Conflicts Between Public Needs and Property Rights



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By Chris Jeub

You may recognize the picture above from the hit Disney movie, *Up.* The story began with a retired home owner refusing to sell his small property. His little house was his private property, but the needs of the public didn’t sway him to allow the development to roll in. The development was forced to build around him.

The idea of homeowners refusing to make way for the public need of development may seem outdated or far-fetched. However, many countries struggle with the conflict between public expansion and individual property owners. Here’s another picture from the Republic of China of a privately owned apartment and a highway being redirected to circle it.



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This picture above shows an example of a “nail house,” a term used to describe home owners’ stubbornness in refusing to sell their property to make way for developments and highways. Developers refer to these private property owners as “tough as nails” much like Christians may refer to stubborn people as “thorns in sides.” They are also referred to as “holdouts,” home owners who hold out for a better deal, which I explain later.

Who wants an eyesore like the ones above? The needs of the public should help make the way for highways to roll through as needed and make sure development benefits the public as a whole. Why should one owner “holdout” like a “stubborn nail” at the detriment of the community as a whole?

However, there is much to be said in defending private property, even if it costs the public inconvenience or money. Where would the bright line be for justifying seizing property for the sake of the public good? Highways can perhaps be justified, but what about a profit-making supermarket or mall? A strong case can be made that such advancements of a society is infringing on the basic human right to own property.

Herein lies the conflict in the Stoa Speech and Debate League Lincoln-Douglas debate resolution for the 2016-2017 school year, “Resolved: The needs of the public ought to be valued above private property rights.”

**This article will examine the resolution itself and then give examples of conflicts that you will be able to consider in your case development.**

Value resolutions tend to lend to conflict situations. Debaters refer to specific examples in their cases and rebuttals that paint the picture of the conflict that the judge must resolve. Consider the following conflicts in setting up your affirmative and negative positions.

Eminent Domain

The most obvious conflict derived from the resolution is the debatable idea of “eminent domain.” Simply defined, eminent domain:

Eminent Domain: The power to take private property for public use by a state, municipality, or private person or corporation authorized to exercise functions of public character, following the payment of just compensation to the owner of that property.[[1]](#footnote-2)

Throughout history, the government has assumed the authority of their right to take private property in the event of the greater good. That has been the status quo of any monarchy or tyranny. Our US Constitution specifically addresses this problem of tyranny with Amendment V of the United States Constitution. It reads:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.[[2]](#footnote-3)

As you can see, reference to property is peppered throughout the Amendment, but particularly with the last: “nor shall private property be taken for public use without just compensation.” A number of conflict situations have sprung up as litigation in law. Most controversial is when private companies who profit off the use of private property appeal to eminent domain to cease property. It has been held up in court, and many see it as a violation of the Fifth Amendment of the Constitution.[[3]](#footnote-4)

And so will debaters, especially those on the negative side of the resolution. Debaters will enjoy digging deeper into the countless examples of the conflict in eminent domain.

Taking Property

When conflicts occur between the needs of the public and private property rights, results of litigation typically result in the regulation of private property, sometimes even the confiscation of it. Consider the following issues that have been raised in recent years and how they can be used as applications in your cases.

* Water rights. Who owns the water that flows through your land or falls from the sky? This is big news in regions that suffer from drought, like western states of Colorado or California. Many of the water rights laws in America are over a hundred years old, pushing landowners to swallow up a lot of the water that should (arguably) flow downstream.[[4]](#footnote-5)
* Space. Who has the right to the space above our land? An interesting case is currently being litigated where a property owner shot down a drone. The drone belonged to a land surveyer who was merely doing the job of the common good; the land owner feels he has the right to privacy.[[5]](#footnote-6)
* Public use. If your land stands in the way of accessing property for public use, whose right is upheld? That depends, and US law has litigated such things over the years. Generally speaking, private land owners must provide access to public lands, something commonly enforced for access to state parks, hunting lands, and the like.[[6]](#footnote-7)
* Travel. Who doesn’t want smooth travel for the public good? Sometimes property owners, that’s who. According to the 2011 Urban Mobility Report by Texas A&M University, traffic congestion in U.S. cities caused 4.8 billion wasted hours and burned 1.9 billion gallons of fuel, resulting in a “congestion cost” of $101 billion, to say nothing of the tailpipe emissions of vehicles stuck in traffic.[[7]](#footnote-8)
* Environment. As a means to protect plant and animal species, should the government take property? The Environmental Protection Agency tends to think so, and they even have fact sheets on their website to explain the how and why of confiscating private property.[[8]](#footnote-9)
* Energy. It takes a lot to move energy from one place to another. Pipelines have been a huge controversy over the years. While some see them as just as necessary as electrical lines, others see it as much more obtrusive to the environment and the land the pipelines travel. In fact, much development has been thwarted, arguably leaving the public suffering for the sake of property owners.[[9]](#footnote-10)
* Land Management. Who can forget the showdown between ranchers and the federal government in Nevada? At the core of the issue was the conflict between public needs and private property owners. The status quo clearly favors the government, the largest land owner in the entire country. Private property owners disagree.[[10]](#footnote-11)

Holdouts

Most of the examples thus far has dealt with winning *affirmative* examples. The needs of the public *have* been valued above private property rights. But what about those private property owners who have won the fight against confiscation? They’re called “holdouts,” and there are some pretty famous ones.[[11]](#footnote-12)

* Edith Macefield. This was the holdout that inspired the Disney film *Up*. Edith refused to allow developers to buy her house, even when offered $1 million in 2006 (the house was valued at half that amount). Development built sky rises around the century-old farmhouse, lending to much of the inspiration of *Up*. Edith died in 2009 and ironically left the home to the developer who managed the urban development around it. Today plans are being made to make the house a community center, perhaps as an icon to serve as a reminder of the conflict you are debating.[[12]](#footnote-13)
* Macy’s Million Dollar Corner. “The World’s Largest Store” at the corner of Broadway and 34th Street in New York has an awkward notch with a privately owned rental. It consists of a privately owned piece of real estate that refused to sell to Macy’s, and the retail giant eventually built around it. It remains today underneath a giant Macy’s bag.[[13]](#footnote-14)
* Rockefeller Center. Also in New York is the behemoth 30 Rockefeller Plaza. In the late 1890s, the Rockefeller family was apparently unstoppable in their growth and expansion. That was until the Hurley brothers, owners of a saloon on 6th Avenue, refused to sell. At one point, $250 million was asked of the mogul: Rockefeller refused, and the Hurley brothers refused to leave. The Rockefellers built Manhattan’s skyscrapers around the tiny buildings, which remain to this day.[[14]](#footnote-15)
* Tokyo Airport. The most expensive place to live on the planet is Tokyo, Japan. You wouldn’t think there are farmers in the middle of the city, but there are. In fact, up till 2003 one of the major airports had been unable to expand its runways because of a group of farmers who refused to sell their land. Runways, in fact, were built around fields of farmland. In 2003, however, the Supreme Court of Japan upheld lower courts in Tokyo’s ruling to take the land for the sake of the public good.[[15]](#footnote-16)
* Nail Houses. Much like the nail house at the beginning of this article, Lou Baogan of Zhejiang, China, had a highway built around his home. Up till 2012, he had thought he would simply remain in his home till he died. After refusing government payments, he was reportedly forced from his home and relocated.[[16]](#footnote-17)

There are countless number of examples where the needs of the people and private property owners conflict. Debaters may reference these examples all year long as evidence of either the affirmative’s attempt to promote the needs of people (i.e. get rid of the eyesore) or as David and Goliath inspiration to stand up to the rich and powerful developers.

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