

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.

In the last two installments, we surveyed definitions, analyses, and philosophies pertinent to this season's resolution. Now it is time to begin synthesizing that material and discussing competitive approaches. I am happy to report that, contrary to the expectations of many NCFCA members to whom I have spoken, this resolution will emphatically *not* devolve into a comparison of communism with capitalism. In fact, for reasons I will discuss below, I don't expect such comparisons to last beyond the first handful of tournaments.

Part I: Dos and Don'ts for AFF

As I explained in the resolutorial overview section (and mentioned again briefly in the philosophy section), it is dangerous for AFF to build his case on pragmatic arguments for economic freedom, since to do so requires adopting a value closely resembling the economic interest of the community (e.g., prosperity, economic growth, or the general welfare). This means AFF should focus either on moral arguments for the primacy of the individual right to property or on pragmatic arguments aimed at some non-economic goods, like the preservation of peace, security, or liberty. (Thankfully, there are plenty of those arguments to choose from.)

AFF should resist the temptation to characterize the NEG position as socialism or communism. I call this a temptation because, if done successfully, it would end most rounds outright, given the political priors of the judges who tend to frequent NCFCA tournaments. I recommend resisting it because I doubt it will be successful: as I will explain in more detail in Part III, it is not the case that negating the resolution requires adopting socialism or communism. And every debater in the league will have discovered middle-ground NEG positions to take before the season is over. It is best to anticipate those, rather than trying to box every NEG debater into an artificial ideological cage. (If you somehow discover an argument which *proves* that NEG must be a communist, that is a different story. But so far as I know, there is no such argument. There may be an argument showing that negating the resolution raises the *possibility* that some sort of radical socialism will develop down the line. But that does not mean NEG must *defend* or *espouse* radical socialism.)

Likewise, AFF should not needlessly box *himself* into any extreme positions. It may seem that affirming the resolutions requires jettisoning any and all limits on the individual right to property, but that is a mistake. AFF may still accept limits on the right to property which are

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imposed for the sake of protecting individual rights, especially the property rights of others. For example, AFF may accept zoning restrictions (laws that prevent certain activities or construction on private land) if their purpose is to protect the rights of homeowners by preventing residential property from being devalued, and he may accept taxation for the purpose of funding the government if that government exists to uphold the individual right to property and other liberties. The only limits on the individual right to property that AFF cannot clearly accept are those imposed only for the sake of the economic interest of the community. That is still problematic, given how reasonable many of those limits appear, but it is by no means an impossible position to defend.

Part II: Potential AFF Cases

There are endless possibilities open to AFF under this resolution, but I will discuss the three I suspect will be most prevalent during the competitive season.

First, AFF may make the Lockean argument that the individual right to property is not subject to restrictions because it is a natural right that stems from the more fundamental natural right of self-ownership. Since every person owns himself, and since owning oneself is sufficient for owing one's labor, every person has a right to the fruits of his own labor, a right that is independent of laws and government institutions. In contrast, the economic interest of the community, while desirable, is not similarly rooted in anyone's natural rights. No one has a natural right to GDP growth, abundant food, or low inflation. For that reason, the economic interest of the community is an amoral value and is thus inferior to the individual right to property, which is a moral value.

A second, very closely related line of argument, based on the work of Nozick and Hayek, says that coercion is morally wrong and that negating the resolution requires endorsing coercion. According to Hayek, coercion means forcing another person to act according to your plans, rather than his own, and government may legitimately use coercion only in order to prevent coercion.¹ (That is why, for example, arresting a kidnapper is a legitimate exercise of government power but arresting a dissident journalist is not.) Since valuing the economic interest of the community over the individual right to property would require (at least sometimes) confiscating property for the sake of the community's agenda, the NEG position requires coercion not aimed at preventing other acts of coercion and is thus illegitimate. By Nozick's logic, this amounts to the same thing, albeit on a smaller scale, as slavery: it is the commandeering of an individual's labor against his will.

¹ F. A. Hayek (Friedrich August von Hayek was an Austrian economist, legal theorist and philosopher who is best known for his defense of classical liberalism.), *The Constitution of Liberty* (Chicago: Chicago University Press, 1960), 20-21.

