

COMMENT

Property rights aren't primary; ideas are*

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Abstract

The current approach to the study of property cannot distinguish the causes of human action from the consequences of human action. It also cordons off morality thereby opening a hole in how property rights work. The scientific difficulty is that our analysis must constantly shift between the individual, their local community, and the larger polity in which both are embedded, in order to explain simultaneously different levels of consequences with different kinds of causes. The difficulty is made worse when we construct mental models without the human mind. My framework leaves the human mind in. Since Armen Alchian and Harold Demsetz, the study of property rights has had a decidedly external stance: the institution imposes itself on the individual from the outside. The problem of property rights, however, also calls for inquiry from the inside out of human agency, because in the study of property, ideas are primary.

Key words: Ideas; mind; property rights; property

JEL Codes: D23; D91; K11

1. The current approach

Since North and Thomas (1973) and North (1981), nary an economist doubts the importance of property rights to the study of economics, nor its necessity to what McCloskey (2016a) calls the Great Enrichment of world over the last 250 years. Property rights are that foundational. Check the textbooks. But economists generally do not make a distinction, as I do, between *property* and *property rights*, except to delineate objects of ownership from relationships between people regarding objects. The double burden of the argument in my article (Wilson, 2022) is to make a meaningful distinction between property and property rights and to situate it in a rather old, voluminously covered subject. Four commenters seriously and constructively pressed that burden, raising questions and seeking engagement from four nonoverlapping directions. I honor here their diligence and service to the project by reflecting on and responding to their reviews.

Economists and political scientists in the study of property rights are, without much loss from generalization, deep-seated consequentialists. As such, Allen (2022) expresses frustration that I am not sticking with the sixty-year-old program of economic property rights. I do not care whether I adhere to a particular paradigm or not, so long as what I write is true. My point is that the current paradigm has a problem. *It does not distinguish the causes of our actions from the consequences of our actions.* For Demsetz (1967), unrealized gains or the avoidance of losses explains the emergence of property rights in land among Native Americans on the Labrador Peninsula. Barzel (1997: 15, 16) assumes that consequences – the ‘ability, in expected terms to consume the services of an asset’ – are ‘what individuals maximize’. Three necessary conditions for ‘the origin of property rights’, Riker and Sened (1991: 951, 955) assert, are that ‘right-holders desire the right’, ‘rule makers desire to recognize the right’, and

*I thank five commenters for stimulating the ideas in this essay, the Editor for the opportunity to work through them in a response, and Deirdre McCloskey for her helpful comments.

‘duty-bearers respect the right’, which is akin to, well, assuming the can opener. Such analytical frameworks make consequences the origin of our actions.

Economists and political scientists who study property rights are also mostly, dare I say overwhelmingly, positivists (McCloskey, 2022). Barzel (1997: 15) makes clear upfront that ‘the concept of ‘rights’ here is strictly positive, carrying no normative connotation’. Riker and Sened (1991: 952), too, ‘have nothing to say about [the] moral bases’ of property rights. If the consequences of our actions are one and the same with the origins of our actions, then any moral consideration of our actions does indeed seem to be superfluous. One also gets the sense they are cordoning off their analysis so that nothing moral may get in. Perhaps as practicing economists we might ask, what are the benefits *and costs* from fencing morality out? And is the cordoning itself a moral-scientific act?

Where economic and political analyses often differ, unsurprisingly, is where they assume property rights come from (Murtazashvili, 2013). Economic analysis tends to focus on how property rights emerge spontaneously as efficiency improvements in the absence of government (see, for example, Barzel, 1997; Demsetz, 1967; Sugden, 2004) and on when that spontaneous order breaks down (see, for example, Libecap, 1989; Murtazashvili, 2013; North, 1981).

Political analysis tends to assume, rather strongly, that property rights originate from the government (see, for example, Bromley, 2006; Commons, 1924; Sened, 1997). ‘Governments must grant rights,’ Sened (1997: 6) claims, ‘before it can enforce them’. ‘To have a right in something – a civil right, a contractual right, a property right’, Bromley (2006: 38) explains, ‘is to have the capacity to compel the state [*recte* government] to come to the defense of your particular interest’. After all, as many an economist and political scientist has asked me, if someone claims a property right, but there is no government to enforce it, does it make sense to call it a property right? ‘Well, no, not when you put it that way’ is how I’m supposed to reply and then accept without a second thought the bald assertion that governments must grant rights before they can enforce them. But wait. The person claiming something is still doing something and doing something *intelligible* to boot. More than that, their action means something whether there is a government or not, a spontaneous order or not, or formal or informal enforcement or not. At any rate all of us think so when we say, ‘It’s mine!’ To conclude that the supposition doesn’t make sense – that it doesn’t make sense for someone to claim a property right if no authority enforces it – is to assume that the consequence of enforcement is the origin of someone’s claim. I did say the consequentialism of economists and political scientists is deep-seated. In this case, it is also misguided. My article is about how to disentangle the causes and consequences of claiming a property right. Rather than dismissing the supposition and accepting the assertion of political analysis, I begin by inquiring into the meaning of someone’s action when we say they claim a property right. The meaning of human conduct, including the force of words and free will, is important for its scientific explanations (McCloskey, 2006).

