

COMMENT

Why is there property? A response to Professor Wilson

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Abstract

A critical response to Bart Wilson's (2022) theory of property, focusing on his assertion of a final cause in the evolution of property. It argues that while Darwin's great achievement was to remove final causes from earthly evolution and thus move the question of how biological life is organized from theology to science, Wilson's apparent restoration of a final cause to the evolution of property would move the question of how social life is organized from science back to theology, a clear step backward.

Key words: Final causes; social evolution

Why do people have kidneys? To be sure, they cleanse the blood of waste and maintain vital balances of fluids and minerals, and without that cleansing and balance, we couldn't live. But that doesn't address the question. It tells us what kidneys *do*, and that our lives depend on that something being done, but not *why* we have kidneys to do it. It describes the *function* that kidneys perform in keeping a larger, complex biological system alive, but not the *purpose* that is served by having these systems kept alive, much less whose purpose that might be. Apart from concerned people who had nothing to do with inventing kidneys, who cares whether the human species lives or dies? No one seemed to have minded that the dinosaurs or the woolly mammoths died away. Why should we humans be different?

Before 1859, most Englishmen would have understood not just the function of kidneys but the vast, intricate order of life on earth itself as the fulfillment of a purpose, a divine plan. Every species was constructed in such a way as to live in sustaining balance with the others, and every organism to have just the form and internal equipment it needed to survive in the niche assigned to it in the grand order of nature. So marvelous a circumstance could not be an accident. The remarkably functional and efficient organization of life must be the work of a Creator whose purpose was that organisms and species live and propagate and whose wisdom provided each of them with a strategy for survival and the means to pursue it.

But a reluctant Charles Darwin, fully aware of the pain and controversy his ideas would inflict on the comfortable world of Victorian Britain, removed the will of God from the constantly shifting organization of life over time. In its place he offered evolution by natural selection, in which the only purposes at work are those of individual organisms, each struggling to survive in a hostile environment. Those whose physical characteristics and behaviors equip them to succeed in the struggle live to reproduce and pass their advantages on to their offspring, while the losers in nature's cruel game perish, not because they deserve or are somehow meant to die, but only because, through no fault of their own, they are not well enough adapted to their environment to live. The historical development of species and populations and the relationships among them are not determined by God's master plan, nor are the lives and deaths of individual organisms given larger meaning or made comprehensible by reference to divine will. The organization of life on earth is merely the pattern that emerges

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when individual organisms obey the rule *Do what you must to survive* and a constantly changing natural environment, with no overarching purpose or direction, selects who will live and die. It's not a consoling vision, and Western culture has never quite recovered from the shock of it. But for most thoughtful people, it did relocate inquiry into why they have kidneys from theology to science.

A century after *The Origin of Species*, the philosopher Carl Hempel (1959/1965) clarified the conditions under which functional explanations of natural and social phenomena, theories that purport to 'explain' the existence of phenomena by articulating the function they perform in keeping a system in operation, could be treated as scientific. Scientific theories, he insisted, must be testable by some means, either the prediction of phenomena not yet observed, the gold standard of natural science, or the successful rationalization of a system's observable history in terms of the theory, as in Darwin's theory itself. In social science, this requires a commitment to the idea that all phenomena must be reducible to the actions and interactions of individuals in changing environments, and not the proximate result of abstract or supernatural forces. Adaptive change must come from within a system and not be imposed on it from without, and the functionality of specific phenomena like kidneys or property must be linked to a 'hypothesis of self-regulation,' something in the actions and interactions of individual cells or people that senses when the system, the body or the society, is operating improperly and acts to correct it. This ties explanation to observation and ensures the existence of an empirical core of statements whose veracity can, in principle, be determined by observation. This is the decisive difference between Darwin the natural scientist and his theological predecessors. When phenomena are explained by final causes or purposes divorced from the behavior of individuals, it becomes very hard to formulate testable propositions about when and how these purposes will be manifested. Theory is reduced to metaphor by the inability to specify the circumstances under which causal agents will assert themselves or the observable consequences this might have.

I would have thought all of this well settled by now, but Professor Wilson seems to disagree. There is much to praise in his erudite and stimulating essay. Why is there property, he asks, and answers in an argument of four steps that makes considerable progress on the question but which, for reasons unknown, he insists on forcing into the template of Aristotle's four causes, a framework that is quite unnecessary to make his argument and leads him badly astray. As I understand it, the argument is this: (a) human brains work in such a way as to make all people, irrespective of culture, understand the meaning of property as conferring the exclusive right to possess an object; (b) the particular social forms and institutions that govern the expression of this universal impulse differ from culture to culture, are transmitted across generations, and may change at the margins with conditions, but will always function to protect and support property so defined; (c) because of this cultural transmission, individuals internalize specific intentionalities about property – attitudes, beliefs, feelings and the like – that cause them to think and act in particular ways that manifest a strong desire to protect their own property and a resentment of others who try to interfere with it; and, finally, (d) that all of this happens for a reason, the fulfillment of a purpose, which is to allow all humans to live in peace by providing the means, property and trade, to recognize and reconcile competing claims and desires.

