are called, and specifically in the case of bequest by a complicated law called the *rule against perpetuities*. The rule imposes a time limit on property restrictions imposed by the terms of a gift, sale, bequest, or other transaction. Instead of lasting in perpetuity, restrictions automatically lapse when a legal time limit expires. The legal time limit has the curious formulation "lives-in-being plus 21 years." To illustrate its meaning, assume that my only child is an unmarried daughter, and I stipulate in my will that she will inherit my ancestral home, Blackacre, on the condition that it never be used except as a residence. According to the rule, the restriction must ordinarily lapse 21 years after my daughter's death.[48]

Notice that the rule against perpetuities is a "generation-skipping rule." By this phrase we mean that it allows an owner to skip over the living generation by restricting their use of the property, but the property passes unrestricted to the unborn when they reach the age of 21 and become legal adults. A generation-skipping rule has an economic rationale. Assume that you must choose a principle concerning the power

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[45] For example, a trust is created in which the beneficiary receives the interest income from the trust property but cannot touch the capital until she is middle-aged.

[46] For example, the owner leaves instructions that, at his death, his land is to be given to his oldest son, at whose death the land is to be given to *his* oldest son, and so on.

[47] In the past in America, covenants sometimes blocked future sales to buyers belonging to certain races.

[48] This account of the rule against perpetuities is roughly, but not exactly correct. The "life in being" designated as the "measuring life" does not have to be that of the daughter. It could, for example, be the first child born in Kinshasa the month before the testator's death. The rule, to be brief, is extremely complicated—so complicated that it invites creativity to avoid it.

of one generation to impose restrictions on the use of property by subsequent generations. The principle that you choose will apply to every generation. You know that the world changes in unpredictable ways, so no restriction is good forever. You also know that most owners are prudent and benevolent toward their heirs, and a few are foolish and venal. In effect, you want a principle to protect against an occasional fool in an unending sequence of owners, given a constantly changing world.

A prudent owner will not restrict a prudent heir, and a prudent owner will restrict a foolish heir. Given these facts, an attractive principle for you to choose allows each generation to restrict the next generation, but not subsequent generations. When prudent owners apply this principle, only foolish heirs will be restricted. Furthermore, the restrictions that prudent owners impose on foolish heirs may prevent the foolish heirs from imposing restrictions on the next generation. So, the rule against perpetuities appears to maximize the value of property across generations.

A trust is an organization where one person owns and manages money for the benefit of another. Trusts have different purposes, such as transferring wealth to one's heirs while avoiding inheritance taxes. When a person creates and endows a trust, it pays money to the beneficiary, which is not an inheritance, so no inheritance tax is owed. Eventually, however, the trust is dissolved, and the tax authorities may recapture part of the taxes that the trust avoided. To further reduce tax liability, some U.S. states have enacted laws allowing citizens to create "perpetual trusts" or "dynasty trusts." Because they never dissolve, they avoid the tax liabilities triggered by dissolution, but they are also inconsistent with the rule against perpetuities.

U.S. citizens in one state can establish a trust in another state. States compete to attract trust business by making favorable laws, especially for avoiding taxes owed to the federal government or other states. Perpetual trusts are an example. Besides avoiding taxes, competition for trust business can also improve the efficiency of trusts. The management of stock portfolios, which trusts often have, illustrates such an improvement. In the nineteenth century, most U.S. states adopted a rule making the trustee liable if the portfolio included speculative stocks that lost their value. This rule caused trustees to buy bonds and very conservative, "blue-chip" stocks. Low risk, however, characterizes the portfolio as a whole, not each stock in it. In a balanced portfolio, the risk from one stock offsets the risk from another. In technical terms, holding stock with negatively correlated risk results in low risk for the portfolio as a whole, even though individual stocks are high risk. Some innovative states responded to these facts by changing the rules of trust management. Under the revised rules, the trustee who holds a balanced portfolio is not liable for losses caused by a fall in value of individual stocks. This change in the rule caused trust portfolios to shift away from conservative bonds and toward more individually risky stocks. States making the change attracted more trust business, which puts pressure on other states to modernize their rules of trust management.[49]

[49] See Max M. Schanzenbach & Robert H. Sitkoff, *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*, 50 J. LAW & ECON 681 (2007). See also those authors' *Lawyers, Banks, and Money: The Revolution in American Trust Law* (2011). As another example of competition among juris- dictions, the trust was developed in the common law, not in civil law. The success of London banks in the trust business has put pressure on Paris banks to modify French civil law to gain all the advantages of the trust in English common law.