2. The lay of the land

Part of the scientific difficulty is that our analysis of property rights must constantly shift between the individual, their local community, and the larger polity in which both are embedded, in order to explain simultaneously different levels of consequences with different kinds of causes. One challenge is how to ascribe polity level consequences to government action and, simultaneously, individual actions to the feelings, thoughts, knowledge, and wants that prompt someone to act. Another challenge is how to ascribe polity level consequences to individual and community level causes, and community level consequences to polity level causes. It is all rather difficult!

We overamplify our difficulties, however, when we fail to distinguish the origins of action from the consequences of action. If we were to ascribe the causes of an individual’s or their community’s action (that is, their personal feelings, thoughts, knowledge, and wants) to the consequences of government action or inaction, as our desire for simplicity and generality often make us wish to do, we risk running roughshod over human agency. As Olson (1965) pointed out long ago, that is what is wrong with assigning agency to social class and other groups, if one does it blithely, without explaining how free-

rider and other obstacles to such action are to be overcome. For example, Alexis de Tocqueville's notion of a supposed American 'self-interest properly understood' runs afoul of such obstacles. Yet, if we were to ascribe the causes of government action to establish property rights to the consequences of an individual's or their community's action, we risk idealizing how agents of governments respond to the governed. The public choice school weeps. So we must learn to explain three levels of consequences at once, with three levels of distinguishable root causes.

Scholarship in economics is, in general, attuned to not idealizing government agents. Anderson (2016), Alston *et al.* (2021), Cai *et al.* (2020), Dippel *et al.* (2020), Anderson and Ratté (2022), to name a few, document and explain how government action regarding property rights in land fails to measure up – to put it mildly – to the ideals of our humanity. Throughout history, Native American, Afghan, and Chinese peoples, for example, have suffered and continue to suffer in poverty, and yet their governments/subjugators fail to extend them the dignity and autonomy which human beings deserve.

The general stance is one of external factors on people. It is the exertion of force from the macro level of enforcement capacity, of political stability, of political ideology on people. It is the consequences of property right regimes on people at the macro level of a polity. Such is the predominant way of thinking about property rights. When working through the origins of property rights, the tendency is to explain how they work from the direction of the macro level of an Act of Congress down to the micro level of the individual homesteader.

Hodgson (2015) takes an appropriately macro perspective in his critique of economic property rights as abilities to consume resources. He argues that relegating legal property rights to a primary supporting role devalues both property and legal property rights. Hodgson is precisely on point in taking Allen (1991), Barzel (1997), and several others to task. Property is more than possession, the use or control of a thing 'without reference to, and imputation of, any kind of legal or moral right' (Hodgson, 2015: 688). And property at the macro level does indeed 'involve legitimate and enforceable rights' (Hodgson, 2015: 688) and 'refer to the right of the owner or owners, formally acknowledged by public authority' (Pipes, 2000: xv). But it is not the small step it so seems to go from there, as Hodgson approvingly quotes the historian Richard Pipes, to 'before the state there is only possession' (Pipes, 2000: 117). Yes, indeed, property is 'a creature of ... the legal system' (Penner, 1997: 3). But it is not only a creature of the legal system.

Before the state there is something more than the ability or use or control of a thing. Property also operates at the level of the individual in their local community, with individual and community level causes and individual and community level consequences, which means that property also predates the formal legal system. The conclusion from such an observation is not that because property predates formal legal systems, governments can't alter legal property rights. Governments can and most definitely do. The conclusion is also not that because property predates the formal legal system, legal property rights do not shape how individuals think and feel about the moral way to conduct themselves regarding property. Legitimate legal property rights can and do. The conclusion is rather that something about property is temporally prior to modern legal property rights. Decker (2022) defines ownership in terms of the law and how the law works to adjudicate competing claims. That is what I intentionally avoid. I am explaining property from the inside out of human agency, not from the outside and above. *Whatever legal property rights are, they are logically, psychologically, and temporally posterior to something at the micro and meso level of human action and its causes.*

But I make a different argument. I argue that property is logically, psychologically, and temporally prior to any *moral reasoning* of property rights. I do not broach the relationship between the moral and legal reasoning of property rights. Nor do I broach explaining community level consequences of legal property rights with polity level causes, nor polity level consequences of legal property rights with community level causes. My argument is at the level of the individual and their community. And my argument is this: property is primary and property rights are secondary. As a custom property effects property rights. However the argument fits into a bidirectional relationship between

property (at the community level) and property rights (at the polity level) is another question, for future work.¹

Murtazashvili (2022) reads me as ‘devaluing’ property rights. I am using primacy and subordination, primary and secondary, not as relative value judgments on property and property rights, but as a description of the logical, psychological, and temporal relationship between property and property rights. I am not normatively evaluating one as more important than the other. Rather, I am marking the necessary dependence of property rights on property. To be clear: I am not questioning the value of property rights and the significance of their politics with respect to property in the modern world or our study of them. ‘I am putting them in their rightful place, subordinate to a primeval human custom and our mediating symbolic minds’ (Wilson, 2020a: 189).

