The Boundaries of Property: Complexity, Relationality, and Spatiality

Nicholas Blomley

What does the property boundary mean to laypersons? How do everyday geographies of property work? Merrill and Smith offer an influential set of hypotheses concerning the boundary's role in communicating simple messages of exclusion in the everyday world. The first goal of this article is to assess these claims. Drawing from qualitative data on gardening from Vancouver, I suggest that the messages of the boundary may also be complex, intersubjective, and ambiguous. The supposedly robust moral intuitions that inform people's interactions with boundaries are not always exclusionary.

Drawing from the sharp distinction between the heterogeneity of the empirical record and the studied simplicity of Merrill and Smith's account, my second goal is to make some broader claims regarding property and the boundary. Rather than seeking universality, simplicity, and singularity, I suggest the necessity and value of working with complexity. A relational view of property and space (or "spatiality"), I suggest, offers us a better perspective in which to begin to think about the complex work of the everyday property boundary.

In this case, the elephant is the room. *There can be few enormous subjects more often dodged than the space we occupy on the surface of the earth*. Land ownership – its many modes, its distribution, its history – is the great ignored in politics today, gingerly taken up if at all, and quickly put down again in favour of more fashionable topics: capitalism, urbanization, democracy, industrialization, the role of the state (Mount 2014, my emphasis).

It is interesting to observe what it is that legal processes (choose to) step over rather than pick up... (Strathern 2004: 209).

Real property in Western liberal societies is conventionally held in territorial units of space, affecting the manner in which rights are allocated and contained. Laypersons seem to treat property and the space as synonymous, investing considerable energy in the maintenance of the boundary, driven by a desire to stay "between the lines" (Perin 1988). Thus, I can grow tomatoes on "my" land, but not my neighbor's, unless invited.

The spaces of law, including those of property, deserve our attention (Braverman et al. 2014). Property is a powerful institution, affecting social life and everyday human relations in multiple and ethically charged ways. However, property is not simply an abstraction, but materialized in the here-and-now. To understand its effects requires that we attend to its quotidian presence. Property is manifested as territorially. Territory is not simply an outcome of property, however, but a particularly strategic resource for its realization. Following Sack (1986), it can be argued that as a distinctive way of organizing and materializing relations, the territorialization of property serves as a particularly effective means to serve property's multiple functions. Property works with territory, in other words, not simply on it (Blomley 2015). As such, it would seem important to understand the practical work of such legal spaces, notably the boundary, in producing and arranging property relations. What does the property boundary mean to laypersons, and how does it generate its meanings?

This is a fundamental question, yet there is very little scholarship on the work of the everyday property boundary. Empirically speaking, we simply do not know enough about lay conceptions and practices of property. This is a curious omission. Property scholarship of various complexions makes strong claims concerning property's lived effects and ethical dispositions, yet spends little time documenting property's lived world, including critical sites such as the boundary. This, perhaps, reflects the disposition of many lawyers to eschew research on the everyday. But if property does not happen in the everyday, then it is simply an abstraction.

> Law… is dependent upon everyday life to give meaning to its central concepts (what is "reasonable", "customary", "excessive", or "appropriate"?), to root its abstract rules and principles in human understanding, and to produce implementation, compliance and judgment. *It is misleading to regard law as capable of existence apart from or in opposition to everyday life* (Engel 1995: 125, my emphasis).

Space is also neglected by most property scholars, characterized by one as a "forgotten dimension" (Babie 2013). Perhaps this reflects the prevalent view that property is not a relation between a person and land, but a relation between people, in regard to land. To consider the boundary, from this logic, is to tempt a form of reification, that misses property's relationality. Such a view, however, rests on an indefensible view of the boundary as an inert thing, rather than (like property) a relational effect.

There is, however, one important account of the quotidian property boundary. Thomas Merrill and Henry Smith have jointly and severally provided a highly influential set of hypotheses concerning the boundary's role as a device for communicating simple messages of exclusion in the everyday world. I begin, therefore, by summarizing their account, drawing in particular on the claims it makes concerning information and beliefs generated by the property boundary. Notably, Merrill and Smith do not provide much if any social scientific data to justify their arguments. The first goal of the article, therefore, is to provide such data to assess their claims. I draw from a qualitative study of lay conceptions of the boundary to suggest that in practice, people may see property boundaries in ways that complicate such claims. This is useful, I suggest. Most immediately, my account questions the boundary approach of Merrill and Smith and, in so doing, points us to the need to push the boundary into different directions. This is the second goal of my article. I argue that such analyses need to avoid overly simple or reductive descriptions of the property boundary. Premised on a view of both property and space as relational, I argue that an adequate treatment of property and its spatial dimensions must take its complexity seriously.

The Boundary Approach

Through numerous publications in top flight Law Reviews, and an influential casebook on property, Merrill and Smith's "boundary" approach (Katz 2008) offers an account of how property works, and what property does, including its effects in the everyday world. They begin their account by rejecting a prevalent view of property as a bundle of rights, arguing that this invites a formless relativism whereby property is understood as simply an "authoritatively established collection of use rights" that comprise "the list that is currently recognized by law... or by established practice and convention" (Merrill and Smith 2001: 397–98). Property thus becomes simply a label applied to the bundle of rights that has been granted to an owner. This ignores, they argue, an older and more robust view of property as a

distinctive type of right to a thing. Blackstone's famous character-ization of property as the sole and despotic dominion of an individual over something, in total exclusion of others, is taken as the regulative norm. The right to exclude all others from a thing is said to be central to property: "Give someone the right to exclude others from a valued resource… and you give them property. Deny someone the exclusion right and they do not have property" (Merrill 1998: 730).

Property rights, they note, are in rem rights. Property law defines legal objects over which rights can be delineated. Property rights attach to persons insofar as they have a particular relation to those things. Those rights are, crucially, said to be "good against the world," that is, they apply to an open-ended population of duty-bearers. Here, a distinction can be drawn to an in personam legal relation, such as a contract, which applies only to a discrete and identifiable group of persons. The in rem nature of property is crucial, Merrill and Smith point out, as it implicates normal people, not just formally trained legal actors. Property is only good against the world if lay people understand the nature of the rights to which it is attached.

How can property's in rem rights and duties be communicated? Rather than delineating a complex list of dos and don'ts, property works, they argue, by defining a chunk of the world—a thing—from which others are presumed to be excluded. This is said to generate informational efficiency. The alternative—a governance regime—requires an extensive delineation of permitted uses and activities, which is overly costly in terms of information cost (while such finely grained distinctions are evident in property law, they note, these are treated as outliers). An exclusion regime thus applies whenever we encounter "a thing that is marked in the conventional manner as being owned" (Merrill and Smith 2001: 359). While low cost, an exclusion regime is also low precision. Exclusion from a thing is a "rough but low cost method of generating information that is easy for the rest of the world to understand" (Smith 2004: 971). "Property," Smith (2003: 1147) notes, "presents a simple message to the outside world." Rather than prompting conversations, real or implied, concerning the meanings, ethical dimensions and behavioral impacts of boundaries, the supposed "beauty of the property system is that it shortcuts discussion. Simple signals tell owners that they are free to choose how to use their property and tell non-owners to keep out" (Baron 2010: 952).

Such a simple message is invaluable to lay people. It is helpful "to private transactors who want to determine the rights they can acquire through transactions, but it is also valuable for those who simply need to respect rights in order to avoid liability for

violating them" (Smith 2004: 984). The simplicity of the message means that it can also be announced ex ante, generating stability and certainty. Actors also do not have to develop first order information about things they do not need to differentiate, or evaluate individual uses (Smith 2004).

And here, we get to space. Property on this account entails what Katz terms a "boundary approach":

> Ownership, on an exclusion-based or boundary approach, is the product of a norm that protects the boundaries around an object so as to exclude the whole world but the owner. The owner controls access to the attributes of the resource within the boundaries, which are hers in virtue of the exclusion of others. An owner has, in effect, a gatekeeping function (2008: 281).

To focus on land as the "thing" that anchors an exclusion right "allows the use of a very cheap proxy measurement—stable spatial boundary lines" (Merrill and Smith 2001: 390). A spatial boundary carves a complex informational world up into "semiautonomous components" (Smith 2012: 1703), or "chunks" (1702), so as to allow for easier communications. The boundary sends "a *simple message* to outsiders" (Smith 2012: 1709, my emphasis), generating "simple on/off signals" (Smith 2002: 973). The message "*is a simple one—to 'keep out'*" (Smith 2002: 978, my emphasis). Again, such messages are sometimes rather rough and ready, and can be both over- and under-inclusive (Smith 2002). But this roughness is deemed worthwhile. The law of trespass may look somewhat arbitrary and even irrational, Smith (2012) notes, but "it permits owners the space (literally, in the case of land) to pursue projects without having to answer to others, thus generally promoting efficiency and liberty" (1718).[1]

What evidence do they provide for this account? In part, they look to legal doctrine and case law, notably the ad coelum[2] rule, which they claim to identify in U.S. case law, whereby the boundary serves to delineate a column of space, with a clear inside and outside, the effect of which is to exclude outsiders. So, for example, to establish an actionable trespass, all that is required is to demonstrate that a person has invaded the column of space.