B. Rights to Use Someone Else's Property

In general, no one may use another's property without the permission of the owner. Use of another's property without the owner's permission is an illegal trespass. As we saw in Chapter 4, this rule and moderate transaction costs induce those who want to use another's property to bargain with the owner. Bargaining leads to the use of property by the party who values it the most, as required for allocative efficiency.

Can someone ever use another's property lawfully without the owner's permission? We have already seen that the "fair use" exception allows one to use copyrighted material without the owner's permission—in limited circumstances. (See question 5.11 on page 135). This issue arose in the famous case of *Ploof v. Putnam*.[50] Putnam was the owner of a small island in Lake Champlain, a large body of water in northern Vermont. In November, 1904, Ploof was sailing on that lake in a sloop with his wife and two children when a violent storm arose very suddenly. Ploof needed a safe harbor quickly, and the nearest one was Putnam's island. Ploof moored his sloop to a pier on that island, hoping that his ship and family would be able to ride out the storm in safety.

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[50] 81 Vt. 471, 71 A 188 (Supreme Court of Vermont, 1908).

However, an employee of Putnam's, fearing that the sloop would damage his employer's property by being cast repeatedly against it during the storm, untied the ship from the pier and pushed it away. The sloop and its passengers were then at the mercy of the storm. The ship was ultimately driven by the storm onto the shore and wrecked.

Ploof sued Putnam, alleging that the losses to his ship and the injuries to himself and his family were the result of wrongful action by the defendant, through his employee. Ploof argued that the storm caused an emergency that justified his trespassing on the defendant's property, even without permission. He asked for compensatory damages for his losses. Putnam replied that every property owner has a right to exclude trespassers. This principle is so firmly settled, he asserted, that the court should award him summary judgment without proceeding to trial. The trial judge denied the defendant's motion for summary judgment, and the defendant appealed. The Supreme Court of Vermont affirmed the decision and held that *private necessity* like that of Ploof was an exception to the general rule against trespass.

In an emergency, one person can use another's property without permission. However, the user must compensate the owner for the costs of use. To illustrate, a hiker who gets lost in a remote wilderness may break into an uninhabited cabin in order to obtain food and shelter, but the hiker must compensate the owner for damage to the cabin and food consumed. As another example, X becomes deathly ill during the night, the only pharmacy in town is closed, and its owner Z is unreachable, so X breaks into Z's pharmacy and takes the required medicine. The law will excuse the trespass, but X must pay damages to Z. As a final example, X, who is about to be murdered by Y, picks up the nearest heavy object, Z's valuable china vase, and crashes it over Y's head, thereby saving X's life. X must pay damages to Z for the vase. In brief, the private-necessity doctrine allows compensated trespass in an emergency.

Bargaining theory rationalizes the *private necessity* exception to the general rule against trespass. In an emergency, transaction costs may preclude bargaining. For example, the suddenness with which the storm arose precluded Ploof from finding Putnam and bargaining with him. When bargaining is precluded, voluntary transactions do not necessarily cause goods to be used by the party who values them the most. A rule allowing compensated trespass assures that trespass occurs only when its value to the trespasser exceeds the cost to the owner.[51]

[51] Suppose that Ploof had found Putnam on the pier and bargained with him. The emergency has conveyed monopoly power on Putnam, who has the *only* nearby pier. Given Putnam's monopoly and Ploof's desperation, Putnam might demand an exorbitant amount of money for use of the pier. Ploof might promise to pay it, and then refuse to do so after the emergency passes. Litigation of such "bad-Samaritan contracts" is discussed later, when we come to the "necessity doctrine" in contract law.

C. Inalienability

The law forbids the sale of some valuable things, such as body organs, sex, heroin, children, votes, atomic weapons, or human rights. You cannot even *give away* some of these things, such as heroin or your vote in a national election. You cannot lose some of these things by *any* legal means, such as your human rights. One meaning of *alienation* is losing something, especially an intimate part of yourself. In law, the term *inalienable* refers to something of yours that you cannot lose by specified means. Thus, body organs, sex, and children are inalienable by sale, your vote is inalienable by sale or gift, and your human rights are inalienable by any means.