3. A mental model without the human mind

In the pages of this journal, McCloskey (2016b, 2016c) and Greif and Mokyry (2016) debate neo-institutionalism/modern economic analysis, and exchange critiques of one another. The debate proves instructive for my reading of a subsequent article in this journal, also by Greif and Mokyry, along with North (2005), which illustrate the circularity with which economists attempt to understand human conduct vis-à-vis institutions. The problem stems from eschewing that which makes us human – our symbolic minds.

I ask your indulgence to extensively quote their framework of institutions and behavior (Greif and Mokyry, 2017: 26–27, bold added):

We suggest that **institutions – rules, expectations, and norms – are based on shared cognitive rules**. Indeed, it is hard to think of **incentives as anything but a cognitive rule**. **Cognitive rules are social constructs** that convey information which distills and summarizes society’s beliefs and experience. These rules have to be self-enforcing and self-confirming, but they do not have to be ‘correct’. **Cognitive rules include** not only **beliefs** based on observed empirical regularities such as the difference in temperature between winter and summer (which each individual can observe on his or her own), but also beliefs about nature such as that the gravity of the moon causes the tides and that smoking causes cancer, which individuals believe because they are socially accepted (equilibrium) cognitive rules. **The incentives that people respond to** are also socially based **cognitive rules**: people believe that certain actions will lead to certain outcomes. For instance, in some societies people believe that working hard and paying one’s taxes honestly are rewarded and are the correct things to do. In others, people have different moral beliefs on what constitutes ‘cheating’ on their taxes, what constitutes ‘shirking’ on their jobs, and what constitutes a ‘bribe’ as opposed to a ‘fair payment’. The very definition of these concepts is shared cognitive rules. These rules others may think of as ‘institutions’. We think that **cognitive rules such as what is moral, what is expected of people to do in certain situations, and how causes lead to outcomes are underlying the regularities in behavior that are generated by institutions**. Without such social mechanisms, people are incapable of making sense of much of the world around them, neither of the society they live in, and the markets they buy and sell in, nor the physical and biological world with which they cope with on a daily basis. Economists have typically assumed that people make decisions on the basis of knowledge of the problems they have to solve. What North and others have pointed out is that the **rules** by which this knowledge emerges are the result of individual learning; we, on the other hand, see **them as social constructs** that provide the foundation of individual decision making and that are transmitted by social rules – such as the rules of the road or the rules of the market.

¹See Libecap (1989) and Ostrom (1990) for discussions of how property right rules need to fit the community on the ground, and Smith and Wilson (2019) and Wilson (2020a: ch. 9) for discussions on the bidirectionality of human conduct.

How should we think about institutions and cognitive rules? **Cognitive rules**, which summarize and aggregate society's beliefs and attitudes, **are followed because individuals** with limited cognition – that is, everyone – have to rely on them in exercising their choices since these **rules link outcomes to decisions** and thus **set the incentive structure**. The knowledge and information conveyed by the consequences of choices and decisions are specified by these rules. **Individuals have the option to follow the rules or not, but they normally cannot set the rules**. In other words, cognitive rules correspond to behavior when the cognitive frameworks they convey constitute an equilibrium in a 'game' between each individual and the rules. If I take this action, such and such is likely to happen – whether that involves eating spoiled food, driving through a stop sign, or writing a rude email. In a sense, one is 'playing' by responding to the rules rather than to the other players. The individual takes the rules as given – as if they correspond to reality – in making choices.

To which I will add a selection of the response by Greif and Moky (2016: 31, bold added) to McCloskey (2016b):

Her criticism is especially otiose, however, because the literature has long recognized that rules are, well, rules and that motivation is the linchpin of institutions. One work that expresses this view is Greif (2006). He noted that **rules 'are nothing more than instructions that can be ignored**. If prescriptive **rules** of behavior are to have an impact, **individuals must be motivated to follow them ...** By '**motivation**' I mean here **incentives broadly defined to include expectations, beliefs, and internalized norms**' (p. 7). Furthermore, 'taking the reasons that people follow rules as exogenous to the analysis, as North's institutions-as-rules approach does, is clearly useful for various purposes, but it is limiting to consider motivation as exogenous' (p. 39). In short, 'motivation ... is the linchpin of institutions, as it mediates between the environment and behavior' (p. 45).

