

INDIVIDUAL RIGHT TO PROPERTY VS. ECONOMIC INTEREST OF THE COMMUNITY

By Noah McKay

Resolved: The individual right to property ought to be valued above the economic interest of the community.

The evolution of political ideology in the modern era has been defined by the tension between individual rights and collective interests. It was the levying of new taxes for the purpose of recouping war expenditures that sparked the American Revolution; it was the incompatibility of personal freedom with income equality that sustained the half-century long Cold War between the United States and the Soviet Union; and it was a collective preference for security over privacy rights that led to the Patriot Act and the expansion of mass surveillance in freedom-loving democracies at the turn of the twentieth century. Balancing individual liberty against the common good always has been, and probably always will be, beset with difficulties.

This year's NCFCA Lincoln-Douglas resolution is no exception. Conflict between private property and community interests is pervasive and contentious. But it is also highly relevant to issues facing voters and politicians today: Should government have the authority to lock down businesses in the name of the common good? Should government be able to implement price controls when recession looms? Should the rich be made to hand over great portions of their wealth in the name of fairness? Hopefully, over the course of this competitive season, you (and your judges) will arrive at greater clarity regarding these questions. In this short introduction, I will canvass a few definitions and points of interpretation that will equip you to engage with this fascinating topic.

Part I: Definitions

Let's begin by defining a few key terms. The right to property is a complex right with a long history in western philosophy and law, but it is possible to capture the gist with a good dictionary definition:

Oxford Dictionaries. "Property" <https://www.lexico.com/en/definition/property>

"The right to the possession, use, or disposal of something; ownership."

Merriam-Webster. "Property" <https://www.merriam-webster.com/dictionary/property>

"The exclusive right to possess, enjoy, and dispose of a thing."

More detailed accounts of the right to property typically focus on three things: the right to use, the right to exclude, and the right to alienate:

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Hugh Breaky (Hugh Breaky is professor of philosophy at Griffith University, Australia. The Internet Encyclopedia of philosophy is a peer-reviewed academic resource with 30 volunteer editors and over 300 authors, each of whom holds a doctorate.), "Property," in The Internet Encyclopedia of Philosophy (Internet Encyclopedia of Philosophy), accessed May 13, 2022, <https://iep.utm.edu/prop-con/>.

“Taking a broader perspective than Honoré, many contemporary property theorists accept a three-part approach to property. The general idea of private property, it is held, consists of the following three elements:

Exclusion: others may not enter or use the resource;

Use: the owner is free to use and consume the resource;

Management and Alienation: the owner is free to manage, sell, gift, bequeath or abandon the resource.

On this account, property owners are expected to have some level of each of these three types of entitlements. Full Liberal Ownership will emerge as the limit case of private property, arising when a property-holder has the maximum possible entitlement on the three dimensions of exclusion, use and alienation. Lesser types of property are still possible, provided they contain some threshold amount of these three elements.”

Notice that, according to this definition, having a property right to something does not require having all three of these more fundamental rights to the maximal degree. After all, each of us owns our own body, even though none of us has the right to alienate our body (e.g., by selling ourselves into slavery) or to use our body in any way we see fit (e.g., by consuming illegal substances or prostituting ourselves).

The fact that property rights can “come apart” this way has led some philosophers to doubt whether there really is such a thing as the right to property. Thomas C. Grey famously argued that “property” is really just a name for a bundle of other rights, and that we might as well talk about those rights explicitly and get rid of the term “property” altogether. But most scholars think that the concept of property is still coherent, and some think that it boils down to one central right in the bundle. For example, philosopher of law James Penner has argued that the right to exclude is what defines property and that the other features of property rights follow from exclusion:

James Penner (James Penner is a philosopher of law. He has taught at Brunel University, the London School of Economics, King’s College London, and University College London. He has established himself as one of the world’s leading experts in the philosophy of property and the law of trusts and writes more widely in the areas of private law and the philosophy of law. He has been a visiting professor in China, Canada, Belgium, and Australia.), The Idea of Property in Law (Oxford: Oxford University Press, 1997), 71.

“Thus at a theoretical level we understand the right to property equally as a right of exclusion or a right of use, since they are opposite sides of the same coin. Yet we can equally see that only one of these ways of looking at the right might drive the analysis in understanding the shape of the property norms in the legal system. It is my contention that the law of property is driven by an analysis which takes the perspective of

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exclusion, rather than one which elaborates a right to use. In other words, in order to understand property, we must look to the way that the law contours the duties it imposes on people to exclude themselves from the property of others, rather than regarding the law as instituting a series of positive liberties or powers to use particular things. This can be expressed as follows, in what I shall call the *exclusion thesis: the right to property is a right to exclude others from things which is grounded by the interest we have in the use of things.*”

Other scholars, such as Larissa Katz and Robert Nozick, have argued that the defining feature of the right to property is the right to manage how a resource is used:

Larissa Katz (Larissa Katz holds the Canada Research Chair in Private Law Theory at the University of Toronto. Prior to joining the Faculty of Law in 2013, Professor Katz clerked for the late Justice Charles D. Gonthier at the Supreme Court of Canada and taught at Queen’s University, Faculty of Law.), “Exclusion and Exclusivity in Property Law,” The University of Toronto Law Journal 58, no. 3 (2008): 315.

“I have argued above that the exclusivity of ownership refers not to the right that others exclude themselves from the object owned but, rather, to the owner's special agenda-setting authority, a position that is neither derived from nor subordinate to the positions of others with respect to that resource. The function of much of property law and property-related tort law, I have argued, is to preserve the exclusivity of the position of the owner by ensuring its supremacy in relation to the rights and privileges of others and by ensuring that non-owners fall in line with the owner's agenda. Exclusion is simply a special case of a more general strategy of deference to the owner’s agenda.”

