The Purpose of “The Law”  
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Negative Case by Adam Densmore

**Summary**

I’m about to give you an instruction which will scare most of you away: if you have not read *The Law* by Frederic Bastiat, put down this excellent resource, and go do so. It’s only 80 pages and will give you a lifetime of material for this resolution. Now the ones of you still reading have either read the book before, have just read the book, or are going to get lost when you try to argue this case. I urge you to reference the book first and foremost because while I’m building a resource for you to give you a leg up in your debate season, I’m not able to write in 5 pages what Bastiat writes in 80, and most certainly not as well.

The essence of this case is going to be the purpose of “The Law.” “Law” is a word oft thrown around, and people usually mean the do’s and don’ts of life in America, or perhaps that confusing code we use to sue each other when we get upset. What “The Law” is, however, and I capitalize it intentionally, according to Bastiat, “It is the collective organization of the individual right to lawful defense. [[1]](#footnote-1)” In other words, it is the ability to protect oneself from what’s referred to as “plunder”

Plunder has two forms—lawful and unlawful. Unlawful being common theft, and lawful being when the government takes someone’s property. Given the resolution, we’ll be referring to the second of these. The book, which I genuinely hope you’ve read by this point, outlines the harms and dangers of such plunder, and that’s where you’ll rest your case.

The value is: “The purpose of the law,” and, as will be explained in the actual case, if the purpose of the law is denied, the laws are by definition immoral and detrimental to that “collective organization of the individual right to lawful defense” that we discussed as the essence. It’s a lot more debatable if, in cross-ex you parametric the resolution to the United States/capitalist systems, and if you don’t, you’ll see why.

The nitty-gritty of how to use this case is really flexible. When I was debating, I always preferred to either run with no negative case, or a flexible case—independent contentions that I could use as many or as few of as I wished based upon my opponent. In college debate, they call it a “mini-case.” You’ll carry the same idea throughout your argumentation and negative philosophy, consistent with your value framework, but you should change out apps, links, order, or number of contentions how you please. Even better is using these contentions to directly refute your opponent’s case, but that’s riskier, so practice with it before trying that in tournaments.

The Purpose of “The Law”

“It was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”[[2]](#footnote-2) Frederic Bastiat knew when he said this that legislation exists to codify into an enforceable form the protection of rights that transcend any politic. That’s to say that the purpose of any just legal code is to fundamentally protect, *not restrict*, the rights to life, liberty, and property. Law does not exist to protect “needs of the public,” but to protect three aforementioned categorical individual rights—including property.

# Definitions/Context

**Private Property:** legally owned property by entities other than the government, which can also include the “just compensation.”[[3]](#footnote-3)

**Law:** “It is the collective organization of the individual right to lawful defense,”[[4]](#footnote-4) according to Frederic Bastiat.

Since the government, or a legal system, is what would have impact on this resolution, we ought to examine it through their eyes. The government should place more priority on private property rights than on the needs of the public. Thus, I will define the actor as the pertinent government.

*[Supplement definitions if Affirmative’s are not workable]*

# Value: Purpose of the Law

What is the purpose of the law? I don’t mean the intent or spirit of each individual statute, I mean the reason for any just legal code to exist. It is to protect those three fundamental rights I discussed in my introduction. The crux of my argumentation, or my negative philosophy is this: **The inherent purpose of law is not to protect “needs of the public,” but to protect God-given rights to life, liberty, and property.** Whether those are protected from other nations, other citizens, or government itself, if a law does not aid in those ends, it is not a pure law.

With that understanding, I’m going to lay 4 foundational contentions, or overarching arguments against the resolution, and then go through each of my opponent’s arguments using that mindset and framework.

# Contention 1: Private Property Provides (Purpose of Law)

When individuals own property, without fear of seizure for “the need of the public,” they naturally buy, sell, trade, compete, and seek to accumulate more property, with a personal incentive and self-interest[[5]](#footnote-5) in making it/themselves better. Ask Adam Smith, considered the Father of Capitalism, if you don’t believe me. When you have public property, or wavering private property rights, no one really feels the incentive to maintain it. Their hard work might be seized at any moment, so why not let someone else do it?

# Contention 2: Private Ownership is Absolute

If people *ever* fear government seizure of property, or mandatory contribution of private property to “needs of the public,” they *always* fear it. This is really simple: either they own something, or they don’t. If they can’t rely upon owning it, they don’t effectively own it, and won’t have the same incentive to prosper the property.

# Contention 3: “Needs of the Public” = Slippery Slope

The saying goes that if you give the government an inch, it’ll take a mile. If you give them the right to determine “needs of the public”, and then give them the authority to enforce that by seizing private property, congratulations you have given them the ability to casually take peoples’ stuff; if you think they won’t abuse this, think again.