I include everything from the first sentence to the last sentence in each quotation so that the reader has the complete reference with which to assess my comments.

Let's summarize the framework based on the bolded portions of the quotations. An institution is rules, expectations, and norms. An incentive is a cognitive rule. A cognitive rule is a social construct. A cognitive rule includes beliefs. An institution is based on shared cognitive rules. People respond to incentives. People respond to cognitive rules. An institution generates regularities in behavior. Cognitive rules underlie regularities in behavior. A cognitive rule may be what is moral. A cognitive rule may be what is expected of people to do in certain situations. A cognitive rule may be how causes lead to outcomes. Rules are social constructs. Rules provide the foundation of individual decision making. Rules are transmitted by social rules. A person follows cognitive rules because cognitive rules link outcomes to decisions. A person follows cognitive rules because cognitive rules set the incentive structure. A person has the option to follow a rule or not, but they normally cannot set the rule. A rule is an instruction that can be ignored. Individuals must be motivated to follow a rule. Motivation is an incentive. Motivation includes expectations, beliefs, and internalized norms.

In this form, the circularities of the framework become apparent. To say that a person follows cognitive rules because cognitive rules set the incentive structure is not just circular but undoubtedly tautological if, 'indeed, it is hard to think of incentives as anything but a cognitive rule.'

How does an institution generate regularities in behavior? Cognitive rules underlie regularities in behavior. How do cognitive rules underly regularities in behavior? People respond to cognitive rules. How do people respond to a cognitive rule? By following or not following a cognitive rule.

Why does a person follow a cognitive rule? A person must be motivated to follow a rule. What motivates a person to follow a rule? Expectations, beliefs, and internalized norms motivate a person to follow a rule. What are the expectations, beliefs, and internalized norms that motivate a person to

follow a rule? The incentives for a person to follow a rule. What are the incentives for a person to follow a rule? Another way to ask, ‘Why does a person follow a cognitive rule?’

Let’s go again. Why does a person follow a cognitive rule? A person follows what is expected of them in a certain situation. What is the expectation of a person in a certain situation? Motivation to follow a cognitive rule. What is motivation to follow a rule? An incentive to follow a rule. (See above.)

Again: Why does a person follow a cognitive rule? A person follows what is moral. What is the moral thing for a person to do? That’s for the humanities to ponder. In economics it is an incentive to follow a cognitive rule. What is an incentive to follow a cognitive rule? (See above.)

One last time: Why does a person follow a cognitive rule? Because a cognitive rule links outcomes to decisions. Why does a cognitive rule link outcomes to decisions? An outcome is the origin of someone’s action.

The problem is that despite recognizing that the mind is important – the title of their article is ‘Cognitive Rules, Institutions, and Economic Growth’ – there is no discussion of what makes cognitive rules ‘cognitive.’ The framework is still mindless behaviorism, that is, utility maximization that makes consequences the origin of our actions (McCloskey, 2016c).² Aren’t beliefs something of the mind, you ask? Yes, and beliefs are an element of an institution for Greif and Mokyr. But like economists in general, they treat beliefs as information, as propositions we know to be true. Beliefs, as the humanities recognize, are more. They are ‘a way of thinking and feeling about what we know to be true’ (Wilson, 2022: 9). Beliefs are, McCloskey (2016c: 73) adds, ‘dispositional and practical’. They are founded on sentiments, often moral ones. Think of modern politics in the Age of Covid.

Economics is spinning its wheels trying to develop mental models of human conduct to understand institutions, including that of property.³ We need a framework that treats cognition as the embodied mental process by which we perceive the world. We need a framework that distinguishes outcomes from the origins of human action. We need a framework that distinguishes cause and effect in an evolving historical process. We need a framework that explains human action as meaningful. We need a framework that explains property rights at the level of the individual and their community. And then we can see why property rights are secondary.

4. Explaining the custom of property

The same dissatisfaction that concerns North (2005) and Greif and Mokyr (2017) concerns me regarding the analysis of institutions such as property. Economists and political scientists tend to think that about institutions as impositions from the external world on the individual – when what happens inside our heads would appear to be as important as what is imposed on us from the outside. North presents the problem as one of individual learning and feedback and gestures to the brain to explain what happens in our heads. Greif and Mokyr recognize both as deficient, presumably for the obvious observations that humans learn and internalize feedback socially and that the mind, not the brain, is what is meaningful in human intercourse. They propose thinking about what happens inside our heads ‘as social constructs that provide the foundation of individual decision making and that are transmitted by social rules’ (Greif and Mokyr, 2017: 27). That’s a good start, but it’s also where they stop. Cognitive rules are something constructed socially. That’s it, something constructed socially. They stop with the tautology. My argument opens with what that something is.