The sale of sex or children is prohibited by conventional morality, as well as law. Many forms of inalienability express conventional morality. Other forms of inalienability, such as the enactment of human rights, express the aspirations of eminent political theorists. What about economic theorists? What have they had to say about the efficiency of inalienability? Occasionally, a regulation increases the efficiency of a transfer. This fact provides an economic rationale for regulation. However, inalienability goes far beyond regulation. Whereas regulations restrict transfers, inalienability prohibits them. The efficiency of a transfer cannot increase by prohibiting it. In general, prohibitions on transfers are inefficient because they prevent people from getting what they want. Following this line of thought, some economic writers have attacked laws that make certain goods inalienable.[52] Is there *any* economic rationale for inalienability?[53]

Some theorists argue that the sale of certain commodities undermines their transfer by superior means. For example, consider the supply of blood to hospitals. Two complementary means are used to ensure that blood is free from infection: A medical history is taken from the individuals who supply blood, and the blood is tested in laboratories. The individual suppliers are more likely to provide an accu- rate medical history when they give their blood away than when they sell it.

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[52] For example, see Elizabeth Landes & Richard A. Posner, *The Economics of the Baby Shortage,* 7 J. LEGAL STUD. 323 (1978) and J. Robert Pritchard, *A Market for Babies?,* 34 U. TORONTO L. J. 341 (1984). See also the 1987 symposium on the economics of selling babies in the *Boston University Law Review.*

[53] See Susan Rose-Ackerman, *Inalienability and the Theory of Property Rights,* 85 COLUM. L. REV. 931 (1985), Margaret Jane Radin, *Market-Inalienability,* 100 HARV. L. REV. 1849 (1987), and Richard Epstein, *Why Restrain Alienation?,* 85 COLUM. L. REV. 970 (1985).

Consequently, donated blood is freer from infection. This fact provides an economic rationale for obtaining blood by donations rather than purchases, but not a reason for prohibiting the sale of blood.[54] For example, in the United States most blood is obtained by donations, but some blood is purchased.[55]

However, assume that the sale of blood undermines voluntary donations. For example, people might feel that giving blood away for free is stupid so long as it can be sold. If these facts were true, then prohibiting the sale of blood might be neces- sary in order to divert transfers into the superior channel of gifts. Similarly, anthro- pologists have argued that markets destroy gift economies among tribal people. Although plausible, the factual support for this theory is not strong enough to pro- vide a convincing defense of inalienability. It seems, then, that inalienability rests on conventional morality and political philosophies that stress values other than Pareto efficiency.

Web Note 5.7

As the technology for making use of transplantable human organs improves, the demand for those organs has far outstripped the supply available under the inalienability rules. See our website (and the box on "Inalienable Bodily Organs") for a discussion of how a regulated market in human organs might significantly increase the supply.

D. Unbundling Property Rights

In England, the boundaries of property are often based on enduring natural objects and countours of the land such as rocks, trees, or hills. In the United States, much of the land was surveyed and divided into uniform parcels in the countryside and in towns.[56] Standardizing property simplifies comparing one property to another. Easy

[54] See RICHARD TITMUSS, THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY (1971), in which the author argues that inalienability is an efficient method of assuring quality control. See also Kenneth Arrow, *Gifts and Exchanges,* 1 PHILOSOPHY & PUBLIC AFFAIRS 343 (1972), and Reuben Kessel, *Transfused Blood, Serum Hepatitis, and the Coase Theorem,* 17 J. LAW & ECON. 265 (1974).

[55] Blood can be purchased in the United States, but the federal Food and Drug Administration requires labels to distinguish whether the source is a "paid donor" or "volunteer donor." Note that nonprofit institutions that collect blood from "volunteer donors" usually sell it to hospitals.

[56] A grid for land boundaries ("rectangular survey") was an innovation that spread in the British Empire during the nineteenth century, replacing the demarcation of land boundaries by natural objects such as trees and rocks ("metes and bounds").

Inalienable Bodily Organs

Advances in medical technology have sharply increased demand for transplantable bodily organs.[57] Each year in the United States there are almost 80,000 people waiting for organ transplants. But the supply of suitable organs, is much smaller—approximately 10,000 organs per year. Excess demand in a market causes the price to rise, which brings supply and demand into equilibrium. This cannot happen to transplantable organs because all states adopted the Uniform Anatomical Gift Act of 1968, which forbids the sale of organs. Consequently, gifts or donations are the only means by which to supply transplantable bodily organs. The donor may consent to give up transplantable organs in the event of his or her death. People often have the opportunity to consent when renewing a driver's license. However, less than 20 percent of the United States' driving-age population has filled out the donor cards. Absent consent, the current system typically requires physicians to ask next of kin whether they may "harvest" the organs of the decedent. This is not the best time to make such a request.