## Application: Eminent Domain

A shining example of the government abusing their ability to seize property for “needs of the public” is in eminent domain.[[6]](#footnote-6) Time and time again governments decide that they should be allowed to buy private property (at whatever price they determine) and use it for a public park, new apartments, a highway, or anything they decide.

# Contention 4: “Needs of Public” = Subjective

Not only can the government abuse the authority the affirmative wants to give them, but there is inevitably disagreement about what this so-called “needs of the public” actually are. While one party may believe tearing up an old neighborhood to replace it with a mall is a need, others may disagree—the government gets to call the shots in that case, regardless of peoples’ opinion and property rights. For example,

## Application: Friends of Denver Parks[[7]](#footnote-7)

In 2015 in Denver, Colorado, the city decided that the “needs of the public” would be satisfied only by tearing up eleven acres of natural open space, Paul A. Hentzell Park, and turning it into a small elementary school. The inconvenient truth of the matter was that the surrounding citizens disagreed, but the government did it anyway. A neighborhood group of lawyers called “Friends of Denver Parks” took the matter up legally, only to be dismissed by the judge. The decision stood and the park is gone. “Needs of the public” are subjective, and giving government that kind of authority is dangerous.

Affirmative Brief: Strategy

First of all, just as I mentioned to the negative, read Bastiat’s *The Law.[[8]](#footnote-8)* This will help you understand the resolution, give you some opening quotes (especially to help you as a negative), and give you a better shot to throw some fatal punches toward the negative if they come at you using a version of this case. Now, if the negative uses this case exactly as it is written, you can beat them on applications. There are droves of applications (find your own) of instances of public need outweigh the private property violations.

What the negative has to do that is going to be the hardest from their side, however, is passively exclude times like war—in a draft,[[9]](#footnote-9) people (and therefore their property) are subjected to “seizure,” or usage for the public need. Even without the draft, millions of individuals choose to sacrifice at least part of their private property to promote the needs of the public. You can press the extreme here: if people sat around and advocated their private property rights instead of pursuing the needs of the public, the nation would fall in times of even moderate peril.

The other thing that the negative has to do for their case to hold any water is talk about everything in the context of the government and the law—the negative says that *the law* needs to protect private property, and that *the government* can’t take away private property or justly determine what “public need” is. The resolution *does not* say anything about either law or government. Keep that in mind—this is a value debate, not a policy debate, and so all you have to do is prove that one is more overall important than the other, not that government is a good agency, not that law works toward that goal, and not that it even can be forcibly implemented.

Finally, if you really want to change things up, do some thorough research into Rousseau’s “Social Contract,”[[10]](#footnote-10) (also attributed to John Locke, basically the same thing). You can run that the government’s *duty* is to promote the needs of the public. This turns the analysis the negative used for the majority of their time, and takes it one step further—it’s not just their prerogative, but their obligation.

The overall approach you want to take is finding exceptions and extremes that break down, one by one, the principle that the negative argues. Show that their view is utopian, not realistic.

1. Bastiat, Frédéric. Page 6. *The Law*. Irvington-on-Hudson, NY: Foundation for Economic Education, 1950. Print. [↑](#footnote-ref-1)
2. AZQuotes Website, citing Frederic Bastiat: <http://www.azquotes.com/author/1031-Frederic_Bastiat>. The full quote is, “Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.” [↑](#footnote-ref-2)
3. U.S. Constitution, Amendment 5 [↑](#footnote-ref-3)
4. Bastiat, Frederic. Page 6. *The Law.* Irvington-on-Houston, NY: Foundation for Economic Education, 1950. Print. [↑](#footnote-ref-4)
5. Business Dictionary, *Self-Interest:* <http://www.businessdictionary.com/definition/self-interest.html>. The full definition is, “Focus on actions or activities that are advantageous to an individual or organization. For a business or individual to survive and grow, a degree of self-interest is necessary. When there is too much focus on self-interest the benefits of the group at large diminishes.” [↑](#footnote-ref-5)
6. Leung, Rebecca. *Eminent Domain: Being Abused? Is Seizure of Private Property Always in Public’s Intedrest?.* CBS News, September 26, 2003. <http://www.cbsnews.com/news/eminent-domain-being-abused/> [↑](#footnote-ref-6)
7. Prendergast, Alan. “Hentzell Park: Judge upholds ‘less than transparent’ land swap.” *Westword.* 12 May 2014. Web. 16 August 2016. [↑](#footnote-ref-7)
8. Bastiat, Frederic. n.p. *The Law.* Irvington-on-Houston, NY: Foundation for Economic Education, 1950. Print. [↑](#footnote-ref-8)
9. Harris, Tom. “How the U.S. Draft Works.” *How Stuff Works.* n.d. Web. 18 August 2016. [↑](#footnote-ref-9)
10. “Social Contract Theory.” *Internet Encyclopedia of Philosophy, a Peer-Reviewed Academic Resource.* n.d. Web. 18 August 2016 [↑](#footnote-ref-10)