The material explanation

Cognition begins in the physical world when a stimulus like light or sound contacts our body. An impulse of electricity travels to the central nervous system, and the mind (not the brain) classifies

²See Smith and Wilson (2019).

³For related discussions, see Kimbrough and Wilson (2022), Smith and Wilson (2019), and Wilson (2008, 2010, 2012).

that impulse relative to the entire neural physical order. Such classification is *abstract*. It is an interpretation by the mind we call perception out of the ‘great blooming, buzzing confusion.’ Perception in the abstract is key to the argument that property is primary and property rights are secondary. Perception in the abstract determines both the particulars we sense physically – seeing the colors blue and black – and the concepts we form mentally – a blue and black dress. As Kant is famously paraphrased, ‘concept without percept is empty; percept without concept is blind.’ It doesn’t go the other way. It doesn’t go from sensing particular colors of blue and black by the body to the interpretation of the colors blue and black in the mind. Nor does it go from a bunch of blue and black jigsaw pieces that the mind fits together to form a blue and black dress. No, the object in the physical world is *re-presented* to the mind, via an interpretation of the physical impulse, and then the mind, so to speak, calls on the abstract concept of ‘a blue and black dress.’ Such a representation to the mind forms the sense in us of seeing the blue and black dress before our eyes.

Such thinking doesn’t come naturally to us. We want to think of cognition as adding up sensory pieces to form a whole, when it works in the opposite way. We perceive a whole abstractly which subsequently can be broken down into pieces, which is the literal Greek word *analysis*, break apart.

Several abstract concepts compose property, but the central concept is *MINE*.⁴ Two features of the concept are important to the account of property as a custom (Wilson, 2020a). First, in every language someone can say, ‘This is mine,’ which means we have good reason to believe that *MINE* is universally human (Goddard and Wierzbicka, 2016). Decker (2022) doubts that humans universally practice the custom of property. I find it odd that his counterexample is a satellite state of the Soviet Union whose government agents murdered people who dared to say, ‘Das ist meins!’, which failed after 41 years of repressing property, and which was ultimately replaced with a state that respects the universal human custom. As I note in the article, when I say that someone can say, ‘This is mine!’, I am using the word *can* in a socialized sense of duty and following rules at the micro and meso level of the community. Decker is using it to mean what is legally permitted at the macro level by the government. Decker engages my argument with macro lenses. The project is about constructing micro and meso level lenses for property.

Secondly, the concept *MINE* is semantically primitive, meaning that it cannot be broken down into smaller semantic units (Goddard and Wierzbicka, 2016). *MINE* is like other universally human concepts, such as *DO* and *THIS*. The word *do* carries the meaning of *DO* and *this* the meaning of *THIS*. That’s as far as linguists can break down *do* and *this* in every language. *DO*, *THIS*, and *MINE* are all semantically primitive. The concept *RIGHT*, however, is not semantically primitive, which is one reason why the meaning of *right* has drifted over time in English (Wierzbicka, 2006).

The importance of *MINE* is that humans connect themselves to a thing with the abstract concept. I hypothesize in Wilson (2020a) that there is a principle by which the human mind abstractly classifies things in the world with the concept *MINE*. In the same way that the concept *I* appears to be contained within a physical body, our minds locate the concept *MINE* as being contained within the thing we call mine. Where my body goes, so the concept *I* goes with it. Likewise, where a tool I claim as mine goes, so the concept *MINE* goes with it. Latin diction in the debates of thirteenth-century scholastics through language choices in sixteen-century jurisprudence appear to support such a claim. Authors say things like ‘X has property in a thing.’ With the choice of the preposition *in*, they metaphorically locate the concept of property, one semantic component of which is *MINE*, as inside the thing.⁵ With things like cows which wander on their own accord, my claim to a particular cow as mine also appears to go with the thing.⁶

The material explanation of property establishes that our minds universally perceive connections between people and things by abstractly classifying the thing as mine, which is cognitively prior to

⁴I use small capitals to denote a concept and italics a word.

⁵Such a linguistic claim is not universal (see Wilson, 2020a: 99). The choice of prepositions and their physical relationships as metaphors is conventional. The evidence of the universality of property is for the concept *MINE* not the Latin and English word *in*. Simple linguistic evidence cannot establish the universality of emphysicalizing *MINE* in things.

⁶In Wilson (2020b) I provide some evidence on the in-ness of property from a 3D economic experiment.

sensing a specific person and thing as the very situation (of property rights) before our eyes. The material explanation of property is about the necessary cognitive foundations that make property possible.

But so far, the argument is about one mind and one person's claim of something as mine. One person's claim of 'This is mine' does not make the abstract custom of property, as all two-year-olds bitterly learn. Nor does the word *mine* itself imply a right in the thing (and correlative duties). We should be precise here. The word *mine* by itself and in the abstract carries the concept MINE and only MINE. We need much more than MINE to get to a right in the thing. We need much more than MINE to get to property in a thing. What we need is other people, and then with property in a thing, we can get to a property right to a thing.

