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# The Primacy of Property; or, the Subordination of Property Rights

## Comments

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RESEARCH ARTICLE

# The primacy of property; or, the subordination of property rights

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## Abstract

A property right, the standard view maintains, is a proper subset of the most complete and comprehensive set of incidents for full ownership of a thing. The subsidiary assumption is that the pieces that are property rights compose the whole that is ownership or property, i.e., that property rights explain property. In reversing the standard view I argue that (1) a custom of intelligent and meaningful human action explains property and that (2) as a custom, property is a historical process of selecting actions conditional on the context. My task is to explain how a physical world of human bodies with minds that feel, think, know, and want gives rise to a custom of property with meaning and purpose. Property is primary because ideas are primary.

**Key words:** abstract thought; ideas; perception; property rights; property

**JEL Codes:** D23; D91; K11

## 1. Introduction

What I explain under this article's title is as much captured by the little word *or* as by the two noun phrases it conjoins. My proposition connects as causally true two alternative predicates for the very same thing: Property must come first and can be used to *explain* property rights, and property rights must come second and can be *explained by* property. I put the proposition this way in Wilson (2020): Property effects property rights. Or, as I emphasize here, property rights are an effect of property. The case of property is a particular example in human intercourse of the more general proposition that custom must come first and can be used to explain rights, and rights must come second and can be explained by custom. By rights, I mean moral (as opposed to legal) rights grounded in moral reason. The more general proposition could be stated as custom effects rights, or rights are an effect of custom. The even more general proposition in explaining mental phenomena is due to Hayek (1952, 1978), namely that abstract mental phenomena must come first and can be used to explain concrete mental phenomena, and concrete mental phenomena must come second and can be explained by abstract mental phenomena. Hayek's proposition concerning mental events could be stated as the abstract effects the concrete, or the concrete is an effect of the abstract. Our minds do not add up the concrete particulars of what we see – blotches of blue and black color of specific shapes and forms – to produce the abstract idea of a 'blue and black dress.' Our minds abstractly classify the neurophysical impulses sent from our eyes to be the particular case of a 'blue and black dress' before our very eyes.

My main concern is not to defend the truth of Hayek's general theory of psychology. Modern cognitive neuroscience accepts the core tenets of his theory as true, particularly the representation of

percepts and memories in cortical networks and the mind's process of classifying neurophysical impulses as sensations and images (Fuster, 2003: 7, 60). Nor do I argue the truth of the proposition for custom and rights, which is too general to expound upon here.<sup>1</sup> I focus on explaining how the specific proposition regarding property fits the general theory, which thereby prepares the way for tackling the grander question of how the general theory applies to custom and rights. I also do not take on metaphysics but ask how our minds cognize physical things, even if the physical world is in the end a mental existence. Impeach such an inquiry as unphilosophical or uneconomical and I demur. Natural history and the significance of yielding the generally accepted primacy of property rights to a new primacy of property, I submit, should inform both the economics of and the philosophy of property in the study of flesh-and-blood human beings.

## 2. Property is a custom

First, what is 'property' and 'property rights'? Property is one of numerous customs that humans universally practice.<sup>2</sup> To name a few others, all human communities teach the next generation how to make and use tools to make and use derivative tools, and all human communities use narrative to explain how things came to be.<sup>3</sup> They all distinctively fashion their hair, adorn their bodies, and practice hygienic care. All human communities learn the customary ways of greeting each other and for visiting kith and kin. All human communities and only human communities routinely exchange one thing for another thing (Ridley, 2010; Wilson, 2015, 2020). And, all human mentors teach their children the community's rules of property for at the least some small set of things, such as tools, utensils, and ornaments (Linton, 1952).

Property – like grooming, tool making, and storytelling – is a custom socially taught and learned each generation anew. No human being is born knowing how to style hair or be hygienic. Nor is any human being born knowing what 'not yours' or "Thou shalt not steal" means. No matter how insatiable the desire may be to call things 'Mine!', all children must learn from their mentors how *not* to acquire things they intently want. Different communities may teach different rules about what things under what circumstances people can claim as 'Mine!', but they all use the abstract concept NOT to delimit some set of things as those about which you *cannot* say, 'This is mine.' The concrete particulars concerning the circumstances and the set of things may vary from time to time, place to place, culture to culture. For example, a hunter at the time of Justinian or Blackstone can kill a deer in an open field and call it 'Mine!' Cephu, a Mbuti Pygmy, however, cannot call the forest antelope he spears 'Mine!' *if* he sets up his net ahead of everyone else's (Turnbull, 1968/1987: ch. 5; see also Boehm, 2012). 'Not yours' is what Cephu's band could say to him about the entire carcass, including the liver that his wife had hidden in the event he was caught. If Cephu sets his net in line with everyone else, then he can call the forest antelope he spears in his net 'Mine!'

In every human language there exist lexical exponents for the abstract concepts NOT, MINE, THIS, THING, YOU, I, CAN, and SAY [I use the notation of the linguists Wierzbicka (1996) and Goddard and Wierzbicka (2016) to denote a concept in small capitals and a word in italics], which means that in every language someone can say things like we say in English: 'you cannot say about this thing: this is mine' or 'I can say about this thing: this is mine' or 'you can say about this thing: this is mine' or 'I cannot say about this thing: this is mine.' Property is an *abstract* custom composed of semantically primitive and indefinable-except-of-themselves concepts. In every language you can say, 'This thing is mine,' and in every language you cannot break that down further into smaller conceptual sets of meanings. There is an abstract form common to the custom in all communities, past

<sup>1</sup>Commons (1924: 332) anticipates such an argument for legal rights: '[Laws] spring from authority, custom, habit, initiative, or what not.' Nevertheless, it is important to read *rights* in this essay as moral rights.

<sup>2</sup>In what follows I never use the word *property* to refer to a thing. Prior to the eighteenth century, writers like Francis Bacon and Sir Edward Coke never called a material good property.

<sup>3</sup>For a more complete list as of the early 1990s, see Brown (1991).

and present. Property is, as Wittgenstein (1980: §672) says of concepts more generally, ‘not for use on a *single* occasion’ (original emphasis). It operates in our minds, and on the occasion of putting your net in the semicircle with everyone else’s, our minds classify the prey in the net as ‘yours.’ On other occasions, as Cephu knew but still learned the hard way, the prey is classified as ‘not yours.’

So far everything sounds mostly plausible, or at least not unreasonable, to most readers and controversial to only a few. But when we reflect on the observation of a common abstract form by which someone can claim something as mine, it means that the study of property rights as rights starts at the wrong end and then proceeds to argue without explaining that which most requires explaining. The wrong end is asserting that property presupposes property rights; that is, some collection of property rights composes the custom of property.<sup>4</sup> It may appear that in our economic, legal, and philosophical inquiries that property is derived from property rights. But such an appearance is an error.