---

[1] There are echoes here of Sack's (1986) account of territoriality as an efficient means to power, serving to summarize complex spatial expectations, and deploying the boundary as a technology that communicates ownership and direction.

[2] *Cujus est solum, ejus est usque ad coelum et ad inferos* (he who owns the soil owns also the sky and to the depths).

Even minor forms of boundary crossing, they note, are deemed objectionable within the common law. Intentional trespass occurs when a person crosses the boundary lines of another's land, either personally or with a significant object. The comparative utility of the trespass to either intruder or possessor is irrelevant, as is whether the possessor experiences any actual harm as a result: "Accordingly, the midnight streaker who dashes unseen across the lawn of another, and who merely bends a few blades of grass in the process, is guilty of the tort of trespass" (Merrill and Smith 2007: 1871).

As noted, their account does not rely purely on legal doctrine. *Everyday* practices relating to property boundaries are essential to their claims, reliant on the view that property's messages must be successfully communicated to the world as a whole. Smith cautions against overlooking such a point, noting that "information must be processed by those under a duty to respect respects and by those wishing to acquire rights, as well as by those expected to enforce rights" (2003: 110). The advantage of property as spatialized by the boundary is that it generates "standardized packages that the layperson can understand at low cost" (Merrill and Smith 2001: 359). Such packages, as noted, are said to communicate simple, clear information to the world as a whole: "The need for far-flung and sometimes socially distant persons to respect property rights calls for simplification and standardization" (Smith 2012: 1709). This presumably reflects the centrality that they give to property's role in the management of transaction costs, understood as the costs of the capture and protection of property rights, within which information plays a central function (Allen 1991; Barzel 1997): "Because property rights need to coordinate the behavior of large numbers of unconnected people, they must be easily comprehended and must resist possible misinterpretation" (Merrill and Smith 2007: 1850).

Property boundaries, further, are said to structure not only information, but also moral dispositions, on the principle that no system of property rights can survive unless "suffused with moral significance" (Merrill and Smith 2007: 1850), taken on by the population as a whole. They claim to identify a coherent and stable set of such beliefs, premised on a belief in the justifiability of exclusion by the owner. Legal enforcement or self-help (such as the erection of fences and the use of private security) alone are seen as inadequate in securing such beliefs (ibid. 1853). As such, property can only work, they suggest, through extensive and dispersed forms of self-government in the population at large: "Property can function only as property if the vast preponderance of persons recognize that property is a moral right" (1850). Such beliefs are said to be operative: "The core of property

depends on robust and automatic prelegal intuitions that it is wrong to violate property rights… by crossing boundaries" (ibid. 1894).

Everyday Boundaries

Critiques of Merrill and Smith have tended to be confined to their selective reading of case law.[3] However, their argument for the work of the boundary in the everyday world has received less attention.[4] They make sociolegal claims, in other words, and should be assessed accordingly. Strikingly, they provide very little empirical evidence for their claims concerning the everyday life of property, however. As such, it would seem useful to assess into how this information "processing" occurs in relation to the spatial boundary.

However, it is hard to get at the "everyday" experiences of the "layperson" relating to property. While there are undeniable methodological challenges associated with making empirical sense of legal "consciousness," it can be argued that it can be discerned in the ways "people conceive of the 'natural' and normal ways of doing things, their habitual patterns of talk and action, and their commonsense understandings of the world" (Merry 1990: 5). On the principle that property in the lived world is not simply property-in-general, but always applied to some specific context, one strategy is to explore the ways in which property boundaries get taken up in particular areas of human endeavor. Gardening clearly has a close relationship to property and space, I would argue, particularly within Anglo culture (Seed 1995). One need only think about Lockean notions of mixing labor with the soil to begin to discern the connection. Gardening, and the space of the garden, has a strong relationship to privacy, autonomy, and control. Yet, gardening also connects to the public dimensions of property: we mow our lawns for ourselves and for our neighbors (Blomley 2005a; Weadick 2014).

Several years, I conducted a research project in the Strathcona neighborhood of Vancouver, that sought to explore the manner in which lay people enacted property through their

---

[3] For example, Alexander and Peñalver (2012) point to the "apparent lack of fit between the exclusion theory and the existing law concerning the right to exclude, pockmarked as it is with exceptions" (140).

[4] There are a few exceptions. Katz (2008: 283, fn. 30) argues that the "undue reliance" on the physical boundary as an on/off signal is a weakness of the model, noting that boundaries do not always generate such signals, and additional contextual material may be required to interpret such signals. Fitzpatrick and McWilliam's (2013) analysis of bright-line rules in East Timor notes the manner in which "simple interpretive rules may accrue interpretive complexity as they traverse various communicative, epistemic, and enforcement settings" (316).
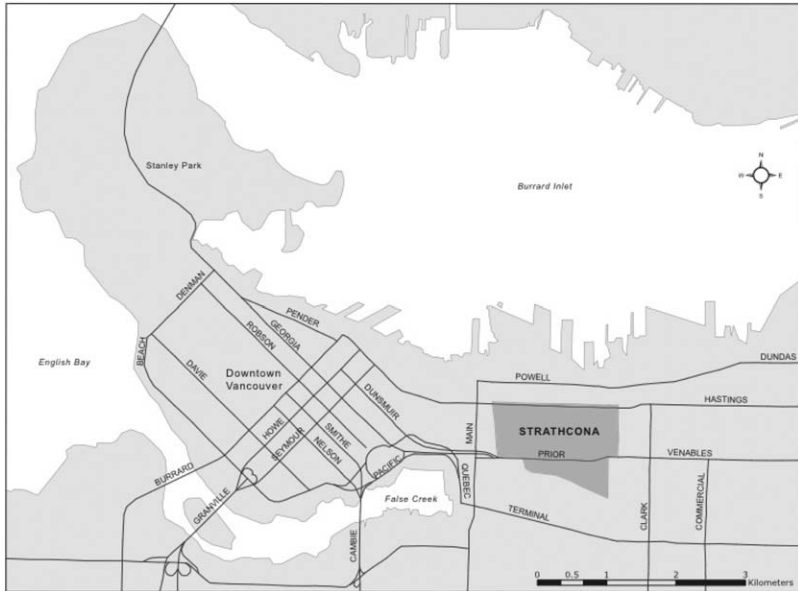
Figure 1. Location of Strathcona Within Vancouver.

gardening, both in relation to neighbors, as well as gardening in
public (e.g., front gardens, and gardening in public space). I gener-
ated a rich dataset, from which I produced a number of papers
(Blomley 2004, 2005a, 2005b). I thought it would be productive to
return to the data to think about the everyday boundaries of prop-
erty, with particular reference to Merrill and Smith's analysis. I do
so initially to evaluate their analysis. In what follows, I also draw les-
sons from the sharp distinction between the heterogeneity and
diversity of the empirical record and the appeal to simplicity that
undergirds Merrill and Smith's account, to argue for the impor-
tance of a careful engagement with the complexity that is inherent
to the relationality at work at the property boundary.

Strathcona is an interesting research site in this regard (Fig-
ure 1). Located to the east of Vancouver's Chinatown, it is Van-
couver's oldest residential neighborhood, housing past waves of
Ukrainian, Jewish, Italian, and British immigrants. As of 2005
(shortly after my field work), 43 percent of the population in the
neighborhood was Chinese-Canadian. Overall, the population
was relatively poor, with median household income 46 percent
that of the Vancouver CMA.[5] However, there was evidence of

---

[5] http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-597/P3.
cfm?Lang=E&CTCODE=5292&CACODE=933&PRCODE=59&PC=v6a1s6#Note17
(accessed 13 October 2015).

Figure 2. Densely Gardened Public and Private Spaces in Strathcona (Photo by Author).

gentrification. Comprising small lots with 25-foot frontages, Strathcona is an intensively gardened space. Occupied by a diverse and shifting population of ethnically diverse renters and homeowners, white yuppies garden next door to Chinese seniors growing bok choi and gai lan. Pressed for space, or motivated by creative impulses, gardeners routinely burst their bounds, spilling over onto public boulevards. The City's oldest community garden, combining individual lots with community spaces, can also be found here. As we shall see, the practices and meanings attached to property boundaries are lively and compelling issues. Property and its spaces matter a great deal (Figure 2).

