

The Universal and Uniquely Human Custom (Not Right) of Property

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Date : December 18, 2019

Bart J. Wilson, *The Meaning of Property in Things* in *The Property Species: Mine, Yours, and the Human Mind* (forthcoming 2020), available at [SSRN](#).

What is the meaning of “property”? If you think there cannot be a fresh and intriguing perspective yet to offer on that question, you’ll be pleased and surprised to read the new work by [Professor Bart Wilson](#).

In the [opening chapter](#) for his forthcoming book, *The Property Species: Mine, Yours, and the Human Mind*, Dr. Wilson challenges scholars of all disciplines to reconsider their prior assumptions about the origins of property and its meaning. In doing so, he announces in the chapter’s opening line the claim he sets out to defend in the book: “Property is a universal and uniquely human custom.” (P. 1.)

To narrow the discussion a bit further, Dr. Wilson refines the claim he seeks to establish as: “All humans have property in things, and *Homo sapiens* is the only animal to have property in things.” (P. 2.) In ways far too detailed to summarize here, he anticipates and effectively defends this basic claim against obvious and immediate adverse responses you might expect from cultural relativists, biologists, legal centrists, philosophers, lawyers and others.

A few highlights of Dr. Wilson’s supporting analysis will give a sense of his claim. For example, haven’t we all heard about other animals besides humans staking claim to territory or defending what might be called their possessions in food or mates? Dr. Wilson points out that such examples might easily but too quickly be analogized to the human conception of property.

When you consider the usual examples offered about non-human behaviors of this type, they can almost always be better explained as only acts to retain possession, defensive acts to threats of loss of possession and the concomitant risk to exclusive use, or other reactions to a fear of dispossession. But, as Dr. Wilson reminds us, “[p]ossession . . . is only nine points of the law.” (P. 5.) The “last tenth,” he explains, “is the *origins* of property in humans, and not simply its like and unlike effects.” Only once focused on that aspect of human property, can we “begin to trace what property is and how it works.” (P. 6.)

So, how do we locate that last tenth, the origins of property as a human concept? Dr. Wilson walks us through several steps. One is that humans, unlike any other animal, have “symbolic thought” which is “what makes many uniquely human capabilities possible: language, creativity and innovation, art, and trade.” (P. 6.)

Dr. Wilson’s inquiry is initially focused on “things” – tools, utensils, ornaments, and so forth—because he makes the bold claim that “[n]ot every human community has property in land, but all human groups have property” in things of this sort. (P. 8.)

Symbolic thought makes property a uniquely human custom because we transform our relationship with, and use of, “things” beyond that of other animals by “socially transmitting” these things with “moral force and shared expectations” that are developed based on (sometimes distinct across

communities) “meaning-laden customs.” (P. 13.)

Humans do not simply follow impulse regarding things. We do not unidirectionally seek only to acquire or to use which is “[t]he common feature to all nonhuman practices regarding food and mates.” (P. 7.) In contrast, “[h]uman beings . . . appear to be the only species to teach their progeny how *not* to acquire things.” (P. 7.)

According to Dr. Wilson, herein lies the universality of property as well. For this, Dr. Wilson integrates lessons from cognitive linguistics, including his reporting that “linguists have identified . . . a semantic element” common in every human language: the concept “MINE,” which appears to develop naturally in children.

When tied to the teaching regarding not acquiring things mentioned above, three other universal linguistic concepts come into play to define property as a human custom. These are “NOT,” “GOOD, and “BAD.” So, according to Dr. Wilson, humans are taught and develop customs regarding “Not Mine” (or, “yours”) and the “good and bad ways to acquire things in their community.” (P. 7.) Dr. Wilson also then concludes that, because these concepts must be “socially taught and socially learned,” property “is a custom because it is a moral practice.” (P. 8.)

Dr. Wilson explains that identifying property as a “custom” and recognizing its origins as such is consequential. For one thing, doing so “avoid[s] reifying property as a right” which inevitably devolves into a battle of which rights trump other rights. Customs, on the other hand, are designed to “fit” within a larger set of community interactions and coordinate with other customs much more freely than the strictures of rights-based values. Once we see property as “about what humans do” and “about how we orderly conduct ourselves with regard to things” (P. 11.) then property can be used to facilitate the “moral scheduling pattern” of communities. (Pp. 13, 14.)

If Dr. Wilson’s claims are correct, the focus by lawyers, economists, and others on “property *rights*” and how to define them may be not just missing the point but perhaps distorting the point of property as well. According to Dr. Wilson, “Property rights are the expectations defined by property, not the content of property.” (P. 14.) He uses these conclusions to challenge the oft-invoked bundle-of-sticks metaphor and to rebut legal realist claims that property has no prior normative content absent its definition by the state.

Many of us law professors teaching the first class of property for the semester this coming month will start by asking our students the traditional “What is Property?” question. Dr. Wilson’s work offers a rich new set of considerations for the answer to that question; and, we would be wise to keep his proof of customary origins in mind before too quickly getting sucked into the rights-based conveyor belt generated by the language of judicial resolution of property disputes that will dominate the course.

Dr. Wilson’s hopes to appeal not to a particular group of scholars fixed on their own path but instead to overcome the far too enduring obstacle present in scholarly inquiry when “different disciplines talk past each other in their own languages with different assumptions and different questions.” (P. 3.)

Indeed, legal scholarship (including property scholarship) and legal scholars are often guilty of academic stove-piping. Thus, Dr. Wilson’s work independently makes a valuable contribution by his invitation to greater interdisciplinarity in property research.

Furthermore, the substance of the work itself reminds us that so many questions about property are of interest to myriad fields of inquiry. Opening the communication lines across multiple fields has very valuable cross-pollination effects.

As Dr. Wilson notes, “[d]epending on which department you visit at your favorite university, you will hear some rather different perspectives on property.” (P. 2.) What those departments don’t do often enough is talk in order to discover their differences and understand the diversity of perspectives in order to seek synthesis. This work is an example of the exploration that is possible when we look beyond our department’s walls.

Cite as: Donald Kochan, *The Universal and Uniquely Human Custom (Not Right) of Property*, JOTWELL (December 18, 2019) (reviewing Bart J. Wilson, *The Meaning of Property in Things in The Property Species: Mine, Yours, and the Human Mind* (forthcoming 2020), available at SSRN), <https://property.jotwell.com/the-universal-and-uniquely-human-custom-not-right-of-property/>.