



FURTHER TOWARDS A THEORY OF THE EMERGENCE OF PROPERTY

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What is right is not derived from the rule, but the rule arises from our knowledge of what is right.

~Julius Paulus, third century Roman jurist

Non ex regula ius sumatur, sed ex iure quod est regula fiat.

Irving Fisher (1906)

Property rights:

“The right to the chance of obtaining some or all of the future services of one or more articles of wealth.”

Property:

“The abstract right of ownership.”

A Thing is not Property:

“A loaf of bread is concrete wealth, not a property right; the right to eat it is the property.”

Armen Alchian (1965)

Property rights:

“The rights of individuals to the use of resources.”

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“The **rights** of individuals to the use of resources.”

What does “the right to do X” mean?

right is not a universal semantic prime

Yoram Barzel (1997)

Economic property rights:

“The individual’s ability, in expected terms, to consume the good (or the services of an asset) directly or to consume it indirectly through exchange.”

Property is moral

right (to do X): the legal, equitable, or moral entitlement to do something

- 1) Moral (legal connotation historically follows)
- 2) Entitlement, the grounds for laying a claim to do X

Anglo tradition: rules and evidence to support moral claims to do something

droit (French): ce qui est juste; ce qui est conforme à une règle implicite ou édictée

that which is right; that which is consistent with an implicit or enacted rule

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Theoretical aim and framework

Treat property as a sphere of actions, perceptions, and things that appears regularly in human intercourse.

rule-guided action and rule-guided perception

rule: “simply a propensity or disposition to act or not act in a certain manner, which will manifest itself in what we call a *practice* or custom.” ~Hayek, 1973

Property is a practice or custom.

Demsetz (1967)

“[T]he emergence of property rights can be understood best by their association with the emergence of new or different beneficial and harmful effects.”

Rules, rule-following, and custom

What is right consists in the capacity to follow rules.

Not “know” in an axiomatic declaratory sense

But “know” in the sense that an action is or is not consistent with a rule

→ Only in their totality does the whole system of rules form a sense of how to conduct ourselves rightly.

→ Rules govern our perceptions: Does the perception of an action as one of a kind fit a pattern of what is right and do others share it?

Rules, rule-following, and custom

Sharing the practice means there is a common perception of the action.

→ Individual integrated into a regularized whole, a “we”.

A practice is **dialogic**, in continual active dialogue and multilaterally extending to and from each person.

“W has the right to do X with Y” is monologic.

The custom is what keeps the rule **active**, and the application of the rule reaffirms the custom.

The current application of the rule also modifies the custom by amalgamating into the background all of the unarticulable nuances of its application here and now.

Ex iure quod est regula fiat

Ius est norma agendi. (Mackeldey 1883)

Ius is a rule of conduct.

Literally: *ius* is the standard which is to be acted.

Disagreement in the perceptions of what is right leads to an act contrary to the *ius*, an *iniuria*.

The moral *ius* is the background practice of what is right, out of (*ex*) which arises the rule (*regula*).

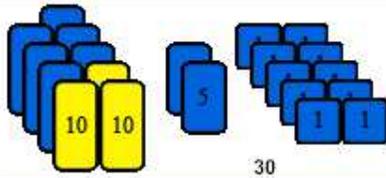
Non ex regula ius sumatur.

Literally: *ius* is not taken out of the rule.

Why? Because the unarticulable background cannot be taken out of an articulated foreground.

Proposition

A rule of property regarding things arises from our background knowledge of what is right regarding things.



Blue 100% **Select All Blue**
 Prod. % **Show %s**
 Red 0% **Select All Red**

Summary Information

Potential Profit = 0
 Need 2 blue for each
 1 red to to earn 2 cents.

 0 blue needed or
 0 red wasted

Total Profit (cents)	416
Time	11
Period	32 - B

Your field is selected.

0
130

stop taking

2b: 1r

10
31

110
0

Chat Room A

```

***** Period 29-A *****
***** Period 29-B *****
[Person 2 moved 130 Red from person 1's field to person 2's house]
***** Period 30-A *****
***** Period 30-B *****
[Person 3 moved 10 Red from person 3's field to person 4's house]
***** Period 31-A *****
<Person 7>: it's a group of 8 !
***** Period 31-B *****
[Person 4 moved 11 Blue from person 4's field to person 3's house]
***** Period 32-A *****
***** Period 32-B *****
<You>: let's be good
                    
```

Chat Room B

Send

26
13

6
59

10
31

45
9

26
13

Kimbrough, E.O.; Wilson, B.J.; and Smith, V.L. 2010. "Exchange, Theft, and the Social Formation of Property," *Journal of Economic Behavior and Organization*, 74: 206-229.