Depending on the account of property rights you encounter, the kinds of actions or objects an asserted right pertains to varies, but the explanation generally follows Armen Alchian’s trailblazing lead by defining property rights as ‘the rights of individuals to the use of resources’ or ‘a socially enforced right to select uses of an economic good’ (Alchian, 1965/2006: 53; 1991: 584). Such a definition is often sufficient to assert for the purposes of economists, whose analyses generally take the institution of property rights as a given and proceed from there to weigh the costs and benefits of different patterns of rights. My aim is to put the question marks deeper down and explain the how the custom of property is functional, not in the Marxian sense, but in the sense that biologists ask about the function of a trait to understand both its etiology and how it is adaptive. To explain the primacy of property we need an account why humans have the custom of property.

The richness of thinking about property in terms of *why?* is that there are, as Aristotle taught us, four different kinds of explanations: the material, the formal, the efficient, and the final.<sup>5</sup> (1.) Humans have the custom of property because physical bodies operate with a mind that perceives – organizes, identifies, and interprets – sensory input from the world such that it connects a person to a thing by classifying the thing as ‘mine’ (the material explanation). (2.) Humans have the custom of property because people learn from their mentors the circumstances under which a common abstract form makes a thing ‘mine’ or ‘not mine,’ ‘yours’ or ‘not yours’ (the formal explanation). (3.) Humans have the custom of property because when someone acts in opposition to a thing classified as ‘mine,’ the resentment we feel prompts us to be an agent of change and defend ourselves (the efficient explanation). (4.) Humans have the custom of property because it confers peace to a species which is impudent, capricious, and malicious when resources are scarce (the final explanation).

The central claim is that the formal and final explanations of property arise from material and efficient explanations of the custom by a history of selecting actions conditional on the context/environment.<sup>6</sup> 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. In principle, there is a complete reductionist account of property based solely on material and efficient explanations, and in which human actions reoccur synchronically; that is, we can answer the question of how property works in the moment independent of history and function. But we cannot give a full meaningful account of property without reference to its historical abstract form and purpose. The formal and final explanations of property, as marked by our actions, are a part of the custom. With such an account of property in hand, we can proceed to explain how property rights are an effect of property.

<sup>4</sup>A related kind of error, the legal realist kind, is to argue that no such necessary and sufficient collection of property rights exists for all things, and thus(!) there is no prior concept of property. See Grey (1980). Once the order of explanation is reversed, i.e., property rights are derived from property, the legal realist challenge to property fails.

<sup>5</sup>For a summary, see Shields (2022).

<sup>6</sup>For key ideas which cause and give form to the claim and the next four sections, see and compare with the book length premise of Haig (2020).

### 3. The material explanation

Let me begin with the physical world. Cognition begins with a neurophysical input to our bodies from some object in the external world and ends with the body doing or saying something in the external world. What happens in the middle, in the mind, determines the order of what comes first to do some explaining and what comes second to be explained.

The common misconception is, for example, that when light from an object in the external world contacts our eyes, it conveys the qualities of the external world into an (afferent) impulse which travels to the central nervous system to preserve the qualities of the external world in the memory of the central nervous system. Then on another occasion when light from the same object again contacts our eyes conveying the same qualities of the external world into an afferent impulse, our physiological memory recalls the qualities and sends to the mind the perception of a sensation of sight.<sup>7</sup> The perception from memory, the misconception concludes, is the result of what we see in the external world.

Such a misconception is a generalization of how we incorrectly assume we teach the *tabula rasa* of a child the colors of the rainbow. The first time a parent sits down with their child and points to a blotch of yellow, we imagine something about the yellowness of the light as entering an afferent impulse which is preserved in the child's body upon arrival at the central nervous system. Then when the parent next sits down and asks the child to identify the color they see, the child's physiological memory recalls yellowness qualities from the central nervous system and sends to the mind the perception of the sensation of seeing yellow. The parent confirms that their child knows the color yellow when the child can report back as a word that what they see is yellow. The misconception is that the sensation of seeing yellow from the light explains the perception of yellow in the child's mind. Rather, the perception of yellow in the mind explains the sensation of seeing yellow. Perception inside the mind is primary; sensation of what we see through the eyes is secondary.

How does perception effect sensation? When the light from an object hits our eye, it does not convey a quality of the external world into the afferent impulse.<sup>8</sup> The neurophysical input instead stimulates an impulse of electricity to travel to the central nervous system. The mind then classifies the impulse in the context of the entire neural order in the body as the sensation from seeing; that is, the mind organizes, identifies, and interprets a particular impulse as *relative to the entire neural order* as the sensation of seeing something. The relative position of the impulse determines the character of the mental quality, which is why in 2015 some people looked at an Internet image and saw a white and gold dress and others looked the very same image and saw a blue and black dress (Wallisch, 2017). The minds of those who saw a white and gold dress organized the impulses from the dress relative to the impulses from the light *next* to the dress in such a way that the light next to the dress was illuminating the dress from behind. The minds of those who saw a blue and black dress did not organize the impulses from next to the dress as illuminating the dress. Moreover, evidence suggests that those who saw a white and gold dress also appeared to have a history of longer exposure to short wavelength daylight as compared to those who saw a blue and black dress and had a history of longer exposure to long wavelength incandescent light. In other words, the position of the impulses from the light of the dress is relative to the impulses of light in the entire neural order of the body, and that relativity determines how the mind identifies and classifies the sensation we see. The qualities we see in an image are not properties of the image itself, but a set of classified relations in our mind.

Sensory qualities are determined by a classification that happens in the mind. Perception is an interpretation by which the mind abstractly classifies the neurophysical inputs it receives to be the concrete particulars that we sense. As with sensory qualities and images, 'the formation of abstract concepts,' Hayek (1952: 145) explains, 'constitutes a repetition on a higher level of the same kind of process of classification by which the differences between sensory qualities are determined' (see also Parkinson and Wheatley, 2013). By higher level, he means a supraconscious process of abstract classification.

<sup>7</sup>Failing to explain how an external object happens to be classified as 'the same' is the first clue that something is missing in such an explanation.

<sup>8</sup>The eye collecting the signal from the environment is not sensation. It is signal collection.