The formal explanation

As an anonymous reviewer taught me, Kant differentiates two ways in which someone possesses a thing: physically and intelligibly (Kant, 1797/1999; Williams, 1977). Physical possession is the familiar use and control of a thing. Intelligible possession means 'that a thing will be mine even though I do not happen to have it with me' (Williams, 1977: 32). Many animals physically possess things, but only humans intelligibly possess things (Wilson, 2020a). Note: 'intelligibly,' that is by a symbolic mind. Why does my claim 'This cow is mine' go with the cow as it wanders out of sight and onto my neighbor's land? Because my neighbors can know that what I say about the cow is true, because my neighbors can say to me about the cow, 'It is yours,' and because my neighbors cannot say about the cow, 'This is mine.' Property is embedded in a community. My claim on something as mine is an element of property, but property doesn't stop there. I make a claim *to* other people and rely on them to use the concept YOURS in acknowledging it. I rely on my neighbor's mind to classify Bessie as 'You can say about the cow, "It is mine."' Other people and I – we – make property a custom in our community. Property is both something I subjectively experience (only I can say, 'This cow is mine') and something known objectively by other people. Or, as Deirdre McCloskey in her coinage would say, 'know conjectively,' that is, socially *with* other people, as against a God's eye view implied by 'objectively' (McCloskey, 2006).

My mind and the minds of the other people in the community conjointly make property possible. Our minds combine abstract concepts to form constellations of abstract ideas. There is an *abstract form* of an idea *common to all human communities* by which many different people can take on the role of an 'I' who has property in a thing Y:

- (1) I can say about Y: 'This is mine;'
- (2) people can know that what I say is true;
- (3) other people can say to me about Y: 'It is yours;'
- (4) other people cannot say about Y, 'This is mine.'

At this point we can introduce history and connection between the material and formal explanations. The current generation of people transmits the abstract form of property to new members of a community, and the classification of the abstract form of property in the mind is something that happens to the neural order of the central nervous system.

The transmission happens at two levels that correspond to the two levels at which property works. A child learns individually from their mentor the 'ontologically subjective' component of property when they can and cannot say 'This candy is mine' (Searle, 2010). Candy from the shelf in a grocery store – no, Johnny. Candy from Grandma's end table – yes, after you eat your broccoli. We also acquire the information on the abstract form of property from the 'epistemically objective' interactions with our neighbors (Searle, 2010). Both my neighbor and I intelligibly read each other and the situation when I come by to take physical control of straying Bessie. Every time I bring her home the abstract classification is confirmed.

I do not specify the type of selection mechanism, individual or group, that connects the evolving transmission of concepts and ideas between the material and the formal. Because I am concerned with ideational evolution and not biological evolution, I don't feel compelled to take a side in individual versus group selection debate in biological evolution, though I would suspect both are at work in ideational evolution given the promiscuous constitution of abstract ideas. But also, do not take such a side-step as demurring on gene-culture co-evolution. It's all great fodder for future work.

Murtazashvili (2022) notes that I assume throughout the article that *property* means private, individual ownership and wishes that I discuss sharing. If, as I argue in Wilson (2020a), private individual ownership is in fact universal to all human groups, then it seems natural and perhaps prudent in the search for the human origins of property to start with the easier, and perhaps core, case of 'This is mine,' particularly since *MINE* is semantically primitive and *OURS* is definitely not. Except for the concept *YOURS*, which can be decomposed simply as 'You can say about Y, "This is mine,"' the common abstract form of property is presented entirely in terms of semantic primes and thus can be translated one-to-one into every human language (Wierzbicka, 1996). That is a long way of saying, yes, of course, sharing is important to human sociality and more than one person can jointly claim something as 'ours,' but the abstract form is going to be much more complicated than (1) – (4). I respectfully submit that such an explication is beyond the scope of my article, but a fine, useful, and important suggestion for future work.

The efficient explanation

One thing I did not do in the article was link the neurological arguments of material causes to the mental arguments of the efficient causes. As Hayek (1952: §2.7–10) discusses, there is, in theory, an isomorphism between the neural order of the fibers along which impulses travel and the mental order of abstract ideas by which human beings are intelligible to one another. That which moves a person to act is intelligible to other people because of the mental predicates we universally ascribe to other human beings as the origins of their actions. The atomic concepts of *KNOW*, *THINK*, *FEEL*, *WANT*, and *DON'T WANT* are how we understand the meaning of human action, and, furthermore, every language contains lexical exponents for each concept; that is, we can presume such concepts are universally innate (Goddard and Wierzbicka, 2014). Therefore, we can conclude that elements exist in the neural order of every human being that every mind abstractly classifies as knowing, thinking, feeling, and wanting. But there is no one-to-one correspondence between impulses and abstract ideas. Existence is all we can conclude, which, like existence proofs in economics, isn't much scientifically speaking, and certainly offers nothing practical. Herein lies the futility of North's gestures to the brain. Neurological existence doesn't help us understand the origins of human beings springing to action and the meaning of their action.