Data were obtained through my residence in Strathcona (from 1994 to 1999), observation and photography of the urban landscape, and—most importantly—semistructured interviews. Although interviews have their shortcomings, they seemed appropriate, especially as I was keen to encourage reflective exploration, rather than a replicable set of responses (Valentine 1997). In 2000, with the help of several research assistants, I conducted 36 interviews with 42 respondents (some interviews were conducted with more than one person). Interviewees were initially selected based on personal contacts of the research assistants or mine, with some additional contacts made through "snowballing." The intent was not to construct a representative or formally

Table 1. Summary Information—Strathcona Respondents

Gender	Tenure	Ethnicity	Language	Pseudonym
Female	Renter	White	English	Carolyn
Female	Owner	Asian	English	Darlene
M/F couple	Owner	White	English	Norm and Flora
M/F couple	Owner	White	English	Niles and Diane
Male	Owner	White	English	John
Female	Owner	Filipino	English	Karen
Male	Condo Owner	Asian	English	Mark
Female	Owner	White	English	Pauline
Female	Owner	White	English	Linda
Female	Owner	White	English	Susan
Female	Renter	Asian	English	Carol
Female	Renter	Asian	Cantonese	Sally
Female	Renter	Asian	English	Jenny
Female	Owner	Asian	Cantonese	Lucy
Female	Owner	Asian	English	Mary
Male	Owner	Asian	English	James
Female	Owner	Asian	English	Megan
Male	Owner	Asian	English	Michael
Female	Owner	Asian	Cantonese	Mrs. Tang
Female	Renter	Asian	Cantonese	Mrs. Lee
Female	Owner	Asian	English	Jocelyn
Male	Owner	Asian	English	Jack
Male	Owner	Asian	English	Tom
Female	Owner	Asian	English	Winnie
Male	Owner	Asian	Cantonese	Mr. Chan
Male	Renter	Asian	Cantonese	George
Female	Renter	Asian	Cantonese	Mrs. Wong
Male (one of gay couple)	Owner	White	English	Jay
Female	Owner	White	English	Jane
Male (one of gay couple)	Owner	White	English	Fred
Female (lesbian couple)	Renter	White	English	Denise and Nora
M/F room mates	Renter	White	English	Bill and Gina
Male room mates	Renter	White	English	Nigel and Jeffrey
Male	Owner	White	English	Sam
Female	Owner	White	English	Nancy
Male (one of gay couple)	Owner	White	English	Martin

comparable sample but rather to interview a diverse group of residents. Respondents included 10 renters and 32 owners, 22 whites and 20 Asians, and 16 men and 26 women, with 8 seniors, and were conducted in English, Cantonese, and Mandarin. The sample also included a number of gay and lesbian respondents (Table 1). Interviews included the use of photo-solicitation: respondents were shown photographs (mostly taken in Strathcona) of particular examples of property boundaries—such as high hedges and encroachments. In some cases, deliberately transgressive or provocative images, designed to prompt responses, were included, such as the bathtub photo used in Figure 3. Interviews were transcribed and coded, using N4 Classic, a qualitative software package (cf. Buston 1997; Crang 1997). Coding produced broad patterns regarding the direction of the respondents, as well as more detailed clusters of responses regarding particular prompts.

Figure 3. Photo 19, Used in Interview Photo-Solicitation (Photo by Author).

A few general points on the data in order. First, while there some striking consistencies concerning popular attitudes and practices relating to the spaces of property, these did not easily align with tenure, gender, or ethnicity. Indeed, I was struck by the categorical complexity of the data. For example, some renters (but not all) expressed attitudes that appeared more exclusionary in relation to boundaries, while some owners (but not all) appeared to adopt a remarkably relaxed attitude to similar questions. Second, the data were remarkably rich. While this is testament to the abilities of my capable research assistants, respondents also gave nuanced, surprising, and subtle answers. With Ewick and Silbey (1998: 38), I was struck by "the rich interpretive work, the ideological penetrations, and the inventive strategies" of my informants. Moreover, individuals were capable of holding multifaceted, even apparently contradictory positions, depending on the context within which they spoke.

We can derive a number of testable hypotheses from Merrill and Smith's account of the everyday property boundary. First, the boundary should generate simple messages to those governed by property's rights and duties, on the principle that the boundary is an informational device that generates transactional efficiencies. Second, the message that is communicated and taken up by lay people should not only be simple, but also clearly framed: to the outsider, the boundary is said to signal a message that one should keep out. Third, we should expect "robust and automatic prelegal intuitions" (Merrill and Smith 2007: 1894) from respondents, confirming a dominant ethic that condemns boundary crossing. We may anticipate minor departures from this simple logic, as neighbors engage in forms of interpersonal

negotiation and interaction (via the "governance regimes" of property), but these are likely to be outliers from the dominant norm.

In what follows, I assess such hypotheses with reference to three clusters of boundary relationships derived from data coding. The first is straightforward, exploring how respondents evaluated neighborly boundary crossings. Second, I ask how respondents assessed boundaries between private and public property. Finally, I consider the manner in which respondents treated fences more generally. Overall, while one can find evidence that some respondents treated the boundary as a simple message of exclusion, for the majority of the sample the spatialized messages of property were complex, intersubjective, and ambiguous. Further, the supposed robust moral intuitions that inform people's interactions with boundaries were not narrowly exclusive.

Boundary Crossings

One set of interview questions related to boundary crossings: for example, are you "within your rights" to cut back an encroaching tree that crosses into your property? Can you jump the fence to whack back weeds? Who has rights to the overhanging fruit?

Some identified a bright line ad coelum rule, albeit one that could be read in contradictory ways. Jeffrey,[6] a renter, cited what he termed "windfall" as a legal principle: "The apples on a tree in your neighbour's yard are his, and [if] they fall into your yard, they are yours." Others noted that the location of the tree was determinative: "It's not your tree, even though it's growing over your property, it's not yours" (Megan).

However, more numerically common were qualified, or ambiguous responses. Jane starts by asserting that the overhanging plums were "my plums," but then hedges her response. She claims not to feel guilty at picking their plums, but the possibility gives her pause. And, this hesitation is suggestive. The mere existence of a property boundary, while clearly important, was not determinative. Or, put another way, the boundary is not a sharp line, but a space of overlap.

> J: Those are my plums! On my side of the house [laugh]. Yeah it was so funny because I remember when I didn't know Chris [the neighbour] that well and the tree was loaded

---

[6] All names are pseudonyms.

with plums and they were hanging over. And I felt fine pick-
ing those plums

Q: Without consultation?

J: No, I didn't say "excuse me new neighbour, can I…?"
because those plums were in my yard

Q: So they're yours… Okay

J: *I kind of knew they weren't really mine, but they kind of were*,
and I didn't feel like I had to ask, I didn't feel it was such a
big deal

Q: Did you feel slightly guilty?

J: I wouldn't say guilty but *I was aware that I was sort of picking
plums from his tree, but they were really on my property* (my
emphasis)

Some interviewees thought of the fruit not in terms of an
inert commodity that belonged exclusively to person A or B, but
one that moved through a set of reciprocal relations of gifting
and obligation. John helped himself to overhanging figs and
kiwis, but worried that he was unable to reciprocate, as seemed
required; "Unfortunately, we don't have any big fruit trees that
grow into their yard, so they can't share." Mary, who had charac-
terized (in her case) the hypothetical fruit as clearly belonging to
her neighbor, noted that she might pick the fruit nevertheless.
Would she ask first? She vacillated, and then invoked an underly-
ing but clearly powerful reciprocity at work across the boundary.

I might ask. But probably I might not even ask. I think if the
neighbour is nice enough, then they would share. Because if
we have one [a fruit tree], then we would like to share that
with our neighbours.

What, then, of less agreeable encroachments, such as weeds
spreading from a neighbor's garden, or a tree growing over the
line? In a neighborhood such as Strathcona, this can be a particu-
lar challenge. As noted, lot sizes are very small, and space is at a
premium. Some gardens are also left untended. Again, posed
with this issue, a very few interviewees adopted bright line/legalis-
tic responses. Joe, who claimed clear rights over overhanging
fruit, also noted that he was within his rights in law to prune
back a branch ("but only the part that comes over into your
property"). Jay, a owner, would happily prune back a neighbor's
tree: "the legal definition is that if it's hanging over on your
property line, you can pretty much do what you want" (although

he noted that was still deliberating as to whether to consult his neighbor first).