When our body sees, hears, and touches the physical world, our mind connects a certain person to a certain thing by classifying the thing with the abstract concept MINE or NOT MINE. People in such diverse languages as English, Ewe, East Cree, Longgu, Arabic, Finnish, Koromu, Chinese, and Vietnamese can say, ‘This (thing) is mine,’ and in each language there is a one-to-one cross-translatable lexical exponent to express the abstract concepts THIS THING (is) MINE and THIS THING (is) NOT MINE (Goddard and Wierzbicka, 2016). Have linguists exhausted every single language on the planet? No. But given the rather diverse languages that they have studied for the sake of being diverse, it might very well be true that in every language human someone can say, ‘This (thing) is mine.’ Is there any other independent evidence that could corroborate the claim? Yes. Anthropologists spanning the second half of the twentieth century have concluded that ‘in every culture known to history or ethnography’ (Murdock, 1945: 124), all human groups have concepts of property. However minimal it may be (Linton, 1952), there are some things about which only a particular individual can say, ‘This is mine.’

*Homo sapiens* is the only animal whose mind classifies a thing as MINE or NOT MINE (Wilson, 2020). Primatologists surmise that chimpanzees think things like ‘I want this’ (Roberts *et al.*, 2014). Apes point at and request grapes and Wonder Bread like any human who wants something sweet. But, as every two-year-old learns in a tantrum, a particular thought of ‘I want this’ in the here and now does not mean the same thing as ‘Mine!’ in the abstract beyond the here and now. The abstract concept MINE stands outside the here and now, and it is a core concept for the custom of property.

The material explanation for why someone can say, ‘This thing is mine,’ is that the human mind classifies a neural order of impulses that travel on the nervous system with the abstract concepts THIS THING (is) MINE. I hypothesize in Wilson (2020) that classification abstractly emphysicalizes the concept MINE in the very thing itself. The supporting evidence ranges from the creation of compound spears in early humans and Latin diction in thirteenth-century scholastic treatises to cognitive linguistics of sixteenth-century jurisprudence and a twenty-first-century laboratory experiment on a nineteenth-century found property dispute, all of which reflect a supraconscious principle of the mind: property is located in the very thing itself. When we use a hammer, our minds assimilate the tool as part of our body. We feel the nail through the hammer (Polanyi, 1958/1974). The power of abstract thought is that we can still be inside a hammer we call ‘mine’ even when we are not physically holding it. Just as the concept I is in my physical body, if I can say, ‘This hammer is mine,’ part of me – the atomic MINE part – is abstractly located in the hammer even when I put it down. When Henry of Ghent describes a usufruct in Latin as someone who ‘does not have *dominium* or *proprietas* in the thing,’ the case that the Latin preposition *in* takes for ‘the thing’ is the ablative (locative) and not the accusative (motional) case. The language reflects the mind’s classification of property as being located in the thing, not in motion outside and towards the thing.

When Sir Edward Coke reports on ‘The Case of the Swans,’ which he litigated on behalf of Queen Elizabeth, he uses the phrase ‘have property in Y’ eight times. Prepositional phrases reveal how our minds cognize the external world. When our minds classify the light from the scene of a teacup as the sensation of seeing ‘the tea in the cup,’ the concept IN classifies (1) a spatial relationship between two things, in this case a cup and some tea and (2) a functional element which reflects an interactive relationship between the cup and the tea (Tyler and Evans, 2003). The functional element of IN in ‘the tea is in the cup’ is that the cup contains the tea. There is an inside and an outside to the cup and a boundary between the inside and outside such that where the cup goes, so goes the tea in the cup.

When my mind classifies the light from the scene of a cow and I say, ‘I have property in this cow,’ the concept IN likewise classifies a functional element of containment. If I can say, ‘this cow is mine,’ then the functional element from the concept IN in ‘I have property in this cow’ is that the cow contains the property. One abstraction from higher-level processes of classification is that the concept of property is inside the thing I see as this cow. The choice of the preposition reveals a supraconscious principle of the mind regarding me, property, and this cow. There is an inside and an outside to this cow and boundary between the inside and outside such that where this cow goes, so goes the property in this cow. No matter where this cow may wander, I can say, ‘This cow is mine.’

#### 4. The formal explanation

When I have property in the cow, it is not just about me feeling, thinking, knowing, and saying ‘This cow is mine.’ Property is a speech act (Rose, 1985), jointly attended to by other people who have been taught by the previous generation of mentors the circumstances under which I can claim this cow as mine. When I say, ‘This cow is mine,’ the utterance is predicated upon something more than a growl of aggression. I aim to do something, à la John Searle’s illocutionary declaration, with my words (Searle, 2010). I aim to clarify, or perhaps change, how your mind classifies the thing. The claim is predicated on the abstract notion that other people can know that what I say is true. How do other people know that what I say is true? Such a truth is not like the speed of light, a physical constant of the universe. My audience and I have learned from our mentors when such words are true. Insofar as the custom of property relies on what other people know, it is not subjective, but insofar as I commit myself to be the person who confidently says, ‘This is mine,’ the custom is not objective either. In language of Searle (2010: 17–18), statements of property such as ‘This is mine!’ are ‘epistemically objective’ concerning an existence which is ‘ontologically subjective,’ that is, only experienced by me. Property transcends the subjective-objective dichotomy. However human communities apply property to whatever set of things, the formal explanation is that our thinking about property is abstract and intersubjective.

Just as only I can use the concept *I* to refer to myself, only I can use the concept *MINE* to predicate a claim on something I have property in. Both first-personal concepts are singular. If I can say about the cow, ‘This is mine,’ then only I can use *MINE* and emphasize it in the cow. I am using the word *can* in a socialized sense of duty and following rules that comes from people knowing that what I say is true (Wierzbicka, 1996: 104–105). I’m not saying that two different people don’t ever feel inclined to claim the same thing as ‘mine.’ I’m saying that the formal explanation of property includes a notion of community equilibrium about the rules of who can claim a thing as ‘mine.’<sup>9</sup> If other people know that what I can say about the cow is true, then by the same community knowledge, the social constraint on other people is that they cannot say about very same thing, ‘This is mine.’

While the circumstances and the set of things may vary from culture to culture, there is a common abstract form by which someone claims a thing *Y* with *MINE*:

- (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;’ and
- (4) other people cannot say about *Y*, ‘This is mine.’

Such an abstract form is grounded in the material explanation because the classification that happens to the neural order of the central nervous system embodies a perception that has been successfully transmitted to it from a previous generation. Why is the perception successfully transmitted to a new generation? Because something about the classification has worked in the past. Such a form is abstract because there are potentially many things in a particular situation that could be classified as a *Y*: a cow, a swan, a hammer, a Tesla model. There are also potentially many different people who could be classified as an ‘*I*’ who could say about a *Y*, ‘This is mine,’ and there are potentially many different groups of people who could be classified as knowing that what an ‘*I*’ says about a *Y* is true. Such an explanation for property is in Aristotle’s sense formal because it is that which makes a *Y* ‘mine’ rather than ‘not mine’ or ‘yours’ rather than ‘not yours.’