The final explanation

Teleology is always tricky. Traps abound, particularly in evolutionary biology, so you need to be careful here too with the evolution of ideas in a custom. The biological account of a trait in teleological terms is that the trait exists because of a selection mechanism for the survival benefits of the trait to the organism. For example, the essential oils in basil plants exist because of a selection mechanism for the benefit of insecticidal protection to the organism with such essential oils. One fallacious trap is to instead attribute such a trait to conscious design or simple need: Basil plants can't live without essential oils in the presence of some kinds of beetles, so that is why they have them.

The ideational account of a custom in teleological terms is that the custom exists because of a selection mechanism for the benefits of the custom to the person who practices it. Press me and I'll add 'group' if you require it to keep going with the argument. But do not fall prey to the fallacious trap that attributes property to conscious design or simple need. I do not say that humans can't live without property, so that is why we practice it. By final explanation of property, I mean what

Ferguson (1767/1782: 205) says of many human institutions, ‘indeed the result of human action, but not the execution of any human design’. My use of a final explanation for property is scientifically legitimate. I do not introduce, *pace* Adelstein (2022), a final mover into the study of property, despite what Aristotle says about final explanations. My use of a final explanation is about ideational genotypes and ideational evolution of a custom and analogous to final explanations in biology about biological genotypes and biological evolution.⁷ Adelstein seems to fear a final mover in my explanation of property merely because I broach the topic of Aristotle and teleology.

A second trap is to assume a different meaning for the ‘function’ of property. By function, I am not talking about material, formal, nor especially, efficient explanations. ‘The function of property is not what any one person intends before they do something, nor intends as they actually do something, because property does not exist for what any one person wants to happen at any one moment in time’ (Wilson, 2022: 12). By function I am not talking about what happens in some cases, nor about what happens in moments of the free will present. I am talking about why the custom persists as an idea in the long run.

The function, the purpose, the *what for?* of property is peace, not violence and conflict, because violence cuts against order in every species. Fighting is costly for any species, particularly when in direct competition for a resource. Thus, every species, if it is to remain a species, must solve the problem of how to minimize it. (Again, do not attribute such a statement to conscious design or simple need.) Animals, including *Homo sapiens*, are not outright combative at every turn because there are costs as well as benefits to any fight. Such costs induce agonists, through a gradual process of feedback and innovation, to follow practices, whether genetically scheduled or socially taught, to orderly engage their competitors. It is so in humans; the practice is the moral custom of property.

Note that I do not claim that property has only one ultimate social purpose. My use of the definite article should be construed as a definite article, nothing narrower, nothing stronger. The 405 isn’t the only freeway in southern California. It might be fruitful to explore other final explanations of property, but I have my doubts. Recall that my argument for the final explanation of the property embeds an efficient explanation of actions that are selected for over time. Other final explanations of property would also need to embed a historical process of different actions that are selected for over time. Economists would be quick to propose socially beneficial exchange as a final explanation of property. Order is indeed desirable to a community for generating new benefits from trade. But the sentiments that prompt people to exchange one thing for another thing would seem to me to be altogether different than the sentiments I, following Adam Smith, propose in the efficient explanation of property as part of an evolutionary interplay with the final explanation. But I like I said, I see no reason to be strident and claim here that peace is the only final explanation of property.

After deeming my argument ‘odd and muddled,’ Allen (2022) comments in footnote 2 that my final explanation of property ‘is approximately the Coase Theorem. Where there are no transaction costs, there are perfect property rights and peace.’ First, I note that Coase himself doesn’t argue that a condition of no transaction costs ever exists in the world.⁸ Allen oddly misses the point that the takeaway from Coase’s famous article is that because transaction costs are never zero, any particular institutional arrangement is not necessarily efficient. Secondly, Allen similarly misreads the final explanation of property to be about a perfect world of peace. My article is about human beings, not angels.

The idea that property is necessarily based on violence or the threat of violence rests in part on a mythical frontier notion of property. The seventeenth-century Dutch jurist Grotius (1604/1995: 227) frames property as the successor era to an imagined ‘Golden Age’ when ‘in the eyes of nature no distinctions of ownership were discernible’. Like Rousseau (1754/2005: 61–62), we explain property as ‘the first man who, having enclosed a piece of ground, bethought himself of saying, ‘This is mine,’ and found people simple enough to believe him’. The scholar of property law Rose (1994: 9), following

⁷See Haig (2020).