As to whether respondents would be willing to jump the fence and cut back encroaching weeds, without the neighbor's permission, Carol, a renter noted: "It's his property. He's allowed to whatever he wants." To do so would entail trespassing noted Bill, also a renter, "and who knows who's got a shotgun" [laughter]. Gina, his roommate agreed: "I don't think that it would be your place to do that. It might bug you, but you can't really do too much about it." Several respondents, however, were quite willing to contemplate uninvited incursions across a property boundary. Jay, who was zealous about his boundaries, noted he'd like to think he'd talk to his neighbor, but noted that one of them was 87 years old, speaks no English, and can't keep up her garden: "I don't ask her, because we can't communicate, so I just do it. And because her stuff, when she doesn't weed, it affects my garden, so if she's not going to do it, I am." Exclusion, for Jay at least, seemed to work only one way.

The predominant response to the question "would you cut back the intruding tree, or encroaching weeds?" however, can be summarized, simply, as "it depends." "It would depend on a lot of things. It would depend on whether I got on with that person, to start with" (Susan). If a neighbor's garden had grown wild, rather than simply jumping the fence to clear noxious weeds, interviewees noted that they would want to establish why this had occurred first: was the neighbor sick, for example? Routinely, interviewees noted that they would talk to the neighbors first. Granted, on a number of occasions, if the neighbors "were disagreeable and kept letting [a tree] grow, yes, I'd snip it off" (Carolyn). However, such conversations, rather than the existence of the boundary, seemed crucial. Roommates Bill and Gina reflected on this at length, citing a case of a dispute reported in the media concerning a boundary tree, in which one neighbor had gone so far as to cut off "his" side of the tree. This case, which "just escalated into this weird thing," was taken as a parable of the dangers of poor communication (cf. Blomley 2014b). The tree had become a catalyst for their hatred, they decided. For Gina, "had they liked each other, I'm sure they could have probably worked it out." She then reflected on their neighbor-relation: "Occasionally I'll prune the little rosebush that got one big long branch—it's in [Neighbour's] yard just on our border, but it's in her yard, but it needs some help and I might say [Neighbour], I'm cutting it, I'm cutting your rosebush because it needs some help here!" For Bill: "If you have a good rapport with your neighbors you know whether they are going to mind if you stick your hand through the fence or walk around." This sense of

"rapport," of course, presumes a history of positive and recipro-
cal relationships.

Niles and Diane, a couple, described such relations with their
neighbor, Larry. Niles had taken it upon himself to mow the bou-
levard outside Larry's house. Larry had planted his garden with
vegetables, but then he had let it go to seed, and it had begun
sprouting morning glory and tall grasses. Niles had whacked
back the undergrowth, including cutting back the blackberry
bushes shading their garden. He had not asked permission, how-
ever, because of what Niles took to be a prior understanding,
supported by continued interactions and bodily performances:
"I've sort of established that I'm cutting his grass, and he's
neglecting his [garden]... He's... seen it and not done anything,
so I didn't feel any need to ask him... and I was proven right
because the next time I saw him he thanked for it and mentioned
that he was lazy."

As noted, an overgrown garden sent out ambiguous messages
that needed to be carefully deciphered. The neighbor may have
deliberately crafted a "wild" garden, for example: "if it is some-
one who really takes care of the garden and spends a lot of time
there, and has a certain way because they want it that way, then
you wouldn't just go start hacking it off, right?" (Norm). John
would happily snip back branches without asking permission as
"there is sort of an understanding that our yards are overgrown
and we can hack back as we need to."

However, it is not just the neighbors who are actors in this
relationship. The plants themselves needed to be considered.
Over zealous pruning could kill a tree, several noted. Norm and
Flora had jumped the fence when the neighboring house was
empty, and had dug up the blackberries and pruned the plum
tree. For Norm, it seems, this was motivated by a desire to pro-
tect his garden. For Flora, however, a therapeutic motivation was
also at work: "You feel like the garden is just calling out for help.
Especially the trees when they're not pruned properly... you feel
almost like you have to help them!"

There is clearly a boundary relationship here, but it is a com-
plex one, dependent on a set of expectations and relations. It is far
from a simple set of messages, but rather a subtle, learned, and
improvised set of communications, understandings, and actions,
that unfold over and help constitute a boundary relationship.

Public/Private Boundaries

To my knowledge, Merrill and Smith do not reflect on the
distinctive work of property boundaries that separate public and

private property. This seems to be a curious oversight. As a practical matter, most parcels of domestic private property abut public property, if only to ensure physical access. As such, they are a widespread phenomenon. Moreover, we might expect a different set of expectations that we may have concerning such property regimes, as compared to those between private neighbors. We may anticipate that a space governed by public property rules will be more accessible, that it will governed by collective rather than individual norms, and will contain fewer expectations regarding privacy, for example. Given the prevalence of the boundaries between public and private property, and their presumed distinctiveness, it would seem useful to consider them. Yet, experience suggests that we need to be cautious in ascribing simple and clear messages to such boundaries. Proximity and visual oversight make many owners treat the "public" property adjacent to their residence as a space over which they have a particular interest, blurring the supposedly sharp lines between the two. Similarly, public agencies may place particular burdens on owners regarding "private" areas that are visible to public view, through regulations targeting upkeep and maintenance, for example.

The boundaries between public and private property are pervasive and important within Strathcona. Given the small size of the lots, and the enthusiasm of many gardeners, it is not surprising that "private" gardening often spills over across these boundaries. One striking example of this could be found in the center of the neighborhood, surrounding an artists' residence. The building itself takes up the entire lot. Consequently, the residents had gardened up to the sidewalk, and also placed a number of domestic items on the boulevard, such as laundry tubs and an old washing machine, and filled them with exuberant plantings. A picket fence enclosed the public land adjacent to the residence. Respondents were shown a photograph of the site, asked to identify the boundary itself, and invited to evaluate and appraise the situation (see Figure 3), as a means by which they might explore public–private boundaries more generally.

Communicating the difference between public and private property, following Merrill and Smith, would seem to be a primary function of space and its markers. Indeed, a few respondents in Strathcona drew a sharp line between public and private, and expressed concern that an illegitimate transgression had occurred. This was public space, for a few, upon which a private object had been placed. For some, this was a problematic private encroachment. For Georgina: "The bathtub shouldn't be there. It's just in the wrong place. [A] bathtub should be in a bathroom." Others, conversely, treated it as space that had become

privatized, with the installation converting the space into a private one.

Property's meanings were indeed, *pace* Merrill and Smith, derived from a reading of the space itself. Respondents evaluated the space carefully, seeking to read the effects and motivations of the creators, often basing this on prior knowledge of the space and the artists. This shaped how they imagined themselves using the space. Values associated with exclusion and inclusion were derived from the landscape, although as we can see, often in conflicting ways. Yet, while things (whether boundaries or bathtubs) were of significance, their meanings appeared to be complex and varied. Rather than a dyadic relation between thing and duty-bearer, the "messages" of legal space were often intersubjective.

Rather than a sharp boundary distinction, more numerically common, based on my coding, was an ambiguous response that saw the space as a public/private hybrid, where the "public" was understood as both municipal/broadly collective, and as a shared neighborhood space. One resident saw it as "involving everybody, *it's art shared into space*" (Sam, my emphasis). For Pauline: "I don't feel like it's a taking possession of public space in a selfish way, it's more like *extending* the care that you give your own space to the public space" (my emphasis). Rather than a sharp boundary, in other words, this was a hybrid zone, an amalgam of the public and the private, produced not through delineation but via "sharing" and "extending."

We can get a sense of both complexity and intersubjectivity, and the work of vision across and through the boundary line, from the response of Sam. I asked him whether he would feel comfortable picking a flower from the artist's garden. For Sam, this would feel like theft, but this was a "property crime" committed against both the creators of the space, and the wider collective. Sam argued that "even though there is no ownership [i.e., private ownership], it's like the enjoyment is a visual thing," by which he meant, I think, that the creator of the space had a moral claim to the space to the extent that he or she enjoyed looking at it. Yet, others were also able (and were implicitly invited) to visually appropriate this site, Sam claimed. This opened the possibility for dialogues between the creator of the space and others: ". . .if somebody wanted to ask: 'oh, that's a beautiful flower' then the person might be willing to give them that flower." That said, "you can't just go in. . . there's a sense of stealing if you just take it." But this "sense of stealing" was qualified: it wasn't so much that the taking of a flower was a theft from a private individual, as it was a affront to the collective intent of the bathtub. The creator, Sam noted, had put "energy" into the creation of the space that was construed as a visual "gift."

"The gift has already been given by doing it, whether someone is looking at it or not, the gift is given." To take a flower would compromise this gift. However, "it's taking away from the next person, then you will come walking along and suddenly there is no flower to look at." Such claims point us to the need to consider the boundaries between public and private property in any account of property boundaries more generally, with the caution that such boundaries may be far from clear-cut in their meanings.