Even though only I can use the concept *MINE* to predicate a first-person claim on something, everyone else in the community must use the concept *YOURS* when referring to my claim. I thus rely on *YOURS* when I want others to acknowledge my claim that something is mine. Property is thus reciprocal. If I want other people to say ‘That is yours’ to me and my relationships are, in general, reciprocal in the community, then duties in the socialized sense may prescribe that I respect their claims of ‘This is mine’ about other things. Property isn’t unilateral; it requires reciprocal relationships. Property

<sup>9</sup>Cf. Smith and Wilson (2019: 78, 81).



requires me to respect other people's claims of 'This is mine' as much as it requires them to respect my claims of 'This is mine!' If there are things about which I can say, 'This is mine,' there are other things that I can say are yours: 'You can say about it, 'This is mine.'"

The common abstract form of property is acquired information about my past actions and the past actions of my mentors. The physical neural order in the body contains information because it differs from the physical neural order it could have been had circumstances been different. The classification of the perceived thing could have been like that of a deer, a wild animal, in which case when the thing wanders over to the neighbor's yard, the physical neural order would not have been classified as another hoofed mammal with the abstract form of property. I could not say, 'This deer is mine' while visiting my neighbor. But if a horse or a goat or a pig had wandered over to the neighbor's yard, I could say about the horse, goat, or pig the same thing I can say about this cow: 'This Y is mine.' However different we may perceive the horse, goat, pig, and cow to be, the abstract form of property cancels the physical differences between horses, goats, pigs, and cows, but not deer. The physical neural order in my body gives form to my actions and to Y, the very thing itself, as I perceive it.<sup>10</sup> Moreover, the abstraction of a material cause of property gives *the same* form to my actions regarding animals of the same abstract kind, namely, domesticated animals.<sup>11</sup>

The information in the common abstract form of property is acquired because it is socially transmitted from the environment. The physical neural order in the body receives information about what I have done in the past regarding things in general, and this thing in particular, as classified by the abstract principles in my mind. It also receives information about what my mentors have done in the past regarding Y-like things, and it receives information about how MINE has worked with Y-like things in the past.

Linguists of the Natural Semantic Metalanguage persuasion such as Anna Wierzbicka presume that each primitive concept in the abstract form of property – I, CAN, SAY, THIS, MINE, PEOPLE, KNOW, SAY, TRUE, OTHER, and NOT – is innate,<sup>12</sup> but the abstract form of property which combines those concepts as such in (2) and (3) is transmitted socially from mentor to mentee. We learn from everyday experience when 'people *can* know' something and that 'other people *cannot* say' something. Moreover, the circumstances and the kinds of things that the physical neural order classifies according to the abstract form of property are transmitted socially from mentor to mentee. The formal explanation of property is socially acquired from the past and serves to give form both to our actions in the present and our intentions to act in the future. Again, history matters.

## 5. The efficient explanation

Material determinists use physical law to argue that people do not freely act because our actions have prior physical causes. 'Another interpretation,' Haig (2020: 349–350) argues, 'is that we are free when our actions are not controlled by immediate causes external to ourselves.' Both the material and the efficient are causes, and both determinism and free will are true. There is a causal story behind each firing neuron, each element of the physical neural order, and each molecule in the physical world of

<sup>10</sup>In medieval Latin, *informatio* meant molding or giving form to matter (Capurro and Hjørland, 2003 via Haig, 2020).

<sup>11</sup>The pedant may be tempted to say, 'All abstract notions in some way correspond to things that we perceive, so why do we need some complex physiological story about perception for property?' Because our minds do not add up the pieces of what we sense to form the whole that is property in an animal (see the material explanation). Perception is primary, sensation secondary. The abstract operations of the mind as a whole give the particulars we sense their distinct position in the whole system of abstract relations.

<sup>12</sup>See Wierzbicka (1992, 1996) and Goddard and Wierzbicka (2014, 2016). Because these semantically atomic concepts have a lexical exponent in every natural language (and the concept cannot be further decomposed into a simpler concept), the presumption is that there is something common in our DNA in combination with our common natural social environments – nature via nurture (Ridley, 2004) – that generates such concepts so that any two human beings can potentially communicate across any two languages. Table A1 in the appendix reports the complete list of the current 65 universal semantic primes that compose the Natural Semantic Metalanguage.

things. Such a story is, however regrettable, inexpressible and incomprehensible, for there is always another prior material cause to explain someone doing this but not that. Determinism is true in theory but, unlike free will, useless as human practice.

Every explanation needs a place to begin. Aristotle's efficient explanation begins with that which sets a thing in motion. For property, the efficient explanation of property begins with that which prompts us to act, accepting without explanation all the molecular collisions that do not immediately control our actions here and now. When we act in response to immediate stimuli, what we do and say expresses our interpretation of the physical world as it appears to us, including what we want and don't want to happen in the physical world. The efficient explanation of our actions is not manipulable by the formal explanation in the momentaneous present because the abstract form of our actions was socially acquired from the past. As we spring into action, we are free to follow or not follow the abstract form of property.

The efficient explanation of property is about someone doing or saying this, but not that, in the here and now. It is about a 'reflective consciousness,' as Oakeshott (1975/2003: 36) calls it, that sets a human being in motion. It cannot be reduced to genetics or neurochemical processes or abstract classifications that happen to the mind because it begins in the present with our 'intelligent engagement' with other human beings and the meaning of an action *hic et nunc* (Oakeshott, 1975/2003: 37; see also Gazzaniga, 2011). Moreover, a story of neurochemical impulses or abstract classifications in the mind does not make our fellow human beings dependable in their actions. Other people, as fellow thinking and understanding beings, may not do what we want (or don't want) them to do right here, right now. And so we choose to do or say this rather than that because we want (or don't want) something to happen, and it would be good for us if it happens (or doesn't happen). The efficient explanation of property is about our selection, conditional on the context, of an action with a specific meaning. The meaning of an action is what we want to happen, what we want other people to do or not do.

As part of our intelligent engagement with one another, our actions are founded on an innate and universal set of semantically atomic concepts of the mind: KNOW, THINK, FEEL, WANT, and DON'T WANT, which can be translated one-to-one into every human language (Goddard and Wierzbicka, 1994; 2014; Wellman, 1990; 1994). Such mental predicates are the constitutive instruments by which we think about and understand the meanings of our own actions and the actions of our fellow human beings. They make our interactions with people intelligent and intelligible: we say 'meaningful.'