Wilson's presentation of the first three points in this argument is original and suggestive, and certainly provides the basis for a compelling conjectural history in the style of Smith, Darwin, and the modern institutionalists, a functional account of property that shows how it might have achieved its universal primacy solely as an evolved consequence of the actions and interactions of intentional subjects in challenging environments over long periods of time. But Wilson claims instead that there is a final cause, a governing purpose for the entire human species, in this case communal peace, served by the institutions of property being what they are, though he does not say whose purpose this might be and how it is brought to bear on the creation of institutions like property. I say 'claims' because, telephobe (Wilson, 2022: 11) though I am, I'm not sure that even Wilson himself believes this. Consider his paradigmatic dispute: *X* thinks some object *T* is his, while *Y* either disagrees and thinks it's his instead or understands that *T* is *X*'s but wants it anyway. Wilson says plausibly that neither *X* nor *Y* is likely to be thinking about the abstract notion of property or the conventions or laws that specify it as they contemplate their dispute. Their concern is their own self-interest, be it

righteous, as when *X* and *Y* claim inconsistent ownership in good faith, or malicious, as when *Y* wants to seize an object he acknowledges he doesn't own.

Focus for the moment on the former, the existence of competing or contradictory good-faith claims to own an object. Following the Scots, Wilson says that *X*'s claims (and *Y*'s too, in this case) are based on feelings of 'resentment,' which are themselves, as he notes, conditioned by expectations created by customs evolved in the past and, once the instant conflict is resolved in one way or the other, will condition expectations others hold in the future. Geoffrey Hodgson (2003: 164–165) calls historical processes of this sort *reconstitutive downward causation* and, as he makes clear, they do not require or imply a final cause to account for the functionality of specific social institutions within them, nor is their existence itself somehow a refutation of the powerful arguments of Hempel and others against teleology and final causes in scientific explanation.

But Wilson concedes that others in the community must agree with one or another claimant, or the claim to *T*, whichever one is sanctioned to make it, will not be recognized as true and so respected by others. It's not up to *X* and *Y*, unless they agree that it will be and resolve the dispute 'privately.' If they can't, some other agency will have to resolve it, so ownership can be authoritatively established and life can go on. As Wilson puts it, '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... . Whether [a claim's] 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 a [contrary claim] and stamp it out' (Wilson, 2022: 11–12).

The 'community,' or the portion that has the power to speak for it, will or won't do this as they wish, but their judgments, conditional as they are on previous history and the custom it has produced, must somehow be expressed and codified if they are to resolve the instant claim and form the basis of future expectations – this is the function of law, or whatever substitutes for it, in every society. *Something*, as Wilson recognizes, must perform this function, or there can be no property as he understands it, only conflicting individual claims that can't be resolved without violence. Violence inflicted by the law itself on those who have clearly violated existing incidents of ownership has nothing to do with defining the law, or defining property, as Wilson seems to think Benthamites believe, but only with enforcing what the law has already determined is or isn't property against claimants acting in bad faith. But then how does the community, or the law that expresses its will, decide what is or is not property? 'Whatever keeps the peace' is one answer, which Wilson takes somehow to be a positive description of how property actually evolves and which may or may not be empirically correct. Historical research may well reveal, for example, that the lawgivers in this society or that did explicitly formulate the law of property on the basis of what would best keep the peace. But like *X* and *Y* themselves, what the lawgivers think they're doing and the actual functional (or dysfunctional) effects of their actions may be quite different, and it may be that the lawgivers had some different overarching purpose that (also) had the functional effect of keeping the peace, or none at all beyond 'justice' in the individual case, which might have the effect over time of evolving functional forms and rules of property spontaneously. But whatever moves the community or the law to define property as favoring one claim or another is *not* an Aristotelian final cause. It's the intention of the lawgiver that motivates the law, not some unspecified final causer.

Wilson (2022: 11) poses the opposition to his position in a misleading but revealing way. I take him to refer to Bentham's well-known view that property rights (that is, the details of how the logically prior category of property applies to specific disputes) have meaning and effect only insofar as the state chooses to recognize them, so that any claimant's claim to ownership depends in the end on the state's willingness to throw its enforcement powers behind that claim. In this sense, one could say, property is created by the state, and because its means of enforcing its determinations ultimately come to the threat of violence, Wilson is moved to say that this view 'is based – some might even say, purely so – on violence or the threat of violence.' This is nonsense, and though I am not one of them, a thoughtless offense to Benthamites. How, after all, is the 'community' going to enforce its decisions under Wilson's prime directive to keep the peace? As he notes, there will be those who willfully

defy the community's well-founded decisions as to ownership – how are they to be dealt with, if not through some form of coercive restraint or punishment?

The view I have always thought of as the natural antagonist of Bentham's positivism is Locke's contractarianism, and Wilson's argument could be substantially improved were he to abandon Aristotle's framework for Locke's. Locke said that property came to individuals directly from God, and that people have a God-given right to violently resist its unlawful appropriation from them, and when all the mumbo-jumbo is stripped away from this essay, I think that's the answer Wilson would really like to come to in the end, that the final cause of property, the one that gives meaning to the rest, is God, whose intentions for humankind are benevolent and who intervenes accordingly on earth. Darwin's great achievement was to remove God's will from the evolution of species, and turn the study of how biological life is organized from theology to science. But rather than address the many potential earthly reasons for the primacy of property, Wilson would apparently restore God to the position of Final Cause, and so turn the study of how social life is organized from science back to theology. This can only be a step backward.

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