To cope with excess demand, the United States has a non-market method of allocating organs. The rules are very complicated, but most organs are awarded in the order in which patients have been on an official waiting list. In 2006 the organization overseeing organ transplantation (UNOS) suggested an alternative rule—organs may be given first to those likely to live the longest after a transplant. That controversial proposal is still under discussion.

How to increase the supply of organs for transplant? Technology may develop more artificial organs, or technology may make it increasingly possible to transplant organs from other animals into humans. Alternatively, a regulated market in human organs might be allowed somewhere in the world. (The virtues and pitfalls of such a market are explored in the sources that follow.)

However, some nations have already implemented a rule that dramatically increases the supply of organs. We called the current donation rule "required consent." While less than 20 percent of the United States' driving-age population has filled out the donor cards, 85 percent of that same population say that they are willing to make a donation of their organs. An alternative to required consent is a rule of "presumed consent": Everyone is presumed to have consented to his or her organs being harvested upon death unless they have affirmatively declared otherwise. Data suggests that switching from required consent to presumed consent dramatically increases the supply of organs. The four European countries with a rule of required consent (Denmark, Germany, the Netherlands, and the United Kingdom) have much lower rates of donation (ranging from 4.25 percent in Denmark to 27.5 percent in the Netherlands) than do the six countries (Austria, Belgium, France, Hungary, Poland, Portugal, and Sweden) that use a rule of presumed consent (ranging from a low of 85.9 percent to a high of 99 percent).

SOURCES:

See Lloyd R. Cohen, *Increasing the Supply of Transplantable Organs: The Virtues of a Futures Market,* 58 Geo. Wash. L. Rev. 1 (1989).

Gregory Crespi, *Overcoming the Legal Obstacles to the Creation of a Futures Market in Bodily Organs,* 55 Ohio St. L. J. 1 (1994).

Richard Epstein, Mortal Peril: Our Inalienable Right to Health Care? (1997).

Eric J. Johnson & Daniel Goldstein, "Do Defaults Save Lives?," 302 Science 1338 (2003).

[57] An economist joke about this situation goes like this: A patient waiting for a heart transplant learns from his doctor that there are suddenly two hearts available—one from a 24-year-old marathon runner and one from an elderly economist. Without hesitation the patient chooses to receive the heart of the economist. It explains to his astonished doctor, "It is unused."

comparison of property opens the real estate market to broader competition because potential buyers need less information to compare the value of one property relative to another. Besides real estate, uniformity lubricates sales for stocks, bonds, wheat, oil, and many other goods.

Conversely, inconsistent bundles of rights make properties incomparable to each other, so prices must be negotiated individually. Thus, one share of stock issued by Honda is the same as another share of the same class of stock. Honda shares have a public price in the stock market at which they can be bought or sold. In contrast, investment banks have created bundles of unstandardized real estate mortgages ("derivatives") whose prices are individually negotiated. Unlike stock market prices, individually negotiated prices for securities are not public information. Most people do not know the price at which such a security last sold. When securities prices plummeted in the financial meltdown of 2008, Harvard University held many unstardardized securities without a public price, so it did not know how much value its portfolio had lost.

In general, the owners of property possess a bundle of rights. To standardize property, the law must restrict the owner's ability to repackage these rights. The owner of a good may have rights w, x, y, and z over it. The owner may want to unbundle these rights and sell w and x to one person, while retaining y and z for himself. Sometimes, however, law only allows sales of the complete bundle. For example, the owner of a city lot can sell it as a whole, but city regulations may prevent him from cutting it in half and selling half of it.

Zoning illustrates specific regulations that prevent unbundling some property rights. A deeper question is whether something in the nature of property generally limits or restricts unbundling. To illustrate what is at stake, assume that A inherits his family's heirloom pocket watch. B, who is A's brother, would like to wear the watch to a Christmas party each year. B pays some money to A in exchange for A's promise to let B wear the watch every Christmas. A's refusal to let B wear the watch on Christmas in a future year would breach their contract, so B could sue A for money damages.

Continuing the example, assume that A sells the watch to C. In making the sale, A tells C nothing about B. C remains ignorant about A's contract with B until Christmas approaches and B asks C for the watch to wear. C refuses. What can B do? Nothing to C. C does not have to let B wear the watch on Christmas. B's only available remedy is to sue A for compensatory damages for breach of contract.