Contemporary analytical philosophers do not talk about mental predicates in regards to our actions. They typically privilege two of what they call 'mental attitudes': beliefs and desires. C. S. Peirce's pithy account of such attitudes and actions is that 'our beliefs guide our desires and shape our actions' (Peirce, 1877: 5). A belief is not a semantically atomic concept. It could be decomposed, roughly speaking, as a way of thinking and feeling (an attitude) about what we know to be true.<sup>13</sup> If a desire is also considered to be an attitude, then it could be similarly decomposed as a way of thinking and feeling about what we want. In the practice of economics and philosophy, the emphasis in attitudes is more on the thinking and much less so, if any, on the feeling, what Hume and Smith called 'moral sentiments.' As integral as feeling would seem to be for initiating motion in all animals with a central nervous system, or even as in invertebrates a distributed one, one advantage of working with mental predicates in explaining human actions is that it puts someone feeling something on the same par as their thinking, knowing, and wanting.

A drawback of theorizing or philosophizing with nominalizations like beliefs and desires is that they divert our attention away from predicating something about an actual substantive, a person. Rather than focusing on *someone* thinking, knowing, wanting, or feeling something, we tend to look for distinguishing effects of an abstract disembodied noun and glissade into treating it as a substantive of substance that actually does something in the physical world.<sup>14</sup> When looking for

<sup>13</sup>Cf. Schwitzgebel (2019).

<sup>14</sup>For related discussions, see Kimbrough and Wilson (2022), Smith and Wilson (2019), and Wilson (2008, 2010, 2012).

differences in the mind which cause differences in what people say and do regarding property (the efficient explanation), it seems prudent to maintain a constant focus on the actual body set in motion to act, particularly when such mental differences take place in the physical stuff of a body (the material explanation) with socially acquired information about past choices (the formal explanation).

Oakeshott's theory of human action proves useful here in breaking down what is involved in setting a person in motion to act (Oakeshott, 1975/2003: 36). When someone does or says something, Oakeshott contends that such a person (1) perceives the meaning of a situation as one that moves them to action, (2) is able to think about the situation as being different from what it currently is, (3) can know from autobiographical history that the situation is alterable by their own action, (4) is able to choose this but not that action when they think about their alternative courses of action, and (5) decides upon the formal character of the action,<sup>15</sup> that is, decides the abstract kind of person whom they are going to be in this moment, for 'our deeds...mean something about who we are as individuals and...say something about us to the rest of our community' (Smith and Wilson, 2019: 73).

The material and formal explanations of property come together in the human action that creates the efficient explanation of property. What moves *A* in the here and now to say 'This is mine' about *Y* when people can know that what this person says is true and other people cannot say 'This is mine' about *Y*? *A* says 'This is mine' because she wants something to happen, and it would be good for her if it happens. She perceives the meaning of the situation as thinking and feeling that she knows it is true that 'Y is mine,' but someone else, *B*, is acting as if it is not true. That *B* is acting as if it is not true is information because *B* could have acted as if it is true but currently is not.

The meaning of the situation resides in the interpretation of the information on *B*'s action. One interpretation is that *B*'s act is bad for her. *A* feels something bad because she thinks 'B is doing something bad to me and he didn't have to do it.' *A* wants to think bad things about *B* because of this, and when *A* thinks about *B* she feels something bad. Such thinking and feeling – we could call it the sentiment of resentment – prompts *A* to think that the situation calls for her to do something.

The primeval sensations at the heart of the efficient explanation of property are the harm or injury *A* feels (secondarily), and the concomitant resentment, when *A* perceives (primarily) that someone else is acting in a way that is bad for *A*. Resentment is the odious sentiment that sets people (and other mammals and birds) in motion to act.<sup>16</sup> It prompts us to think that the situation calls for us to do something. What we actually do under the 'affection' of resentment – as Adam Smith would meticulously say – is subject to selection conditional on the context.<sup>17</sup>

What follows in selection goes something like this. When *A* thinks about the situation as one moving her to act, she thinks that the situation could be different from what it currently is. *A* thinks that *B* could act differently with regard to *Y*. There is nothing socially and physically preventing *B* from not doing what he is doing. She knows from everyday life that, if she does something, *B* could act differently regarding *Y*. *B* could stop doing what he is currently doing. At this moment *A* thinks that there several different things she could do. She could physically attack *B*. She could bite her tongue and look away. She could growl at *B*. She could sigh. She could simply say, 'This is mine.'

Furthermore, there is nothing socially or physically preventing *A* from saying 'Y is mine' to *B*, from sighing, from growling, from biting her tongue and looking away, or from throwing a punch and beating *B* to a pulp. From living in her community, she thinks and feels about what she knows to be true: she *can* say, 'Y is mine.' She also knows from her history that people can know that what she says is true, and she knows that other people can say to her 'Y is yours.' She knows that other people, including *B*, cannot say about *Y*, 'This is mine.' In this moment, *A* is not a pushover, nor an oversensitive bully. She is a self-confident, self-possessed person who is submitting herself in the forthcoming deed

<sup>15</sup>Oakeshott (1975/2003: 36, 92) calls it 'decid[ing] upon a performance,' where 'a performance is an agent disclosing and enacting himself in responding to his understood situation by choosing what he shall do or say.'

<sup>16</sup>See Smith (1759/1982, II.iii.3).

<sup>17</sup>Smith and Wilson (2019: 25) argue that Adam Smith and his contemporaries like James Hutton use *affection* to mean 'a passive state of some[one] being affected.'

to that which is accredited by other people to be true. She wants *B* to stop doing what he is currently doing. And so conditional on this environment, *A* says to *B*, ‘*Y* is mine’ when she could have done something else.

*A*’s belief – her thinking and feeling that she knows it is true – that ‘*Y* is mine’ does not make her act ‘but puts [her] in a condition that [she] shall act in some certain way, when the occasion arises’ (Peirce, 1877: 6). Such thinking, feeling, and knowing is latent information whose meaning is expressed in a selected action to achieve something that *A* wants to happen.<sup>18</sup> In choosing to say ‘This is mine,’ *A* may be, for example, the kind of person who makes her moral claim known, but not first with physical violence. But what *A* wants to happen, the outcome she imagines and wishes for, the meaning of her action, is that *B* stops doing what he is doing. *A* is not choosing a satisfaction that she wants. Any satisfaction is in her deciding to do what she is going to do. And *A* is not choosing an outcome because she cannot depend upon *B* to do what (she perceives) is good for her. *B* may keep on doing what he is doing. What *A* chooses, conditional on the current environment, is an action with a specific meaning.<sup>19</sup>

## 6. The final explanation

Aristotle’s final explanation begins at the end – *telos* in Greek, translated by the Roman into *finis*, and so our ‘final,’ the purpose for the sake of which the thing exists. What is the function of mentors teaching their children the custom of property? What universal purpose does property serve in a human community? The final explanation of property emerges recursively from a history of people freely choosing to act in the moment. By itself the efficient explanation of freely choosing to act is without reference to its history. But when the environment selects for certain kinds of freely chosen actions, past meaningful actions explain current resentments. The efficient explanation of freely choosing to act grounds the purpose of property because current resentments which prompt current actions are explained by past meaningful actions via a recursive social process of selection conditional on the environment. Successful actions – something happened that someone wanted – accumulate information about what has worked in the past. Such information comes from the environment that selects for certain kinds of actions.