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Third, AFF may argue that upholding the individual right to property is necessary to prevent government power from expanding to dangerous magnitudes. As Hayek elsewhere notes, the right to property is essential to the expression of other rights. After all, you cannot exercise liberty of movement without the right to drive a car, you cannot exercise the right to free speech or freedom of the press without owning the means to disseminate information, etc. So permitting government to curtail the individual right to property would endanger all other rights.² In order to limit government power, we should uphold the right to property unconditionally.

Part III: Dos and Don'ts for NEG

If NEG accepts the burden of defending socialism or communism, the debate round is over. No arguments marshalled in defense of either paradigm will be enough to surmount the judge bias that will be arrayed against him. (More importantly, the arguments aren't very good in the first place.) Fortunately, the resolution does not require NEG to defend either. Communism and socialism require the abolition (or the near-abolition) of private property in favor of collective or state ownership. And that is not necessary to negate the resolution. Negating the resolution merely requires saying that the individual right to property is less important than the economic interest of the community, not that it should be dismantled for the sake of that interest.

In fact, NEG may adopt a fiercely pro-free-market stance and harness it as an *advantage*. This strategy requires two steps. First, NEG must propose a conflict standard for priority – that is, he must argue that prioritizing one thing over another amounts to choosing one over the other when the two are in conflict. Second, he must concede that economic freedom is almost always good for, and thus compatible with, the economic interest of the community. Given the conflict standard, this is consistent with his position: it does not imply that the individual right to property is superior, but rather that it is rarely in conflict with the economic interest of the community. It follows that everyday expressions of the right to property are non-resolutional because they are not instances of conflict. Then NEG is free to narrow the debate to only those rare situations in which the individual right to property is *obviously* being exercised in a way that harms the economic interest of the community, like monopolies and air and water pollution. Ironically, then, the most promising strategy for NEG may be to espouse conservative economic policies.

² Friedrich A. von Hayek, "Liberalism," in *New studies in philosophy, politics, economics, and the history of ideas* (London: Routledge, 1978), 132.

Part IV: Potential NEG Cases

If NEG accepts free market economics, what room is left for substantive clash? The answer is: plenty, and nearly all of it appears favorable to NEG. There are at least two or three different ways to negate the resolution by defending moderate limitations on the right to property.

First, NEG may focus on select examples in which the individual right to property is in clear conflict with crucial community interests and in which the majority of people would agree that government intervention is the only feasible solution. Monopolies, for example, harm the community's economic interests by stifling competition through unfair business practices, and the only way to break up a monopoly is through legislative action. (If there were some way to break it up through market pressures, it would not be a monopoly.) Another example is pollution. Private businesses and individuals often have little incentive to regulate the environmental impacts of their activities, in part because they reap all the benefits of those activities themselves while the associated environmental costs are spread out across the whole community. Since there are no market-based incentives for preserving common resources like air and water, government intervention is usually necessary to preserve them. (It is taboo to mention some kinds of pollution in debate rounds in the NCFCA, particularly those related to global warming. But everyone can agree that concentrated, localized pollution, like contaminated water and smog, is bad for communities. I would focus on that.)

Second, NEG may argue that governments exist, at least in part, in order to uphold the "common good," or those community interests which no private entity would be willing or able to uphold. For example, without government, public parks, roads, and sewers would not exist. And governments need funding in order to uphold the common good. And the only way to fund the government is through taxation, which is just organized, systematic confiscation of property. In some cases, upholding the common good requires targeted infringements on the right to property. For example, if building a pipeline through an individual's backyard was necessary to deliver much-needed oil to the whole population of the east coast of the United States, Government should arguably force him to sell the property if he refused. (More on the federal government's constitutional power to do this next time.)

Third and finally, NEG may argue that maintaining distributive justice requires some sort of wealth redistribution. I do not think this strategy is as likely to be effective as the other two, given judge bias, but it would be truer to the broader philosophical debate behind the resolution. And the arguments for moderate wealth distribution are not bad arguments: for example, Dworkin's claim that success should not be determined by bad luck entirely beyond an individual's control is rather compelling. And it is hard (though not impossible) to deny that *something* should be done to enhance the economic prospects of children who are born into

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abusive or impoverished families through no fault of their own. I don't suspect many competitors will make these kinds of arguments, but I hope someone does.

Conclusion

I hope this strategy section has satisfied those in doubt that there are viable arguments available for both sides of the resolution. Far from pitting obvious truth against obvious error, I think this resolution is rather even-handed when interpreted correctly. In the next installment, I will introduce a few applications that can be used in support of the case outlines offered here.