Fence Stories

What, then, of boundaries between property owners more particularly? What messages do they communicate? One way we can approach this is through the rich and extended commentary of Strathcona respondents concerning fences, visible markers of the property boundary. For some, fences were individualized statements of private dominion, serving as the outside edge of an ad coelum bubble of autonomy. Jay, an owner, carefully itemized all his boundary markers, including fences, retaining walls, and concrete dividers, noting that he "really wanted whatever was mine contained in my space… Fencing and all that kind of stuff does that." His partner, Martin, similarly emphasized the value of fences in "just marking my little spot." They had erected a tall fence, both for security, and to shield other's untidy gardens from view, and had done so without consulting their neighbor.

However, this was unusual. For most of the respondents, judging by the interview data, the fence was not simply an outside edge, marking off the domain of the owner, but an "in-between" device that implicated others, for better or worse. Metaphorically speaking, it was less a wall than a door. Moreover, it was richly semantic, communicating multiple and often ambiguous responses. Respondents evaluated and interpreted fences (their aesthetics, history, existence, height, appearance/removal, their state of decay, their inclusion of plants, etc.) and in so doing, evaluated and appraised others, and their relation to them. In this, the fence often became a zone of interaction with neighbors, those "familiar strangers" with whom relations were to be governed by complex ethical appraisals of "neighborliness," civility, privacy, and "peace." As Perin (1988: 4) puts it, "of all the relationships we have, those with neighbors probably have the least clear lines around them."[7] Indeed, neighborly fences were serious things, which required conversation, rather than assertion. They served both as a

---

[7] Failures in the successful negotiation of such relations can be seen in the widespread availability of "how-to" manuals of Neighbour Law (Doskow & Guillen 2014; Peters 2004).

Figure 4. Photo 18: The "Big Fence Issue" (Photo by Author).

exclusionary and mediating devices. When asked, Bill characterized the old adage "good fences make good neighbours" as an:

> Oxymoron of a statement... [one] that contradicts itself...
> The more bricks you put up, the more private you want to
> be from your neighbour... and privacy is important, it really
> is. But having a good rapport with your neighbours is also
> really important.

The interpersonal quality of the boundary fence is evident in the story (and there were many stories) of one particular fence that I had chosen to use in the photo-solicitation (Figure 4). Interestingly, it was built by two of the respondents, Denise and Nora, an artist couple, both keen gardeners, who rented the house behind it. They had a long story beforehand concerning an earlier fence at a different home that the neighboring owner had simply erected without any consultation, severing their relationship with his basement renters: Denise described as "like putting a fence right in front of your glasses; like painting it directly on your eye."

Subsequently, however, Denise and Nora felt compelled to erect their own high fence. They became tired of drug users shooting up on their back porch, and so they became, as Nora put it, "fence people." While the fence was designed to prevent access and, presumably, communicate a clear "keep out" message, Denise felt "sick about it." She had created a beautiful garden, and in so doing, had created "beauty for the neighborhood, and I was blocking those people out... We're blocking out the

beauty." Her garden was to be shared, at least visually. However, independently, a neighbor took it upon herself to paint the fence with flowers, adding rose bushes in front of the fence. Denise and Nora were delighted: "In the long run of feeling like we were shutting people out, it actually beautified the alley, because that happened" (Nora). They'd been worried that people would write hostile graffiti on the fence, but instead it was the "absolute opposite. It was just like 'Oh great, Yay!' I couldn't have planned that out better." The fence, in other words, was a player in a conversation, real and imagined, around property, where property was understood not only in terms of physical exclusion, but also in relation to visual access and neighborly relations.

Complexity and Simplicity

How, then, does the property boundary—this ubiquitous, yet under-examined spatial technology-work? What does it mean? How does it mean? I am happy to concur with Merrill and Smith that in order to understand how property works, we need to pay attention to the things through which it is mediated, of which the property boundary is a crucial concern. The boundary, indeed, *means*. But, I depart significantly in my understanding of *what* the boundary means within everyday settings such as Strathcona. Whether such clarity can be found in legal doctrine and formal legal practice is beyond my remit. My focus here is on the more prosaic everyday world of fences, weeds, and overhanging fruit. As lawyers, perhaps it might be thought to be a little unfair to subject Smith and Merrill to such a sociolegal critique. But as I argue above, their analysis depends on a set of arguments regarding lay interpretations of property and its boundaries. If property does not work here, it surely does not work anywhere.

Some preliminary points are in order. Merrill and Smith may respond by arguing that the cases I describe are peripheral to their central arguments. They do not really implicate "property" or, if they do, they can be treated as matters that can be thought of through a different lens, such as with reference to a regime of "governance" (Smith 2002, 2004, cf. Alexander 2012). I disagree. First, all of them concern interactions at property boundaries involving laypersons, in which the meaning of these boundaries is at stake. As such, they would seem relevant to Merrill and Smith's project that, as noted, concerns precisely this issue. Second, although overhanging fruit, or painted fences may appear of minor significance, the cases nevertheless surely implicate fundamental aspects of the boundary. It might be argued that the examples I document do not get to the core of the exclusion thesis in

that most do not concern significant physical transgressions of property boundaries. While there are exceptions to this—we see, for example, some neighbors comfortably contemplating acts that constitute trespass in order to cut back encroaching weeds—it is true that most of the physical boundary crossings are relatively modest. Yet, Merrill and Smith's account, it seems to me, can still be tested by such minor cases, resting as it does on a strict view of the boundary, and its associated practices and beliefs. Surely, the boundary no longer works as efficiently as it supposes if it countenances gradations of more or less exclusionary relations. Third, even absent any practices associated with the boundary, their account relies on the supposedly simple and legible information that the boundary generates. The Strathcona study, I would argue, provides a rich dataset that can be used to assess such claims. Finally, one counter may be that the Strathcona data do not deal directly with "property," in the formal, legal sense. However, if we wish to understand how the everyday property boundary works, it is precisely the daily interactions, negotiations, and frictions between residential neighbors that we should be attending to (Selznick 2003). To understand the everyday work of property, "we must describe the world of the quotidian in its singularity rather than assimilating it to general categories" (Sarat and Kearns 1995: 60). The either/or framings of the courts do not do justice to the messier and more open-ended character of property "in the wild." The Strathcona data provide much-needed empirical information concerning how people actually interpret and engage with boundaries. If we want to understand how real people think about boundaries, as Merrill and Smith claim to, we should perhaps talk to some real people about real boundaries.

What, then, does a comparison of the two accounts offer? "Property," Smith (2003: 1147) notes, "presents a simple message to the outside world." For the residents of Strathcona, I have argued, the "message" is far from "simple," but is complex, diverse, and intersubjective. To the extent that property is encoded in space, it is far from straightforward. Respondents work hard to read the things of property, often moving between different interpretations in the same breath. Is a bathtub out of place? What happens when it contains plants? A fence "says" different things depending on its height, history, its relative location, and its effects on interpersonal relations. The overhanging fruit is partly mine, but also (maybe) yours. A space is simultaneously private and public. The "message" moreover, is not simply prescriptive, but also powerfully normative. Property entails both "is" and "ought." A fence is too high. Front gardens are for flowers. Or vegetables. And so on. The work of property is not simply informational, moreover, but ethical and behavioral, encouraging certain forms of action

(fence jumping, fruit picking, and so on). To understand the work of the boundary would thus seem to require a more careful attention to experience and practice (Blomley 2014a).

Merrill and Smith talk of property's signals as being "broadcast to the world from the thing itself" (Merrill and Smith 2001: 359). Precisely, how a thing such as a boundary broadcasts a message is not developed, however, a curious absence in a model that relies so heavily on information. Either way, information appears to flow in a linear fashion between thing (e.g., boundary) and receiver (owner, duty-holder, etc.) This dyadic model, premised on self-regarding, autonomous separative selves, does not seem to capture the complicated work that we find in Strathcona. Property has to be read. But, this is done in subtle, interpersonal, and contextualized ways, entailing evaluation and appraisal. The message of the spatial boundary, moreover, is itself inseparable from the space in which it is situated. In that sense, the boundary is both spatially productive and constituted. Conversations and interpretations of the boundary are, in turn, readings of place: property "is especially attuned to letting people speak to each other, over time, about their relation to place" (Rose 1994: 268).

Such conversations, as Merrill and Smith note, are indeed very much centered on things. But, the things of property seem complicated. Property is an abstraction unless grounded in objects such as hedges and fences. But, such things acquire meaning through their relation to property norms (as well, of course, to other norms) and norms of space. Meanings cannot be simply or easily extracted from the things of property, but must be discerned and derived. People read different things, even contradicting themselves.[8] Boundaries are not simply edges, but sites of interaction, or hybrid zones that intermingle "private" and "public." The performances of property and space are not prior to such objects, but produced in and through them. The things of property are also not simply condensation sites of human agency and meaning. They have some form of agency in their own right. Weeds grow, branches cross borders, and fences rot and sag (Hitchings 2003).