The final explanation explains property by its effects. The custom exists for the sake of a purpose. While property is observed in every community, its purpose must be inferred. The meaning of *A*’s action is what *A* wants to happen, but *A*’s end is not the function the property. That *B* stops doing what he is doing is not the function of property. Nor is *D*’s nor anyone’s utterance that ‘*Z* is mine’ the function of property. 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. Over the time scale of our species, the function, the purpose, the *what for?* of property is peace.

The final explanation of property is that it accords peace to a species which is – as Samuel Pufendorf eloquently puts it – ‘extremely desirous of [its] own preservation’ and ‘often malicious, insolent, and easily provoked, and as powerful in effecting mischief as [it] is ready in designing it’ (Pufendorf, 1672/2005: II.III.XV). We are a species prone to discord, quarrels, violence, and war. If, as David Hume confidently claims, the necessities and conveniences of life were not scarce and people by nature not selfish and limited in generosity, our species would not need property (Hume, 1740/2000: 3.2.2.18). There would be no conflicting claims of ‘This is mine.’ We would be gracile bonobos in abundant forests of fruit. But we live in a world of scanty provisions and of competition for those provisions, where life can be poor, nasty, brutish, and short. We resent the injury we feel when someone does something that we perceive is bad for us, and we attempt to defend ourselves by beating back

<sup>18</sup>See specifically Haig (2020: 243–244).

<sup>19</sup>See Oakeshott (1975/2003: 36–41).

such injury with some injury in return.<sup>20</sup> But the flames of resentment do not stop there. We are a groupish species which shares ingroup resentments and empathizes with ingroup injuries; we are quick to join a fight, which can put the survival of the community at risk. To temper the flames of contention, humans often use third parties with some distance to articulate how the abstract form of property from the past applies to the concrete particulars of the present.

Such a claim about property *is* contentious. Property, the counterview holds, is ultimately based – some might even say, purely so – on violence and the threat of violence. If *A* cannot enforce her claim of ‘This is mine’ through violence, or if *B* can come up and take *Y* from *A* by force, then it is meaningless for *A* to say, ‘*Y* is mine.’ Property, the counterview contends, introduces ‘a thousand quarrels and battles’ (Rousseau, 1755/2002: 116), which is why we turn it over to the government to administer. A short step from there is that ‘governments must *grant* rights before it can enforce them’ because property is primarily about exclusion, about preventing others from doing what they want with things that people claim as mine (Sened, 1997: 6, original emphasis). But I anticipate. ‘We may hence too discover,’ Pufendorf (1672/2005, IV.IV.VII) argued some 350 years ago, ‘the falsity of that vulgar [common] saying, Mine and Thine are the cause of all the wars and quarrels in the world. For on the contrary the distinction of Mine and Thine was rather introduced to prevent all contention.’

The existence of property is explained by the effect – peace – that property makes possible. The teleology-phobic need not worry that such an explanation puts the *explicandum* before the *explicans* because the *explicandum* that occurs in context *c* is the cause of the *explicans* at *c* + 1 (not *c*), which is then the (efficient) cause of the *explicandum* at *c* + 1. The selection of actions conditional on *c* means that the observable body of successful actions at *c* can be the cause of someone feeling, thinking, knowing, and wanting in *c* + 1 before they choose to act in *c* + 1 (about events they want to happen in *c* + 1). What someone feels, thinks, knows, and wants is both the effect of successful selected-actions-that-were and the cause of their selected-actions-to-be, and simultaneously, successful selected-actions-that-were are both the effect of mental-predicates-that-were and the cause of mental-predicates-to-be. *Property exists today because similar actions in the past had effects that enhanced the choice of actions that resulted in events that people wanted to happen.*<sup>21</sup>

Property expresses similar effects in the present because its effects are socially transmitted. If *D* considers himself to agree with *A* who says ‘*Y* is mine’ in *c*, he may express such agreement by saying ‘*Z* is mine’ in *c* + 1 for whatever *D* wants to happen in *c* + 1. When doing so, *D* is not ‘obeying’ the custom of property. He is, in Oakshott’s language, subscribing to the custom. He is, metaphorically in the sense of *subscribo*, signing his name below the custom. His resentment, which prompts his utterance on what he knows to be true, submits himself personally to external interpretations of the community regarding the custom. Perhaps other people will not agree with *D*. Because *c* differs from *c* + 1, other people may not interpret *Z* as abstractly the same kind as *Y* (for example, as another domesticated hoofed mammal), or they may interpret *D* as being mistaken that someone else cannot say ‘*Z* is mine.’ But if they do agree with *D* and whatever *D* wants to happen indeed happens, the custom has been socially transmitted from *A* to *D*, from *c* to *c* + 1. Property remains *active*.

The problem with the view that property is ultimately based on violence is that it fails to distinguish an efficient from a final explanation of property. When *B* thinks about the situation as one moving him to act, he thinks that the situation could be different from what it currently is. *B* thinks, ‘I know that *Y* is not mine; it’s *A*’s. But I want it. *Y* can be mine if I do something to it.’ *B* knows from everyday life that doing something to *Y* will be bad for *A*. He does not subscribe to the custom of property right here, right now. He wants to do something bad to *A*.

The error of the counterview begins with claiming it is meaningless for *A* to say ‘This is mine’ to *B* if she can’t enforce her claim with violence. *A*’s utterance is indeed meaningful without violence: *A*

<sup>20</sup>See Smith (1759/1982, II.ii.1).

<sup>21</sup>The reciprocal interplay between the efficient and final explanations in an evolutionary account of property – the selection of actions conditional on the environment – may be a one way to dissolve the question of how property gets, or fails to get, off the ground in the first place... There is no first place. But fleshing this out is beyond the scope of this project.

wants *B* not to do what he is doing. What *A*'s utterance might not be is successful. *B* may be successful in doing something to *Y*. The fact that *B* wants to do something bad to *A*, the fact that *B* does not subscribe to the custom of property, does not mean that the custom itself is ultimately based upon violence. It means that *B* is acting counter to the custom of property and the sake for which it exists. *B*'s doing something bad to *Y* is an efficient cause of threatening the peace.