Jaworski, T; and Wilson, B.J. 2013. "Go West Young Man: Self-selection and Endogenous Property Rights," *Southern Economic Journal*, 79: 886-904.

–But you gave them their own house and field.

Alright, let's consider things that lie free for any taker (*res in medio quibusvis exposita*).

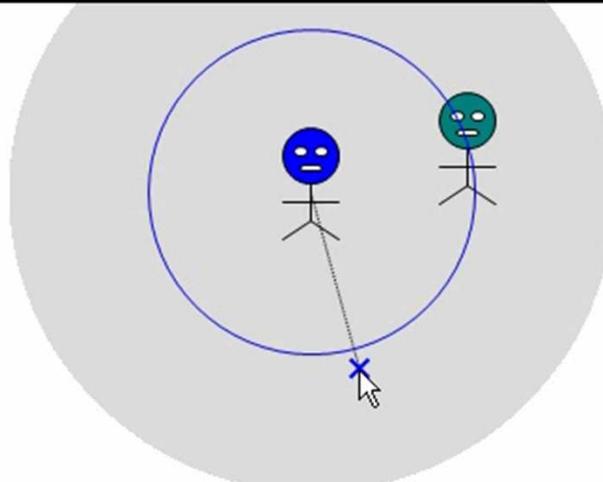
Ellickson (1989, 1991) studied 18th and 19th century whalers.

- Whalers hunted beyond the reach of any state-instituted and -enforced rules of capture.
- Yet the community established clear rules of capture.

Laboratory experiment to examine the proposition that property emerges anarchically out of social custom.

You are Blue.

Blue (You) Red Teal Green



Wilson, Bart J.; Jaworski, Taylor; Schurter, Karl; and Smyth, Andrew. 2012. "The Ecological and Civil Mainsprings of Property: An Experimental Economic History of Whalers' Rules of Capture," *Journal of Law, Economics and Organization*, 28(4): 617-656.

Purple Orange Portions Lost



Lines

Regular

7

Colored

6

Key

Left Click to move.

Right Click to throw.

Summary

Time Remaining

01:28

Period

2

Earnings

200

What is, 'What is right'?

D: should we be trying to help each other?

D: or is selfishness the way to go?

H: that's a super good plan ...

H: if everyone just agrees to not steal other peoples then we will get more

A: that is very true

D: I think so too

G: true

D: I'm down

H: so just do that

What is, 'What is right'?

G: so r we working together or against each other

H: i think we are supposed to work together

G: ok sounds fine

B: its a way to collaborate and help each other or steal from each other

Steal, stealing, steals, stole, and stolen appear 397 times in 175,143 words.

50.3 times the rate in the Corpus of Contemporary American English

Why do the perceptions of these participants lead them to apply *steal* here?

Integration into a “we”

E: do you want to do this the right way?

F: wht is the right way

E: the right way is I produce red you make blue then we split it nobody gets 100 percent profit but we both win

F: tht wat i been doing then u started stealing

F: [E] do u wanna start talkin about maximizing our production or keep fighting over it?

D: So it would benefit us all if no one was a thief. [A]!

A: the point..is to make a big profit?

D: yes but to make a long term profit teamwork helps a lot

The transition to a “we” can be quick.

F: lets agree to not hit once someone is on it
alot of money is lost

D: hahah

A: true

F: my partner and i did and it worked well

E: yup

F: agreed??

A: agreed

F: [D]??

F: [C]??

A: lol

E: haha

A: guess not

C: yea that sounds like a plan

Integration into a “we” is not inevitable

D: look, if we all stop stealing, we can all help each other maximize

...

A: yea [B] push it

D: but... we can help you

B: no

D: what do you need?

D: how many blue for red?

D: we can give you what you need, without you hurting us

C: [B] everyone else hit it were trying to help each other

A: no one can get screwed if we don't steal

C: you aren't making ANY money now

...

D: and we have all been helping each other the whole time

B: Chill out.. itis just a game

...

D: so we are reputalbe

C: uh

C: [it's a game] for
MONEYYYYYYYYYYYYYYYYYYYYYYYYY

C: real money

C: why are you even here

D: we can help you earn more

C: [B] is BALLIN

D: if you let us

D: and then, you would stop hurting us

...

C: we are working together

C: but [B] doesnt want to help

...

C: [B] why would you steal my red fopr someone else

B: just because

...

B: Stop whining

D: gaah! when will it end!

