

COMMENT

## Where lies the bundle of sticks? A comment on Bart Wilson's 'The Primacy of Property'

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### Abstract

'The Primacy of Property' is a deep discussion of property as an evolved institution and should stimulate useful discussion of how property rights and transaction costs economists should ply their trade.

**Key words:** Property; property rights

### Preliminary thoughts

I confess to a difficult relationship with Bart Wilson's writing. I invariably find it difficult, which inclines me toward dismissing it. (Anything that difficult must be unimportant.) But experience has taught me that my initial impulse is not good advice and my reading in the past has paid rich dividends. Here, too, Wilson's consciousness-raising treatment of property (Wilson, 2022) is well worth the effort required. Do have your dictionary close at hand, though. (Emphysicalize, anyone?) And be better read than I. References in 'The Primacy of Property' span economics, philosophy, law, information theory, neuroscience, semantics, sociobiology, evolution, and animal behavior.

I take the purpose of this wide-ranging article to be to explain the evolution of property as a cultural artifact – to explain why the custom of property has such strong survival value for humans. As Wilson puts it: 'The task is to explain how a physical world of human bodies with minds that feel, think, know, and want – of material and efficient causes – gives rise to a custom of property with meaning and purpose.' While not wanting to spoil the punch line, he ultimately concludes that 'the function...of property is peace.'

### On the bundle of sticks

Wilson provides a deep analysis of the purpose and evolution of property. For practicing economists, including scholars in law and economics, an important question is: how should his insights affect the way we do economics? In particular, how should we revise the way we think of the economics of property rights, as famously pioneered by Ronald Coase (1960) and carried out extensively by other authors, most influential to me being Yoram Barzel (1997)? I note that Coase's work is not cited here – a rarity for economic writing on property and property rights. Barzel also goes uncited.

My pragmatic, and I believe common, view is captured well by the metaphor of the bundle of sticks. One's property rights over a resource comprise a bundle of rights, gathered into a package, and in principle separable from one another. (Though see Merrill and Smith, 2000, on reasons why some sticks may be inseparable from others.) An owner in 1880 of Iowa farmland had legal rights that included: the right to farm the land and retain the profits from doing so, to exclude others from entering it, to pass it on to their heirs, and to dig ditches on it that drained water onto neighbors' lands.

Given the collection of rights embodied by the bundle of sticks, and given their *de jure* and *de facto* natures codified by law, embedded in custom, and conditioned by the transaction costs of enforcement, we can entertain taking some of the sticks out of the bundle or adding others in. In fact, laws passed in Iowa in the late 19th century did just this by limiting the ability of land owners to drain water onto adjacent fields (removing one stick from the bundle) and creating quasi-governmental drainage districts with powers of eminent domain and the ability to undertake area-wide drainage projects (canals) and impose taxes on affected property owners (another stick). It has been argued (see Edwards and Thurman, 2022a, 2022b) that this amounted to efficient adaptation of the bundle of sticks to create value by solving the coordination problems that topography and drainage technology posed. Another historical application of this type of reasoning is found in Anderson and Hill (1975).

Whatever the ultimate evolutionary reason for the property system we observe, we live in a world well described by bundles of sticks. I believe that Wilson would consider this to be a rights-first treatment of property, considering the consequences of different rights regimes on the workings of economic exchange. He says, '[t]he standard view of unpacking property as rights-claims... wants to separate the question of what property *is* from the question of where property comes from.' Exactly. Can we not separate the analysis of property rights influenced by transaction costs from the arguably deeper question of how humans and human culture evolved the custom and legal institution of property?

In fact, one of Wilson's examples demonstrates the utility of the bundle of sticks approach, though the example trades a metaphorical bundle of sticks for literal piles of manure. As Wilson explains, in the evening of April 6, 1869 Thomas Haslem raked piles of manure along the side of a road in Connecticut, which William Lockwood the next morning 'stole' in order to apply the manure as fertilizer to his own fields. According to Wilson the custom of property gave Haslem property rights in the manure because the manure piles had been 'created by the dint of [Haslem's] employees' work.' This view was ratified by the Appellate Court of Connecticut in its opinion in *Haslem v. Lockwood*. The 1871 opinion illustrates a common law/transactions costs explanation for why the ruling is the reasonable conclusion. Isn't this the kind of analysis that scholars in law and economics would endorse and find unexceptionable? And isn't it consistent with the evolution of property among humans on a broader time scale?

### The conclusion

Wilson's essay explores how purely mental constructs of ownership order the physical world without changing it. This mental reordering has social function, and not just psychological implication, if statements such as 'this is mine and that is yours' represent beliefs shared by others. If this is so, property serves the grand function he attributes to it: 'Over the time scale of our species, the function...of property is peace.'

Wilson's claim about the link between property and peace is audacious. Contrast it with the more frequently heard 'property is theft,' coined by the French anarchist Proudhon in 1840 but foreshadowed nearly a century earlier by Rousseau: 'The fruits of the earth belong to us all, and the earth itself to nobody' (*Discourse on Inequality*, 1754). I think Bart Wilson disagrees.

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