As this example illustrates, the contract between A and B does not give B security that he will always get to wear the watch on Christmas. What B wants is a right to use the watch on Christmas that he can assert against anyone who owns the watch. B might take a novel legal approach in an attempt to get security: Let A sell B the use rights over the watch on Christmas, and let A retain all other rights over the watch. If A did not own use rights to the watch on Christmas, then presumably A could not sell those rights to anyone else. Further, anyone who tried to prevent B from using the watch on Christmas would presumably interfere with his property rights. Specifically, if C refused to let B use the watch on Christmas then B could sue C for "trespass" and obtain specific performance. (We will explain these terms in more detail in Chapters 8 and 9.)

Notice what happens when A and B replace A's contractual promise to B with A's sale of use rights to B. Damages are the usual remedy for breach of contract. Hence B's contractual right to wear the watch on Christmas is protected by A's liability to pay damages for breach. In contrast, injunctions are the usual remedy for trespass on property rights. Hence B's ownership of the right to wear the watch on Christmas is protected by his ability to obtain an order from the court requiring C to allow B to wear the watch on Christmas.

The example of the watch illustrates how unbundling can hinder commerce. Specifically, if unbundling is allowed, C would be uncertain exactly what rights he acquired by buying the watch from A, which would dampen C's interest in buying the watch. A vigorous market requires certainty of buyers concerning the rights that they acquire.

This example raises the general question, "Can the owner of property, who has a bundle of rights, rearrange the bundle of rights freely, transfer them as he wishes, and force courts to protect the transfer of rights by injunctions?" While this problem seldom arises with watches or similar objects, it often arises with real estate. To illustrate, assume that I own my family's ancestral home, Blackacre, and I want to assure that no one will ever use it for purposes other than a residence. To secure this end, I would like to remove the development rights from the bundle of ownership rights. Can I do it? According to the common law of property, I can only restrict the use by the future owners of Blackacre for a limited period of time. (See the preceding discussion of the rule against perpetuities.) In general, an owner cannot freely unbundle and repackage real property rights in common law. Similarly, civil law systems in countries like France go beyond these common law restrictions by enumerating rights of real property that the owners cannot change. According to the civil law tradition, the enumerated rights attach to the property itself, not to the person who happens to own the property.[58]

Another important kind of property that provokes disputes about bundling and unbundling is the corporation. The stockholders of a corporation are its legal owners. Each share of stock traditionally conveys to its owner the right to one vote at stockholders' meetings. In recent years, however, some corporations have created new kinds of stock that do not give voting rights to their owners. There are many other examples where corporations have unbundled and rearranged the traditional rights enjoyed by their owners.

Instead of entangling ourselves in the details of real estate or corporate law, we must focus on the general point underlying these controversies. In the example of the heirloom watch, the fundamental issue is whether the owner of property can give several different people rights over it that they can enforce by specific performance against anyone who interferes.

Economic efficiency generally favors allowing unbundling whenever it increases the market value of the property, and prohibiting unbundling when it decreases the market value of the property. Property owners generally want to maximize its market value, and they are better situated than the state to know how to do this. Consequently, the state seldom has reason to prevent owners who want to unbundle from doing so. Recall,

[58] In legal language, *numerus clausus* refers to a restricted list of rights, including property rights. In property, these rights are *in rem,* meaning that they attach to the property regardless of its owner, whereas contract rights are *in personam,* meaning that they attach to the particular people who made the contract. See the article by Thomas Merrill and Henry Smith noted at the end of Chapter 4.

however, our previous discussion about the "anticommons." Unbundling may impose future costs on those who would like to repackage the rights into a new configuration. Insofar as there is an economic argument against unbundling, it is based on this desire to minimize future costs of assembling those rights into a more valuable whole.

Some theorists have argued that individuals can sometimes increase the value of their own property by unbundling in ways that increase transaction costs for the sale of other properties. To illustrate, a standard form contract lowers the bargaining costs of everyone in an industry. One seller who departs from the standard form reduces standardization, which imposes costs on other sellers. In general, a common pool of knowledge about contracts lowers transaction costs of exchange, and unbundling drains the common pool. This view implies that property law requires constraints against fragmentation by particularization.

This argument, however, is unconvincing. Much of contract law imposes rules that apply unless the parties stipulate otherwise in the contract. (See our discussion of "default rules" in Chapter 8.) The state does not have to police contracts to make sure that they remain sufficiently standardized. State requirements of standardized contracts are typically misguided for the same reason that state restrictions on unbundling property are misguided. The law should obligate sellers to disclose improbable restrictions on ownership due to past transactions, but as long as the parties understand what they are purchasing, the law should generally enforce agreements to unbundled property rights.