*B*'s action is a mutation that has perturbed the ancient genotype of property. It drops line (2) from the common abstract form of property, namely that people can know that what *B* says is true, and replaces (1) – (3) with 'I can say about *Y*: 'This is mine' if I want *Y* and do something to *Y*.' It is a mutation without the concept *YOURS* and the reciprocal relationships that property in its abstract form entails. Such a mutation is indeed built on power and violence, but it's no longer property. It's a different phenotype of action, one also exhibited, albeit without abstract thought, by chimpanzees: 'might makes right.' Whether its effects survive and are socially transmitted may depend on whether people as a community use their third parties and collective power and violence to defend themselves against *B* and stamp it out.<sup>22</sup> Obviously, the custom of property is not active in all communities. In some communities, 'might makes right' might be active and property the mutation that may or may not be stamped out. But even if the community punishes *B* for doing something bad to *A*, the final explanation of property is still not violence. It is peace for the rest of the community who say, 'That is yours' to *A*.

We practice the custom of property because human beings are a mercurial breed with an unsatiable acquisitiveness for things. There is not a short supply of people who may challenge our claim of 'This is mine' and do something regarding our things that would be bad for us. The custom of property makes peace possible. People choose actions, based upon the abstract form of property and conditional on the environment, that maintain peace. Such peace then makes it possible for people to select actions in the future based upon the abstract form of property.

## 7. Property rights are an effect of property

The point of such explanations is that property can be explained by a custom of intelligent and meaningful human action, which in turn means it is an error to assume that property is derived from property rights. Property rights are an effect of property.

When our body interfaces with the physical world, our minds interpret the neurophysical impulses by abstractly classifying the pattern as the concrete particulars we sense (the material explanation). Our minds interpret the thing we see as the *Y* we see, as well as a web of conceptual associations with the thing, including in the case of a specific *Y*, the abstract classification of mine. Our minds do not innately classify a thing as mine independent of the external world. There is a common abstract form socially transmitted to us by which someone can claim a thing with the concept of mine (the formal explanation). We learn from our mentors when the general abstract pattern of classifying something as mine fits or does not fit the current circumstances of time and place as we perceive them. Whereas the material explanation is based on differences of relative positions in neural order in the current moment, the formal explanation is about the sameness of the abstract form which has been socially transmitted from generation to generation.

The efficient explanation is based on differences in the mental predicates that make our actions in the current moment an intelligent engagement with other people. We think this or that, know this or that, feel this or that, and want this or that, and when someone does something bad to us regarding something our minds classify as mine, it is the combination of these mental predicates as resentment that prompts us to choose an action, conditional on the context, to defend ourselves. The meaning of our action is what we want to happen, that is, what we want someone else to do or not do regarding the thing. Successful actions (to do this but not that) serve as the cause of what we think, know, feel, and want in the future, and which, in turn, prompt us to choose an action in the future, conditional on the

<sup>22</sup>Cf. Rose (2015) on possession and the judgment of the community.

environment. Such recursive selection followed by success or failure of our chosen actions treats the environment as a sameness about what has worked in the past and that which selects for what we think, know, feel, and want in the present. Over long periods of time we can infer from such a process the purpose or final explanation of property: Property exists for the sake of peace.

The standard approach in the analysis of property, or, as it is more often referred to by scholars of all stripes, ownership, is to say that *A* has *full ownership* of *Y* if *A* has the most complete and comprehensive set of rights for *Y*. Such a set of rights is drawn from Honoré's (1961) classic list of eleven standard 'incidents' of ownership, each generally specified as 'the right to *X*.' For example, the incident most commonly referred to in economics is the one that Alchian uses: 'A has the right to use *Y*.'<sup>23</sup> In Hohfeld's (1919) scheme of normative obligations, 'the right to use *Y*' means that (1) *A* has a liberty to use *Y* and (2) *A* has a claim on others to not use *Y*. Another important incident frequently discussed in the analysis of ownership or property is 'the right to exclude other people from using *Y*,' that is, (1) other people have a duty not to use *Y* if *A* does not consent to them using *Y* and (2) other people have a liberty to use *Y* if *A* consents to them using *Y*.<sup>24</sup> *A* is said to have a *property right* if *A* has a proper subset of the most complete and comprehensive set of incidents for full ownership of *Y*. Thus, the standard view is property rights compose ownership, or property rights explain the custom of property.

The standard view puts things the wrong way around. Property explains property rights. When *A* declares, 'This thing is mine' to *B*, she re-presents herself to the external world as having emphysealized the concept of mine inside the thing. Her mind abstractly classifies the neural order of impulses in the moment with the concepts THIS THING (is) MINE, and when she publicly expresses the words for the concepts, she makes what is in her mind, by way of what she says, fit the external world (Searle, 2010). With her words, *A* chooses to publicly commit herself as representing how things are in the world. If other people can know that what *A* says is true, if other people collectively accept her representation as true, then *A*'s utterance makes the external world fit what *A* says (Searle, 2010). The fit between *A*'s utterance and the external world is bidirectional. By choosing to act, *A* creates property in *Y* by representing herself to the external world as having property in *Y*. *A*'s utterance has done something in the world, a so-called speech act, like 'I promise,' by changing how people perceive the very thing itself, an illocutionary force, like 'having people believe I will do what I say I will do,' even though the visual perception of the thing itself has not changed.

When *A* declares, 'This thing is mine' to *B*, *A* perceives *B* as doing something bad to her in the here and now. *A* wants *B* to stop doing what he is doing regarding *Y*. She thinks that *B* could act differently. She knows that there is nothing socially or physically preventing *B* from not doing what he is doing. *A* feels resentment towards *B*. What *A* wants and what *B* wants are in conflict. Physical conflict – violence – is possible. Given the context, *A* chooses to do or say this but not that. Such is the universal problem faced by human beings from time out of mind and for which the common abstract form of property has emerged ... without a jot of rights talk.

The standard view of unpacking property as rights-claims (or their equivalents) wants to separate the question of what property *is* from the question of where property comes from. It wants the question to be about what we do when we make property claims, shaving off any material, formal, efficient, and final causes of how we came to do what we do when we make property claims. But property *is* a custom of human conduct with material, formal, efficient, and final explanations. Such natural history should inform how we theorize about the institution of property rights vis-à-vis the custom of property, which is, as Hayek recognized and clearly articulated, 'logically, psychologically, and temporally' prior to the moral reasoning of property rights (1988: 23). *The abstract custom of property that operates*

<sup>23</sup>The complete list is: (1) the right to use *Y*, (1) the right to possess/exclude others from *Y*, (3) the right to manage *Y*, (4) the right to the income of *Y*, (5) the right to the capital of *Y*, (6) the right to security of *Y*, (7) the transmissibility incident for *Y*, (8) the absence of term incident for *Y*, (9) the duty to prevent harm with *Y*, (10) liability to execution for *Y*, and (11) the residuary incident for *Y*.

<sup>24</sup>See, e.g., Merrill (1998) and Schmidtz (2012).