The message of the boundary, for Merrill and Smith, is that of exclusion. "Simple and robust everyday moral intuitions provide

---

[8] Diane, a white owner, reflected on the ambiguous messages given out by "informal" areas of public space that appeared untended, expressing disbelief at those who dumped refuse adjacent to her house: "One day we were both hanging out of the window screaming at these people that had come from [one street over] and dumped a mattress and a television set, right in front of our house." We're leaning out of the window going "*What* is the *matter* with you, *why* are you dumping your garbage here? *What* makes you think that that is appropriate? I couldn't believe it. *It's as if the land sends out this message to these people and I get a totally different message*" (my emphasis). The dumpers saw the land, presumably, as unowned, while she saw it as a space in which she had an active interest.

crucial support for the core of property," they argue, that being "the right to exclude from a thing good against the world" (Merrill and Smith 2007: 1890–101). I am less convinced at the robustness of these "everyday moral intuitions." To characterize the space of property as a machine of exclusion appears to be complicated by the empirical record. Exclusion, understood as the "keep out" informational message, is clearly in evidence (cf. Merry 1993).[9] But so too are inclusion, obligation, and other-regarding behavior, understood not as a radical openness to the world, but a conditional and context-specific set of interactions. Notions of propriety are entangled with those of privacy. Autonomy is understood not in terms of separation, but rather through relations to others. It is a relational enactment or achievement, rather a static given.

To summarize, the most immediate difference between these two accounts of property turns on their relation to complexity. Merrill and Smith seek to identify the clarity, certainty, and simplicity that they claim can be identified behind the arcane doctrines and principles of property law, such as the numerus clausus principle (Merrill and Smith 2000), and also within property's everyday practices and performances. Perhaps this reflects their allegiance to the ordering principles of law and economics. Perhaps, it also comes from a desire to shore up private property rights against an overweaning state, given the fear that if property has no stable core, "but is just a variable collection of interests established by social convention, then there is no good reason why the state should not freely expand or... contract the list of interests in the name of the general welfare" (Merrill and Smith 2001: 365).

Conversely, the gardeners in Strathcona reveal a complexity of property, to how it works, is spatialized, read, practiced, and reflected upon. This is evident in the challenge I faced in making sense of the data. The coding was arduous and complex, with overlapping and often conflicting results. Respondents seemingly contradicted themselves. The "writing up" of the results proved challenging, as the data resisted my attempts at producing legibility. Multiple, nuanced possibilities presented themselves, many of which I have not tackled here. But, complexity was evident in a second sense. As noted here, while there were some respondents who adopted clear, bright-line interpretations of property, more common were overlapping, mobile, messy (Law 2004) accounts that merged supposedly discrete categories. A bathtub was both public and private or, possibly, a hybrid of both (Blomley 2005b). The

---

[9] Indeed, much more could be said about exclusion. Were I to have interviewed homeless people, for example, or indigenous people, who consider Strathcona unceded First Nations territory, I am sure I would have heard more about exclusion, as well as it's ethical dimensions.

autonomy produced through property was neither exclusively predicated on separation, nor produced through engagement, but entangled with both (Blomley 2005a). The creation of a state-mandated "greenway" saw the enactment of complex forms of property, including state property, a local commons, and individual parcels (Blomley 2004). Community gardeners struggled with issues of access, inclusion, and exclusion, particularly in the face of overlapping indigenous claims for access and use.

The *space* of property, moreover, was a strikingly different one. For Merrill and Smith, the boundary has an obviousness to it, carving up space into legible parcels, and generating simple messages. While some scholars embrace the complexity of the "thing" (Brown 2001), for Merrill and Smith the boundary's "thingness" signals a brute objectivity. Strathcona's boundaries, conversely, are lively, and their "thingness" a good deal more significant.

Complexity is not simply an impediment to Merrill and Smith's model, we can conclude, it is anathema to their very project. And, here the boundary is evident in a second, epistemic sense in their account. Merrill and Smith's account requires the construction of a series of conceptual boundaries to distinguish those relations and data that are said to count from those that do not. As such, they engage in a practice of bracketing, predicated on "the attempt to stabilize and fix a boundary within which interactions take place more or less independently of their surrounding context" (Blomley 2014c: 135; Callon 1998). The distinctions they draw, I would argue, are an effect, rather than inherent to the order of things (Mitchell 1991). But, any bracketing of property's relationality, given property's social and political effects, demands our scrutiny. Not only does it frame our understanding of what property does in the world, it also shapes a view of what property actually is (Singer 2009, 2014). At stake here is what Mol (1999) would term an ontological politics of law (Viljanen 2009).

In keeping with law-and-economics framing, they bracket property's relationality according to a Coasean frame (Allen 1991), predicated on efficiency. At its core is the presumption that property is centered on the coordination of economic transactions, with efficiency understood as the driver of property rules. To sustain this analysis requires the creation of other boundaries, including multiple framings of the economy, of market actors and the objects of market transactions, of the rationalities and externalities at work (or not) in a market, and so on. So, for example, a commitment to Pareto efficiency (i.e., one in which at least one party's position is improved while no one's is worsened) is uncontroversial only after a bracketing of social context (Kelman 1987: 121). Similarly, it requires that we can discern the

preferences of individuals. However, this again requires a radical framing of human desire (Kelman 1987: 129).

Merrill and Smith's account also seeks to draw an analytical line between those aspects of property that they regard as central to their account, and those that they seek to place as outliers. Thus, they bracket out examples of property law that depart from or complicate the exclusionary account of the boundary, such as nuisance, landlord-tenant law, or restraints on the future alienation of property. They worry that scholars have devoted too much attention to these departures, arguing that a "better view" would treat these as supplements to a "morally-grounded bed-rock of exclusion rights" (Merrill and Smith 2007: 1891; cf. Alexander 2012). They are not data that force us to reconsider the essence of property. Rather, they should be treated either as apparent exceptions that, on closer inspection, may reveal the centrality of exclusion, or as unexceptional outliers that encourage us to tweak or fine-tune property in constrained cases. Such analytical distinctions are expressed through spatial metaphors, with architectural tropes such as the core (outliers are "refinements outside of the core of property" 1891), or the pyramid ("the base of which consists of the security of property rights" Merrill and Smith 2001: 398).

But we should be alert to the manner in which their claims rest on a complex set of practices and beliefs that lie outside the brackets they draw. Just as a theatrical bracket, premised on the "suspension of disbelief," relies on external understandings (Goffman 1974), so their "simple" account depends on a complex set of prior beliefs concerning efficiency and the individual that the reader brings to their arguments from outside the frame. Similarly, if a boundary does communicate exclusion (as it surely does, on occasion), this should be thought of not as a given, but as a remarkable accomplishment, predicated on heterogenous forms of socialization, violence, learned habit, and so on. That these relations work silently should not cause us to lose sight of them.

Relationality and Spatiality

To return to my opening questions: what do property boundaries mean? How do they work? Merrill and Smith offer us one account: boundaries are said to give out (1) simple, singular messages of exclusion that (2) are taken up by lay people, generating (3) a dominant ethic hostile to boundary crossing. The evidence from Strathcona, conversely, suggests that boundaries give out complex messages that carry multiple meanings, generating diverse form of behavior, and ethical response.

There are two responses to this difference. One immediate conclusion is to question Merrill and Smith's analysis. Their claims concerning the layperson's everyday moral intuitions and practices seem to be challenged by the evidence I have presented here. While we can find respondents that appear to echo their account, they appear to be the exception. At minimum, I have offered an alternative account of the everyday property boundary, which departs from theirs. In so doing, it challenges the universal claims that they provide. At the very least, it points us to the need to undertake more empirical research into the property boundary, and to do so in diverse settings, attending carefully to the everyday sociolegal practices and beliefs associated with property's territorial dimensions. In what follows, second, I wish to work through the difference between these two accounts to make some more general points concerning property theory in general, and the property boundary in particular. I do so in an attempt to work with the complexity of the empirical record. Rather than seeing this as simply an obstacle, we can try and think with complexity, rather than against it (Law 2004; Mol and Law 2002).

I begin from an intuition that most readers will identify with the complexity of the empirical record. It is, I suspect, not a profound revelation to be told that the meaning of a boundary is shifting, contextual, and intersubjective. When talking of my garden research to others, I am regaled with comparable boundary stories, most of which attest to their complexity. This seems to point us to a crucial conceptual starting point. Rather than beginning from simplicity and singularity, I think it is analytically useful to start from a presumption of property's complexity and multiplicity, including its spatial manifestations.