Robert Nozick (Robert Nozick was an American philosopher. He held the Joseph Pellegrino University Professorship at Harvard University, and was president of the American Philosophical Association.), Anarchy, State, and Utopia, 2013 Edition (New York: Basic Books, 2013), 171.

“What sort of right over others does a legally institutionalized end-state pattern give? The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted. The constraints are set by other principles or laws operating in the society; in our theory, by the Lockean rights people possess (under the minimal state). My property rights in my knife allow me to leave it where I will, but not in your chest. I may choose which of the acceptable options involving the knife is to be realized. This notion of property helps us understand why earlier theorists spoke of people as having property in themselves and their labor. They viewed each person as having a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did.”

So much for the individual right to property. What, precisely, is the economic interest of the community? “Economic” is a rather broad term:

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Oxford Dictionaries. “Economic” <https://www.lexico.com/en/definition/economic>

“Considered in relation to trade, industry, and the creation of wealth.”

Merriam-Webster. “Economic” <https://www.merriam-webster.com/dictionary/economic>

“Of, relating to, or based on the production, distribution, and consumption of goods and services.”

Cambridge English Dictionary. “Economic”
<https://dictionary.cambridge.org/dictionary/english/economic>.

“Relating to trade, industry, or money.”

Merriam-Webster’s definition is the broadest of the three. After all, almost *every* social activity bears *some* relation to the production, distribution, and consumption of wealth. Under a definition like this, practically any community interest counts as “economic.”

An “interest” is simply a benefit or an advantage:

Merriam-Webster. “Interest” <https://www.merriam-webster.com/dictionary/interest>

“Something that produces good or helpful results or effects or that promotes well-being.”

Oxford Dictionaries. “Interest” <https://www.lexico.com/en/definition/interest>

“The advantage or benefit of a person or group.”

Finally, a “community” is a group of people who have something in common:

Merriam-Webster. “Community” <https://www.merriam-webster.com/dictionary/community>

“A body of persons or nations having a common history or common social, economic, and political interests.”

Oxford Dictionaries. “Community” <https://www.lexico.com/en/definition/community>

“A group of people living in the same place or having a particular characteristic in common.”

American Heritage Dictionary “Community”
<https://www.ahdictionary.com/word/search.html?q=community>

“A group of people living in the same locality and under the same government.”

American Heritage Dictionary “Community”
<https://www.ahdictionary.com/word/search.html?q=community>

“A group of people having common interests.”

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(Notice that, if “community” is defined as a group with common interests, the fact that a group of people has a common economic interest is enough on its own to make it a community.)

In summary, then, an economic interest of the community is something that benefits a group of people with respect to the creation, distribution, or consumption of wealth. Notice that the resolution does not specify the nature of these benefits – they could be *practical* benefits or *moral* ones. Insofar as economic justice, for example, is important to a community, it counts as an economic interest. So, one way to negate the resolution is to insist that justice or fairness in the economic realm requires significant limitations on the right to property.

Part II: Resolutional Analysis

Many facets of this resolution are open to interpretation, but I will stick to the three I suspect will be most important.

First, debaters will have to decide on a resolutional actor. A government actor is a natural choice, since governments are uniquely positioned to (i) determine what the economic interests of the community are and (ii) enforce those interests. Furthermore, it may be *impossible* for a citizen actor to value the economic interest of the community over the individual right to property. Sacrificing one’s property for the collective is an *exercise* of the right to property, not an infringement or limitation on it. (This does not mean it is impossible to adopt a citizen actor, but you will need additional arguments for one, and you will need to explain how citizens can genuinely sacrifice their *right* to property, as opposed to merely their property.)

Second, debaters will have to clarify what it means to *value* one thing over another. There are plenty of ways to understand value, but the best interpretations (i) draw a clear line between the AFF and NEG positions, (ii) make the resolution easier to understand and adjudicate, and (iii) permit both debaters to adopt moderate positions, rather than pushing one or both debaters to extremes. One of the best analyses of value is the conflict analysis: under this analysis, the resolution states that the individual right to property should be chosen over the economic interest of the community whenever they *conflict* or *compete*. Under the conflict standard, AFF may affirm the resolution without ignoring the economic interest of the community completely, and NEG may negate it without totally abolishing property rights.

Third, and maybe most importantly, the wording of the resolution may rule out some of the most popular arguments for private property rights. Economists such as Adam Smith, F. A. Hayek, and Milton Friedman have famously argued that private property rights ought to be upheld because they are essential to economic freedom, and economic freedom leads to great prosperity. Unfortunately for AFF, this looks like a case of valuing the individual right to property *for the sake of* the economic interest of the community. So there is case to be made that this line of argument is non-resolutional. In order to run it effectively, AFF will have to find a

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way to interpret the resolution (or the economic-freedom argument itself) in such a way that AFF can value prosperity without prioritizing the economic interest of the community. (Perhaps one way to do this would be to argue that economic freedom leads to greater prosperity for *each individual*, and that it is for the sake of *individual* economic interests, rather than *community* interests, that property rights ought to be upheld.)

Conclusion

In my view, the prospects for this competitive season are fantastic. This resolution raises important questions with no easy answers, and that is always a recipe for stimulating debate rounds. I suspect many competitors are concerned that the topic leans heavily toward the AFF position, and while that may be true to a limited degree, I am convinced that there are plenty of good arguments available to NEG. We will explore some of these arguments in the next few articles.