*supraconsciously in our minds classifies and brings about the particular concrete rights for the environment in question.* Honoré's 'standard incidents' of property expressed as rights are conditional on the concrete particulars of the context in which a named *B* is doing something specific regarding a particular *Y* about which a named *A* perceives the named *B* as doing something specifically bad to the named *A*.

For example, *A* could be Thomas Haslem via his two employees who, on the evening of April 6, 1869, raked *Y* = 18 piles of manure on the side of a public highway in Stamford, Connecticut.<sup>25</sup> And *B* could be William Lockwood who chose to transport the *Y* = 18 piles of raked horse manure to his fields the next morning so that Haslem could not use them as fertilizer, valued at \$6 at the time, on his fields. Interpreting the abstract custom of property to this specific case, (1) Thomas Haslem can say about things he *created* by the dint of his employees' work, 'These piles of manure are mine;<sup>26</sup> (2) people can know that what Haslem says is true; (3) other people can say to Haslem about the 18 piles of raked horse manure: 'It is yours;' and (4) other people, including Lockwood, cannot say about the 18 piles of a raked manure on the public Stamford, Connecticut highway, 'These piles of manure are mine;' all of which explain why Haslem had the right to use the raked piles of manure to fertilize his fields.

Or, *B* could be Queen Elizabeth via her Keeper of the Swans and his workers capturing *Y* = 400 unmarked swans in the Thames near, but crucially not in, *A*'s = Lady Joan Young's private estuary sometime prior to 1592. Capturing *Y* = 400 unmarked swans near Lady Joan Young's estuary means that are 400 fewer potential unmarked swans to swim into her estuary for her to capture and eat, which is bad for Lady Joan Young. Interpreting the abstract custom of property for this specific case, (1) the Queen and the Lady both can say about an unmarked swan in her own waters, 'This swan is mine;' (2) people can know that what the Queen says is true; (3) other people can say to the Queen about an unmarked swan in the Thames: 'It is yours;' and (4) other people cannot say about an unmarked swan in the Queen's waters, 'This swan is mine;' all of which explain why the Queen had the right to use the unmarked swans in the Thames.<sup>27</sup> In this case, the action that *A* chose in response to *B*'s action was unsuccessful because *A*'s perceived harm by *B* did not fit the custom of property for unmarked swans. The Lady's resentment was not for defense, for the unmarked swans were not the Lady's in the first place for the Queen to do something bad to the Lady.

Or, *B* could be Pacific Air Transport which, sometime after the month of May 1929, flew their aircraft in the *Y* = column of airspace above some 72½ acres of land in Burbank, California about which *A* = F. R. Hinman and Nannie Hinman could say, 'This land is mine.'<sup>28</sup> The Hinmans claimed that by the ancient doctrine of *ad coelum* Pacific Air Transport was doing something bad to them simply by flying their planes over the land.<sup>29</sup> The Hinmans thought that they could say 'This is mine' about the column of airspace above the soil 'all the way to heaven.' But when the *ad coelum* custom was imported into common law in the thirteenth century, there were no airplanes flying in the heavens. Given that the environment had changed by the twentieth century, other people no longer collectively accepted the Hinmans's representation as true for the airspace 150 feet above the land. In the twentieth century the environment selected different actions as successful, perhaps because the Hinmans's resentment was not for defense at high altitudes. Only for the airspace below 150 feet could the Hinmans say, 'This airspace is mine.'

To say that Haslem has a property right to the piles of manure or Queen Elizabeth a property right to the unmarked swans in the Thames, which is to say that Haslem and Queen Elizabeth have a right to use a resource, does not explain property. Nor does it explain property to say that the Hinmans have a property right to exclude aircraft from flying at altitudes less than 150 feet above their land.

<sup>25</sup> *Haslem v. Lockwood*, 37 Conn. 500 (1871).

<sup>26</sup> This is my reference to Locke (1689/1988).

<sup>27</sup> Coke (1600/2003, Trinity Term, 34 Elizabeth I).

<sup>28</sup> *Hinman v. Pacific Air Transport*, 84 F.2d 755 (9th Cir. 1936).

<sup>29</sup> The full principle is: Whoever's is the soil, it is theirs all the way to heaven and all the way to hell.



Moreover, proceeding to analyze the costs and benefits of granting a property right to Lockwood, Lady Young, or the Hinmans ignores the most important observations in need of explanation, observations which could have important consequences for the economics of an alternative pattern of rights: Why do both parties perceive the resource as their own (the material explanation)? Why does the abstract form of property operating in the mind historically classify the concrete particulars of the situation this way but not way (the formal explanation)? Why does the synchronic web of mental predicates prompt both parties to choose actions, conditional on the context, with conflicting meanings here and now (the efficient explanation)? Why do the observed diachronic, or proposed alternative, patterns of actions promote peace, or further quarrels, in the long run (the final explanation)?

The abstraction of property appears in our conscious deliberations and introspections to be built up from concrete particular rights. We study this case and that case that happened to be litigated; we model this situation and that situation for which we have some historical data; we find examples of people severing this right from that right; and we imagine that we can construct from our extensive database the general abstract idea of property. We imagine we can design a set of necessary and sufficient incidents for property. The error of our imagining is the assertion that the abstract custom of property presupposes concrete property rights. Rather, the custom of property is something that happens supraconsciously to the mind as it abstractly classifies the situation to bring about the concrete particulars of the case. Property rights only make sense secondarily. The perception of property is primary.

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## Appendix

Table A1. English exponents of the NSM semantic primes

I, YOU, SOMEONE, SOMETHING~THING, PEOPLE, BODY	substantives
KINDS, PARTS	relational substantives
THIS, THE SAME, OTHER~ELSE	determiners
ONE, TWO, SOME, ALL, MUCH~MANY, LITTLE~FEW	quantifiers
GOOD, BAD	evaluators
BIG, SMALL	descriptors
KNOW, THINK, WANT, DON'T WANT, FEEL, SEE, HEAR	mental predicates
SAY, WORDS, TRUE	speech
DO, HAPPEN, MOVE	actions, events, movement
BE (SOMEWHERE), THERE IS, BE (SOMEONE/SOMETHING)	location, existence, specification
(IS) MINE	possession
LIVE, DIE	life and death
WHEN~TIME, NOW, BEFORE, AFTER, A LONG TIME, A SHORT TIME, FOR SOME TIME, MOMENT	time
WHERE~PLACE, HERE, ABOVE, BELOW, FAR, NEAR, SIDE, INSIDE, TOUCH	place
NOT, MAYBE, CAN, BECAUSE, IF	logical concepts
VERY, MORE	augmentor, intensifier
LIKE	similarity

Source: Goddard and Wierzbicka (2014, 2016).