C: your taking MY MONEY

C: real money

Telos of a rule: regularize and create an order

G: teamwork evryone wins

H: right right right

...

G: in this exp. the access to other peoples stuff really just causes problems

...

H: lets make some money

G: muah ha ha ha. order fights chaos i love it!!!!

E: hahahaha

G: no taking. ask and you shall recieve

...

G: the only chaos is if the other half doesn't play nicely

E: seriously people your going to mess it up for everyone because this will turn into everyone messing eachothers up

E: and noone winning

Adam Smith (1759) on harm

To disturb [the We's] happiness merely because it stands in the way of [*B*'s] own, to take from [*A*, *C*, and *D*] what is of real use to [*A*, *C*, and *D*] merely because it may be equal or of more use to [*B*], or to indulge, in this manner, at the expence of other people, the natural preference which every man has for his own happiness above that of other people, is what no impartial spectator can go along with...

Though it may be true, therefore, that every individual, in his own breast, naturally prefers himself to all mankind, yet he dares not look mankind in the face, and avow that he acts according to this principle, and that how natural soever it may be to him, it must always appear excessive and extravagant to them...

[*B*] is to them, in every respect, as good as [*A*, *C*, and *D*]: they do not enter into that self-love by which [*B*] prefers himself so much to [the We], and cannot go along with the motive from which he hurt[s] [*A*, *C*, and *D*].

Harm

“[T]here can be no proper motive for hurting our neighbour”
(Smith 1759: 82).

B's clicking on the red and blue items in the fields and houses not under his control is an act contrary to the *ius*, an *iniuria*.

More than just harm, but contrary to what is right.

The form of the rule must fit what is right.

E: but let's start with the rule of: don't take stuff from other people's houses or fields

E: the fields are fairgame, lets decide on that from now on, nobody takes ANYTHING from a house, if you have stuff to share you can put it in your field

Harm and Resentment

Resentment seems to have been given us by nature for defence, and for defence only. It is the safeguard of justice and the security of innocence. It prompts us to beat of mischief which is attempted to be done to us...

[E]ach individual is naturally, and antecedent to the institution of civil government, regarded as having a right...to defend himself from injuries...

[Resentment prompts us] to retaliate that which is already done; that the offender may be made to repent of his injustice.

Adam Smith, The Theory of Moral Sentiments

Harm and Resentment

B: [D] you took mine! haha

F: what ever happen to our
deal??

D: hhahah im the best

D: im the master

C: i know right

A: [D] u suck\

D: i leraned the best from [C]

F: ok everybody only steal
from [D]

C: LOL

A: k

B: haha

D: hahah hey no fair

E: deal

F: deal

C: deal

E: haha

F: blue??

F: dude come on

A: sorry..

E: hahahaha

F: or dudet u in??

F: steal from [D] no one else

F: ??

A: i will

E: me 2

F: sweet

Harm, Resentment, and Property

What gives meaning to property as a practice?

- (1) Individually people are predisposed to resent harm.
- (2) Members of community mutual empathize about avoiding harm.
- (3) Community feels morally compelled through resentment to commit to the rule.

HAVE vs. POSSESS

Rose (1985) argues that possession is the origin of property.

To have generally expresses a transitory, or to possess a more permanent, power or control.

A man is said to have money, which is, however, always changing and circulating, and to possess a house, lands, and the like.

We are masters of what we possess, not always so of what we have. ~C.J. Smith (1894)

Until there is an act to possess Y, there is no possession of Y.

**Until there is an act to have Y, there is no having of Y.*

HAVE vs. POSSESS

Resentment of harm gives meaning to property as a practice.

Mutual empathy of desiring to avoid harm converts individuals who **HAVE** into individual members of a We who **POSSESS**.

Moral commitment to the rule sustains the practice.

Pierson v. Post (1805)

Post: omg [Pierson]

Post: u saw i had that one

...

Post: [Pierson]

...

Post: that was mine

...

Pierson: u lost it so i have to get it

“To be deprived of that which we are possessed of, is a greater evil than to be disappointed of what we have only the expectation.” ~Adam Smith, 1759

“The task of rules of [property] can only thus be to tell people which expectations they can count on and which not” going forward.” ~F.A. Hayek, 1973

Ius, not Use

The end of a rule of property is to secure from *iniuria*.

A rule of property regarding things arises out of our background knowledge of what is right.

[T]he rule concerning the stability of possession...arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it. ~David Hume, 1740

We have rules of property not because we have an ultimate interest in using things without our grasp, but because, proximately, someone with an equal or stronger hand may challenge our grasp.



Thank you.



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