Why should the complexity of property be expected? Two possibilities come to mind. Property, we are told, entails relations between actors in regard to a valued resource. Yet, as Singer notes, "we more often pay lip service to this idea rather than think through its full implications" (2009: 1048). To think through those "full implications" entails an inexorable confrontation with complexity. For what is to be included in any assessment of property's relationality? What is *not*? While formal legal practice may provide some constraints on what is to be included in such a calculus (Blomley 2014c), the relations at work in the everyday property world, manifested in and worked through the boundary, are likely to be multiple and diverse. Such relations, both practical and ethical, may include those to the collective, to neighbors, to ecosystems, to deities, to systems of classification, to institutions of force and persuasion, and so on. They may be bright or fuzzy. They may be reassuring or worrisome. We should anticipate the array of relations included to be large and diverse. We may also expect that the

meanings attached to such relations will be broad and varied. And, it is likely that the ethical dimensions of such relations will be far from straightforward. Put thus, it seems reasonable to expect complexity and multiplicity when it comes to property, not simplicity and singularity. This is not a claim that property, in all its complexity, should tend one way or another, nor is it an argument that this complexity is inherently a good thing. Nor is it a claim that such relations are unlikely to entail market-based transactions, particularly if they are recognized as complex (Becher 2014). This is an empirical, not an ethical expectation.

Property is likely to be complex, in other words, because of the multiple relations that it works through. But property is relational in a second sense. Rather than simply constitutive of relations, property is itself made of relations. On the principle that "entities take their form and acquire their attribute as a result of their relations with other entities" (Law 1999: 3), we can think of property as an effect produced through a particular set of relations to things, ideas, and practices. Rather than looking at property or the boundary as if they were objects that preexisted our interactions with them, we might usefully think of them as more or less stable effects of a complex web of interactions and relations. That which we designate as property, in other words, is "performed" into being through the arrangement of fences, the pronouncements of judges, the classifications of titling systems, the beliefs and practices of ordinary people, the growing of trees, and so on (Blomley 2013).

Again, the consequence of this claim is that we should anticipate a multiplicity to the forms property takes. As property is differently performed in the many and varied settings in which it is situated (the pages of a Law Review, or sociolegal journal, the proceedings of a courtroom, or the interactions over an overhanging fruit tree), so we should anticipate different modalities of property. There is not one "property," in other words, but multiple manifestations (Viljanen 2009). This is not a claim for an open-ended relativism—clearly, some performances are more successful than others. Yet, precisely because of the entanglement of space and property with the multiple relations that constitute them, we should also anticipate that property will be arranged in different ways in the spaces of the everyday. We should be alert to the performative slippages, misfires, exceptions, and differences as property is variously performed (Gibson-Graham 2008). Put more strongly, we should expect the reality of property to be multiple, rather than singular. As Merrill and Smith suggest, and the Strathcona data reveal, we can anticipate that these realities may include practices and moralities that sustain exclusion. But, we can also find forms of property that take very different forms. As the fence stories reveal, context matters. These are not to be treated as

deviations from some singular, prior essence, I would argue, but should be treated as different realities (Law 2004).

What, then, of the boundary? It may be tempting to think of the spatial boundary as an inert object. Indeed, I think some of the value of the boundary to Merrill and Smith rests precisely on its apparent obviousness. It appears to do simple work because it is a simple thing, an essentially inert medium for the transfer of determinate messages. As such, they draw on, I suggest, an "absolute" view of space itself (Blomley 2014b), whereby Cartesian and Newtonian influences converge so as to create a view of space as "an empty vessel existing prior to the matter which fills it" (Butler 2009: 319). On this deeply rooted and widely prevalent view, space has an objective and presocial quality. It has an obvious "thereness" to it, conforming to Western "commonsense" conceptions of reality as something out there, beyond ourselves. On this view, the boundary's reality, following Law (2004), may evidence independence: (the boundary is largely independent of our actions and perceptions); anteriority (it precedes us); definiteness (it has a definite form; it is more or less specific and legible); and singularity (it is universal, common, and the same everywhere).

However, a relational view rejects the idea of space as outside of the processes that define it, including the actors who imbue it with meaning. Such processes do not occur *in* or *on* space, but actively generate space (Amin 2004; Glass and Rose-Redwood 2014). As picked up and developed in contemporary geography, the argument is that space is not to be treated as divorced from practice, but necessarily articulated through it. Space is both product and productive. "The question 'what is space?' is therefore replaced by the question 'How is it that different… practices create and make use of distinctive conceptualizations of space?'" (Harvey 1972: 14). Space now becomes the presupposition, medium, and product of extant social relations. Eschewing a view of "space" as an absolute concept, scholarship uses the term "spatiality" in an attempt at capturing this alternative view (Merriman et al. 2012).

If property, then, is complex, so too is space. Rather than thinking of the territorial boundary as a "chunk" through which simple messages are communicated, perhaps we need to think of it as a complex "interaction device" (Brighenti 2010: 224), that helps organize the relations inherent to the production of property, establishing a particular "economy of objects and places" (Brighenti 2006: 75), And, as such, we should expect the boundary to do complex work. It may serve as a device for the management of transaction costs (Blomley 2015). It may also serve as a zone for the navigation of property's ethical anxieties. The boundary—simultaneously metaphorical and real—may shore up an individualized

"separative self," yet it may also be the relational skin that is a very precondition for the autonomy of the self (Nedelsky 1990).

It is in this sense, I suggest, that we can begin to make sense of the complicated and multiple work of the boundary in Strathcona. The lesson here is property boundaries do not stand outside the relations that constitute them and the geographies in which they are situated. They are not prior to such relations, but constituted by them and through them (Pottage 2004; Strathern 2004). The spatiality of the boundary, moreover, is inseparable from the spatiality of property itself, predicated on subtle calculations of nearness, proximity, distance, and relation (Keenan 2010: Blomley 2008, 2011). A property boundary is a legal spatiality that is itself embedded in and productive of dense relational geographies (normative, practical, visual, complex, social, political, and so on).

Conclusions

I began this article with a quotation from a review of Andro Linklater's (2013) book *Owning the Earth*. The reviewer characterizes property as the elephant in the room, forgotten in the rush to explore more fashionable topics, such as capitalism, urbanization, democracy, industrialization, and the role of the state. I think he's right: indeed, I would also point out, with Singer (2009, 2014), that to understand these topics we need to think about property. Moreover, in grappling with property, as we must, I think it is useful to think about its spatiality. In his book, Linklater suggests that "if you concentrate on how a place is owned, the perspective changes" (2013: 399). To understand the places we occupy and use, in other words, it is useful to think about property relations. And such property relations, in turn, shape particular geographies. The boundary is one. Our world is crosscut with property boundaries. On a daily basis, we live and navigate dense landscapes, inscribed with property's lines.

So, prevalent and ubiquitous is the boundary that it is easy to overlook. But, as Merrill and Smith remind us, this would be a mistake. The boundary is not an outcome of property; it is an essential means by which it is materialized in the here-and-now. An adequate account of property boundaries, therefore, will need to recognize that they are consequential things, implicated in and productive of property's manifold relations. Such an analysis, I have argued, requires an engagement with the complexity and multiplicity of property, as well as its consequential spatiality.

To start from a presumption of complexity places a particular onus of proof on those accounts of property that claim to identify simplicity and singularity. This injunction applies not only to Merrill and Smith, but would include those of others who

attempt to nail property down to some singular essence. However, this cuts against the grain. There is a seductive appeal to simplicity within Western modes of thinking. Complexity and multiplicity are hard to think with. As I have suggested here, we may have no choice. Following Alexander (2015), we should eschew singular frames, embracing multiple conceptions of property, as no single model fully captures the diverse lived settings in which property and boundaries are put to work.