⁸Coase (1960) is hereby cited (Thurman, 2022). ;-)

Locke, traces the origin of property to ‘the act of establishing individual property for one’s self simply by taking something out of the great commons of unowned resources’. The modern image of property is Yosemite Sam sitting on his front porch with a loaded shotgun yelling, ‘You rackin’ brackin’ varmint! You are forcing to me use force.’ It’s a ‘me against the world’ mentality that equates a claim of property with the right to use physical force to exclude others from using it. And it is a mistake to confuse human fallibility that culminates in conflict for the function of property.

My article situates property within the confines of community – of other people *and* me, not other people *or* me. To claim property in anything is to have learned from my mentors when other people can know that what I say about such a thing is true. I draw upon the approval of my community to make such a claim. It is a ‘me *with* my community’ mentality to say ‘Hey, that’s mine!’ My community backs me up because I respect their claims of property in things. We honor each other’s claims because our mothers taught us to do so.

When someone acts counter to my claim, one question for the community is whether my claim is indeed true, for I too could be in the wrong or simply mistaken. Other questions include what makes for a valid claim and who has the authority and legitimacy to settle a dispute. Pre-state human communities settle on customary ways of answering these questions, which is why I say that ‘no single custom stands above all other customs. Property is one the many customs that human practice. By embedding property as one piece in the whole of human conduct that regulates our communities, we submit property to the same standards that we submit all customs to’ (Wilson, 2020a: 16). Authority, legitimacy, and validity all weave their way into how the custom of property is constituted and reconstituted. Such questions magnify as communities unite, voluntarily or involuntarily, to form macro level polities.

5. Ideas are primary

Social scientists and legal scholars commonly describe the conception of property as relationships between people with respect to a thing. So much so in property law that the thing itself drops out altogether from consideration.⁹ Property law, in the legal realist tradition at least, is not about physical things, but instead about a bundle of incorporeal rights and legal relations between people.¹⁰ Since Alchian (1965/2006) and Alchian and Demsetz (1973), economists too think through property with the conception of rights (probably unwittingly in the legal realist tradition).¹¹ The irony is that such thinking physicalizes rights and relations with the metaphor of a bundle of sticks. To answer Thurman’s (2022) question, the bundle of sticks lies on the macro level. The public administration of rights may work like a bundle of sticks does work in the physical world when government officials mete out justice and administer policy – add this stick, take those two out, tie together with some twine. But as a model for how property works in flesh-and-blood human beings and an explanation for how the custom arose in the first place, it is a complete inversion. Rather than dispensing with physical things, human beings start with the physical thing. Our minds classify physical things with abstract concepts like *MINE* and *YOURS*, and moral sentiments prompt us to make claims like ‘It’s mine!’ The perception of property is primary, while property rights are the result of secondary analyses logically, psychologically, and temporally. Property rights are about the concrete circumstances of time and place, emerging spontaneously or transpiring by deliberate government imposition.

The study of property rights, since Alchian and Demsetz, has been to identify and measure the costs and benefits of a property right regime with a decidedly *external stance*. Macro level government agencies, or the costs and benefits of a situation, exert their force on people from the outside, which then lead economists in their unguarded moments to say things like ‘Clearly, it is not the hunters who

⁹See, for example, Smith (2012).

¹⁰See, for example, Munzer (2001).

¹¹For a critique, see Wilson (2020a: ch. 9).

are to blame [for skinning baby seals alive], but the regulations governing seal hunting that impose a communal right' or 'Often the exercise of communal rights forces persons to behave in ways that are thought to be immoral' (Alchian and Demsetz, 1973: 20). Yep, clearly the costs and benefits made the hunters do it. No normative connotations nor moral bases to consider here.

What Alchian and Demsetz say in print, most economists only think to themselves. The external behaviorist stance, though, permeates economic analysis a half century later. Economists frame their projects around people responding to costs and benefits that flow from property rights. Alchian and Demsetz (1973: 17) literally use the flow metaphor when they pose the question as, 'What consequences for social interaction flow from a particular structure of property rights?'. Acemoglu and Robinson (2012: 450) literally say we can 'engineer prosperity' if we change the 'extractive institutions'. Unlike the brilliant Elinor Ostrom, economists generally don't ask the counterfactual question, nor look for the opposite cases when people *with the same particular structure of property rights* do not do the equivalent of skinning baby seals alive. To close such a gaping hole, we need ethics as well as economics to explain how property rights integrate, or fail to integrate, into different communities of people who conduct themselves efficiently or inefficiently, but also ethically or unethically.

The property rights paradigm is unidirectional, while that which we study, human conduct, is bidirectional. The current paradigm is the equivalent of using ordinary least squares when the presence of endogenous variables calls for two-stage least squares. Unidirectional estimates of property rights are inconsistent, even in the statistical sense, because they leave out the minds of ethical beings who have agency. The problem of property rights calls for inquiry from the inside out of human agency, because in the study of property, ideas are primary.

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