References

Alexander, Gregory (2012) "Governance Property," 160 *Univ. of Pennsylvania Law Rev.* 1853–87.
———— (2015) "Five Easy Pieces: Recurrent Themes in American Property Law" (unpublished paper forthcoming *U Hawaii L Rev*, copy with author).
Alexander, Gregory, & Eduardo Peñalver (2012) *An Introduction to Property Theory*. Cambridge: Cambridge Univ. Press.
Allen, Douglas (1991) "What Are Transaction Costs?," 14 *Research in Law and Economics* 1–18.
Amin, Ash (2004) "Regions Unbound: Towards a New Politics of Place," 86 *Geografiska Annaler B* 33–44.
Babie, Paul (2013) "The Spatial: a Forgotten Dimension of Property," 50 *San Diego L R* 323–382.
Baron, Jane B. (2010) "The Contested Commitments of Property," 61 *Hastings Law J.* 917–68
Barzel, Yoram (1997) *Economic Analysis of Property Rights*. Cambridge: Cambridge Univ. Press.
Becher, Debbie (2014) *Private Property and Public Power: Eminent Domain in Philadelphia*. Oxford: Oxford Univ. Press.
Blomley, Nicholas (2004) "Un-Real Estate: Proprietary Space and Public Gardening," 36 *Antipode* 614–41.
———— (2005a) "The Borrowed View: Privacy, Propriety, and the Entanglements of Property," 30 *Law and Social Inquiry* 617–61.
———— (2005b) "Flowers in the Bathtub: Boundary Crossings at the Public-Private Divide," 36 *Geoforum* 281–96.
———— (2008) "Simplification is Complicated: Property, Nature, and the Rivers of Law," 40 *Environment and Planning A* 1825–40.
———— (2011) "Cuts, Flows, and the Geographies of Property," 7 *Law, Culture and the Humanities* 203–16.
———— (2013) "Performing Property, Making the World," 27 *Canadian J. of Law and Jurisprudence* 23–48.
———— (2014a) "Learning from Larry: Pragmatism and the Habits of Legal Space," in Braverman, I., N. Blomley, D. Delaney, & A. Kedar, eds., *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford: Stanford Univ. Press. 77–94.
———— (2014b) "Property, Law, and Space," 3 *Property Law Rev.* 229–35.
———— (2014c) "Disentangling Law: The Practice of Bracketing," 10 *Annual Review of Law and Social Science* 133–48.
———— (2015) "The Territory of Property," *Progress in Human Geography* (forthcoming).
Braverman, Irus, et al., eds. (2014). *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford: Stanford Univ. Press.
Brighenti, Andrea Mubi (2006) "On Territory as Relationship and Law as Territory," 21 *Canadian J. of Law and Society* 65–86.
———— (2010) "On Territorology: Towards a General Science of Territory," 27 *Theory, Culture and Society* 52–72.

Brown, B. (2001) "Thing Theory," 28 *Critical Inquiry* 1–21.

Buston, K. (1997) "NUD*IST in Action: Its Use and Its Usefulness in a Study of Chronic Illness in Young People," 2 *Sociological Research Online*. Available at: http://www.soc-resonline.org.uk/socresonline/2/3/6.html (accessed 30 November 2015).

Butler, Chris (2009) "Critical Legal Studies and the Politics of Space," 18 *Social and Legal Studies* 313–32.

Callon, M. (1998) "An Essay on Framing and Overflowing: Economic Externalities Revisited by Sociology," in Callon, M., ed., *The Laws of the Markets*. Oxford: Blackwell. 244–69.

Crang, M., 1997. "Analyzing Qualitative Materials," in Flowerdew, R. & D. Martin, eds., *Methods in Human Geography: A Guide for Students Doing a Research Project*. Harlow: Longman.

Doskow, Emily, & Lina Guillen (2014) *Neighbor Law: Fences, Trees, Boundaries and Noise*. Berkeley: NOLO Press.

Engel, David M. (1995) "Law in the Domains of Everyday Life: The Construction of Community and Difference," in Sarat, Austin, & Thomas R. Kearns, eds., *Law in Everyday Life*. Ann Arbor, MI: Michigan Univ. Press. 123–70.

Ewick, P., & Silbey, S.S. (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.

Fitzpatrick D., & A. McWilliam (2013) "Bright-Line Fever: Simple Legal Rules and Complex Property Customs Among the Fataluku of East Timor," 47 *Law & Society Rev.* 311–43.

Gibson-Graham, J.K. (2008) "Diverse Economies: Performative Practices for 'Other Worlds'," 32 *Progress in Human Geography* 613–32.

Glass, Michael R., & Reuben Rose-Redwood, eds. (2014) *Performativity, Politics, and the Production of Social Space*. New York: Routledge.

Goffman, I. (1974) *Frame Analysis: An Essay on the Organization of Experience*. New York: Harper & Row.

Harvey, D. (1972) *Social Justice and the City*. London: Edward Arnold.

Hitchings, R. (2003) "People, Plants and Performance: On Actor Network Theory and the Material Pleasures of the Private Garden," 4 *Social & Cultural Geography* 99–113.

Katz, Larissa (2008) "Exclusion and Exclusivity in Property Law," 58 *Univ. Toronto Law J.* 275–315.

Keenan, Sarah (2010) "Subversive Property: Reshaping Malleable Spaces of Belonging," 19 *Social & Legal Studies* 423–39.

Kelman, Mark (1987) *A Guide to Critical Legal Studies*. Cambridge: Harvard Univ. Press.

Law, J. (1999) "After ANT: Complexity, Naming and Topology," in Law, J., & J. Hassard, eds., *Actor Network Theory and After*. Oxford: Blackwell. 1–14.

——— (2004) *After Method: Mess in Social Science Research*. New York: Routledge.

Linklater, Andro (2013) *Owning the Earth: the Transforming History of Land Ownership*. New York: Bloomsbury.

Merrill, Thomas W. (1998) "Property and the Right to Exclude," 77 *Nebraska Law Rev.* 730–54.

Merrill, Thomas W., & Henry E. Smith (2000) "Optimal Standardization in the Law of Property: The Numerus Clausus Principle," 110 *Yale Law J.* 1–70.

——— (2001) "What Happened to Property in Law and Economics?" 111 *The Yale Law J.* 357–98.

——— (2007) "The Morality of Property," 48 *William and Mary Law Rev.* 1849–95.

Merriman, Peter, et al. (2012) "Space and Spatiality in Theory," 2 *Dialogues in Human Geography* 3–22.

Merry, Sally (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago, IL: Univ. of Chicago Press.

——— (1993) "Mending Walls and Building Fences: Constructing the Private Neighborhood," 33 *J. of Legal Pluralism* 71–90.

Mitchell, Timothy (1991) *Colonizing Egypt*. Berkeley: University of California Press.

Mol, Annemarie (1999) "Ontological Politics: A Word and Some Questions," in Law, J., & J. Hassard, eds., *Actor Network Theory and After*. Oxford: Blackwell. 74–89.

Mol, Annemarie, & John Law (2002) *Complexities: Social Studies of Knowledge Practices*. Durham: Duke Univ. Press.

Mount, Ferdinand (2014) "That Disturbing Devil," *London Review of Books* 8 May 11–14.

Nedelsky, Jennifer (1990) "Law, Boundaries and the Bounded Self," 30 *Representations* 162–89.

Perin, Constance (1988) *Belonging in America: Reading Between the Lines*. Madison, WI: Univ. of Wisconsin Press.

Peters, Brendan (2004) "Fourth Amendment Yard Work: Curtilage's Mow-Line Rule," 56 *Stanford Law Rev.* 943–80.

Pottage, Alain (2004) "Introduction: The Fabrication of Persons and Things," in Pottage, Alain, & Martha Mundy, eds., *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. West Nyack, NY: Cambridge Univ. Press. 1–39.

Rose, Carol (1994) *Property as Persuasion: Essays in the History, Theory and Rhetoric of Ownership*. Boulder: Westview Press.

Sack, R.D. (1986) *Human Territoriality: Its Theory and History*. Cambridge: Cambridge Univ. Press.

Sarat, Austin, & Thomas R Kearns eds. (1994) *Law in Everyday Life*. Ann Arbor: University of Michigan Press.

Seed, Patricia (1995) *Ceremonies of Possession in Europe's Conquest of the New World*. Cambridge: Cambridge Univ. Press.

Selznick, Philip (2003) "'Law in Context' Revisited," 30 *J. of Law and Society* 177–86.

Singer, Joseph (2009) "Democratic Estates: Property Law in a Free and Democratic Society," 94 *Cornell Law Rev.* 1009–62.

——— (2014) "Property as the Law of Democracy," 63 *Duke Law J.* 1287–335.

Smith, Henry E. (2003) "The Language of Property: Form, Context, and Audience," 55 *Stanford Law Rev.* 1105–91.

——— (2012) "Property as the Law of Things," 125 *Harvard Law Rev.* 1691–726.

Strathern, Marilyn (2004) "Losing (Out On) Intellectual Resources," in Pottage, Alain, & Martha Mundy, eds., *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. West Nyack, NY: Cambridge Univ. Press. 201–33.

Valentine, G. (1997) "Tell Me About…: Using Interviews as a Research Methodology," in Flowerdew, R., & D. Martin, eds., *Methods in Human Geography: A Guide for Students Doing a Research Project*. Harlow: Longman.

Viljanenen, Mika (2009) "Law and Ontological Politics," 6 *NoFo* 5–18.

Weadick, Shaun (2014) *Entangled Plants and Property: A Landscape of Domestic Gardens and Alleys*. MSc Thesis. Concordia University, Montreal.

Nicholas Blomley *is Professor of Geography at Simon Fraser University. He has a long standing interest in property and space. He is currently involved in collaborative research both on the liquidation of Japanese Canadian property during World War II, and on spatial restrictions attached to bail and parole orders, as applied to marginalized people.*